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10 **IN THE SUPREME COURT  
STATE OF ARIZONA**

11  
12 In the Matter of:

13 **PETITION TO AMEND RULES 75  
THROUGH 80, ARIZONA RULES  
14 OF THE SUPREME COURT**

Supreme Court No. R-21-

**STATE BAR OF ARIZONA  
15 PETITION**

16 Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona (“State  
17 Bar”) respectfully requests that this Court amend Rules 75 through 80, Ariz. R.  
18 Sup. Ct. (Rule(s)), which pertain to matters related to the unauthorized practice  
19 of law in Arizona.

1  
2 **DISCUSSION**

3 General

4 Supreme Court Rules 75 through 80, which address the unauthorized  
5 practice of law in Arizona, became effective July 1, 2003. The rules have not  
6 been extensively amended since their adoption. The State Bar, through its  
7 experience investigating and prosecuting unauthorized practice of law cases,  
8 recommends that the current rules, including those taking effect January 1, 2021,  
9 be amended to clarify their meaning, ensure procedural consistency, and add a  
10 provision authorizing criminal contempt proceedings.

11 While the current rules authorize bar counsel to pursue civil contempt of  
12 unauthorized practice of law orders and judgments, they do not specify the  
13 manner for seeking contempt or state whether the State Bar and a respondent may  
14 enter into a consent agreement regarding contempt.

15 Additionally, the unauthorized practice of law rules do not currently  
16 specify: (a) when documents and information become matters of public record;  
17 (b) what documents and information become matters of public record; (c) who  
18 may disclose information or documents; or (d) when the State Bar may expunge  
19 unauthorized practice of law records in its possession.

1  
2 The proposed amendments will, in some ways, make the unauthorized  
3 practice of law rules more consistent with the lawyer discipline rules (*e.g.*, Rules  
4 41 through 74). In addition, bar counsel should be granted some discretion in a  
5 few situations where the current rules mandate specific action. Finally, the State  
6 Bar, and not the superior court, should be responsible for notifying complainants  
7 and respondents about various matters.

8 The proposed amendments are reflected in legislative format<sup>1</sup> in Appendix  
9 A. A set of the proposed amendments in final form are set forth in Appendix B.

#### 10 Discussion of Need for Amendments

11 Rule 75(b)(10) – The inclusion of a reference to the court of appeals is  
12 appropriate and necessary because orders may be issued by that court (*e.g.*, in the  
13 case of special actions or appeals). *See* Rule 79(g) (“Final orders or judgments  
14 issued by the superior court in unauthorized practice of law proceedings shall be  
15 reviewable by the court of appeals and this court pursuant to the Arizona Rules  
16 of Civil Appellate Procedure.”).

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19 <sup>1</sup> In legislative format, deletions are reflected with strikethroughs (*e.g.*, ~~rule~~) and  
additions are reflected with double underlines (*e.g.*, rule).

1           Rule 76(a)(2) – “Entity” has been added to include entities that are not  
2 alternative business structures.

3           Rule 76(a)(5) – The inclusion of a reference to cease and desist orders is  
4 appropriate and necessary because the superior court may enter, as a sanction, a  
5 cease and desist order without including injunctive relief language.

6           Rule 76(b)(1) (and elsewhere in the unauthorized practice of law rules) –  
7 The reference to a “Consent to Cease and Desist Agreement” has been shortened  
8 to “Consent Agreement.” The requirement that a consent agreement be filed  
9 “prior to formal proceedings” has been eliminated to allow the State Bar and  
10 respondents to enter into an agreed disposition of an unauthorized practice of law  
11 proceeding subsequent to a complaint being filed in superior court. The addition  
12 of “the entry of an injunction or finding of contempt, or any other sanction agreed  
13 to by the parties” expands the sanctions available to the superior court to include  
14 injunctive relief and use of consent agreements in contempt proceedings.

15           Rule 76(b)(2)(C) – The inclusion of the phrase “Internet sites, including  
16 social media” would allow the superior court to order a respondent to cease the  
17 use of titles or descriptions on the Internet, as well as on “advertising, business  
18 cards, and letterhead,” that may otherwise lead a reasonable person to believe  
19 that the respondent may engage in the practice of law in Arizona.

1  
2        Rule 76(b)(4) – The expansion of contempt to include criminal contempt is  
3 appropriate and necessary to address nonlawyers and entities that fail to comply  
4 with a superior court’s order directing them to refrain from engaging in the  
5 unauthorized practice of law. The State Bar’s efforts have been frustrated, on  
6 occasion, in attempts to prohibit a specific person or entity from engaging in the  
7 unauthorized practice of law based solely on a cease and desist order, permanent  
8 injunction and civil contempt order. Certain nonlawyers have openly refused to  
9 comply with a cease and desist order, permanent injunction or civil contempt  
10 order, and have stated or indicated they do not intend to comply with such orders.  
11 For example, multiple findings of civil contempt have not stopped one nonlawyer  
12 from continuing to engage in the unauthorized practice of law as a business. The  
13 addition of the phrase “the imposition of any other sanction authorized by law”  
14 is necessary to allow the superior courts, in contempt proceedings, to impose  
15 sanctions beyond those specifically enumerated in Rule 76(b).

16        Rule 76(b)(6) – The rule, effective January 1, 2021, references the  
17 disposition of civil penalties against alternative business structures and civil fines  
18 against legal paraprofessionals, but does not state the disposition of fines imposed  
19 on all other individuals and entities. Due to a lack of clarity in the current rule

1 regarding civil penalties for other respondents, penalties have been imposed with  
2 payment to the State Bar in at least one case and to the clerk of a superior court  
3 in another case.

4 Rule 76(b)(7) – The State Bar should be granted the discretion to waive the  
5 imposition of costs, expenses and attorney’s fees. The State Bar’s waiver of the  
6 imposition of costs, expenses and attorney’s fees is often a contributing factor in  
7 respondents entering into consent agreements. Such agreements accomplish the  
8 goals that would be sought at trial and reduce the expenditure of resources by the  
9 State Bar and the superior courts. It is also a practice which is consistent with  
10 disciplinary sanctions against attorneys (Rule 60(d)).

11 Rule 76(c) – It is appropriate and necessary to change “Cease and Desist  
12 Sanction” in the title to “Orders and Judgments” to more accurately reflect the  
13 variety of orders that may be entered by a superior court. The proposed  
14 amendment clarifies the effective dates of orders and judgments that do not  
15 include a cease and desist sanction, avoiding ambiguity with the “immediate”  
16 requirement for a cease and desist order under Rule 76(b)(2).

17 Rule 77(a) – Superior courts should not bear the responsibility of sending  
18 respondents’ answers or responses to complainants in unauthorized practice of  
19 law cases. In typical cases, the identity of the complainant is unknown to the

1 court. Changing the phrase “does not proceed with the case” to “dismisses the  
2 charge prior to a complaint being filed in superior court” is appropriate because  
3 complainants should have the right to file a complaint in superior court only after  
4 the State Bar dismisses their charge prior to filing a complaint in superior court.  
5 Similarly, complainants should not have a right to file a complaint in superior  
6 court if the State Bar dismisses a charge during the pendency of a superior court  
7 proceeding, which may occur as part of a consent agreement or following a  
8 determination there is insufficient evidence to prove an allegation of the  
9 unauthorized practice of law.

10 Rule 77(b)(3) – Unauthorized Practice of Law Counsel may enter into  
11 consent agreements pursuant to Rule 78(c), and dismiss proceedings pursuant to  
12 Rule 77(b)(4). This section should be amended to clarify that Unauthorized  
13 Practice of Law Counsel has the authority to enter into consent agreements at any  
14 stage of an unauthorized practice of law proceeding.

15 Rule 77(b)(6) – This amendment would make the State Bar responsible for  
16 providing a copy of respondents’ answers and responses and the final disposition  
17 of each case to complainants. This proposed amendment, along with the proposed  
18 amendments to Rule 77(b)(3), would transfer the responsibility for providing  
19 information to complainants from the superior court to the State Bar.

1           Rule 78 – The deletion of “Initial” in the title is appropriate because Rule 78  
2 addresses more than initial unauthorized practice of law proceedings.

3           Rule 78(a) – The addition of a reference to consent agreements will reflect  
4 that unauthorized practice of law charges may be disposed of by filing consent  
5 agreements, as well as by dismissal or the filing of complaints in superior court.

6           Rule 78(b)(1) – The inclusion of a reference to violations of orders or  
7 judgments prohibiting a respondent from engaging in the unauthorized practice  
8 of law will clarify that screening investigations must be undertaken when charges  
9 allege a violation of a court order or judgment prohibiting a respondent from  
10 engaging in the unauthorized practice of law. Screening investigations are  
11 appropriate not only when initial charges are submitted to the State Bar, but also  
12 when charges allege a respondent’s failure to comply with prior unauthorized  
13 practice of law orders.

14           Rule 78(b)(2) – Deleting the phrase “cease and desist,” referencing only a  
15 “consent agreement,” is appropriate because “consent agreement” is broad  
16 enough to include all of the various types of agreements set forth in Rule 76(b)(1).  
17 The amended language will clarify that the State Bar may file applications for  
18 orders to show cause regarding contempt in superior court following a screening  
19 investigation.

1           Rule 78(b)(5) – The additional language clarifies that the State Bar may  
2 dismiss charges following its investigations into allegations that respondents  
3 have failed to comply with a court’s previously-entered order or judgment in an  
4 unauthorized practice of law proceeding.

5           Rule 78(c) – Changing the phrase “Consent to Cease and Desist Agreement”  
6 to “Consent Agreement” is appropriate and necessary to be consistent throughout  
7 these rules (*see, e.g.*, proposed Rule 76(b)(1)).

8           Rule 78(c)(1) – The additional language clarifies that Unauthorized Practice  
9 of Law Counsel and respondents may enter into consent agreements or  
10 stipulations in contempt proceedings (*i.e.*, cases in which the charges suggest that  
11 a respondent has violated orders or judgments previously entered by a superior  
12 court in unauthorized practice of law proceedings).

13           Rule 78(c)(2) – Amending the phrase “tender of admissions and consent to  
14 cease and desist agreement” to “consent agreement” is appropriate and necessary  
15 to be consistent throughout the rules (*see, e.g.*, proposed Rule 76(b)(1)).  
16 Language mandating the submission of a joint memorandum in support of a  
17 consent agreement is unnecessary because the form of agreement is set forth in  
18 proposed Rule 78(c)(3).

1           Rule 78(c)(3) – The addition of “consent” clarifies that the form of  
2 agreement set forth in paragraphs “A” through “D” pertain only to consent  
3 agreements for cease and desist orders and injunctions, and not to the form of  
4 document that must be filed for consent agreements or stipulations regarding  
5 violations of previously-entered orders (*i.e.*, contempt actions).

6           Rule 78(c)(3)(A) – “[C]harge” has been deleted because there are no  
7 “counts” in a charge. Pre-complaint consent agreements cannot address “[e]ach  
8 count alleged” because “counts” exist only when complaints are filed in superior  
9 court. The inclusion of language addressing pre-complaint consent agreements is  
10 appropriate and necessary to address situations in which Unauthorized Practice  
11 of Law Counsel and a respondent choose to enter into a consent agreement prior  
12 to the filing of a complaint in superior court.

13           Rule 78(c)(3)(B) – The inclusion of additional language from current Rule  
14 78(c)(4) retains the required analysis with the proposal to strike that subparagraph  
15 of the rule.

16           Rule 78(c)(4) – The requirement of a joint memorandum is unnecessary  
17 because the form of agreement is set forth in the modifications for proposed Rule  
18 78(c)(3). The requirement of an analysis of the proposed sanction, including a  
19

1 discussion why a greater or lesser sanction would not be appropriate has been  
2 moved to proposed Rule 78(c)(3)(B).

3 Rule 78(c)(5) – This current rule will be renumbered as Rule 78(c)(4).  
4 Changing “agreement” to “consent agreement” clarifies that the “agreement”  
5 referenced in the rule is a consent agreement.

6 Rule 78(c)(5)(B) – This current rule will be renumbered as Rule 78(c)(4)(B).  
7 Changing “agreement” to “consent agreement” clarifies that the “agreement”  
8 referenced in the rule is a consent agreement.

9 Rule 78(c)(5)(C) – This current rule will be renumbered as Rule 78(c)(4)(B).  
10 A special action is the appropriate appellate procedure to use if a superior court  
11 rejects a consent agreement, since this type of order is not a final judgment that  
12 can be appealed. The requirement for an adjudication hearing within 30 days has  
13 been deleted because the superior court should have the docketing discretion to  
14 determine when a trial should be set. As an example, in cases where a trial date  
15 has been set, but the court rejects a consent agreement, the trial date previously  
16 set by the court may be more than 30 days after the court’s rejection. The court  
17 should not be required to move a scheduled trial to an earlier date simply because  
18 the parties filed, and the court rejected, a consent agreement. Changing  
19

1 “adjudication hearing” to “a hearing on the merits” is appropriate to clarify the  
2 nature of the hearing.

3 Rule 78(c)(6) – This current rule will be renumbered as Rule 78(c)(5).  
4 Changing the phrase “consent to cease and desist agreement” to “consent  
5 agreement” is appropriate and necessary for consistency (*see, e.g.*, proposed Rule  
6 76(b)(1)). The entry of a cease and desist order and injunction are both  
7 appropriate when a nonlawyer or entity has engaged in the unauthorized practice  
8 of law. The form of judgment has been amended to include a reference to the  
9 entry of a cease and desist order in addition to an injunction, and to include  
10 language for orders regarding other sanctions authorized by law. The form of  
11 judgment in a contempt proceeding should be left to the superior court.

12 Rule 79(a) – Changing the phrase “consent to cease and desist agreement”  
13 to “consent agreement” is appropriate and necessary for consistency (*see, e.g.*,  
14 proposed Rule 76(b)(1)).

15 Rule 79(e) – Striking the reference to “recommendations” regarding  
16 sanctions is appropriate because the superior court enters orders that include the  
17 imposition of sanctions; they do not “recommend” sanctions.

1           Rule 79(f) – The inclusion of a reference to Criminal Rule 35 is appropriate  
2 and necessary to establish a procedure for criminal contempt.

3           Rule 79(g) – Changing “discipline” to “sanction” clarifies that sanctions—  
4 and not discipline—are imposed in unauthorized practice of law proceedings.

5           Rule 80(a)(1) – The processing of unauthorized practice of law cases should  
6 not be delayed due to similar proceedings elsewhere if the matter is pending  
7 before a superior court, but the State Bar should be permitted in its discretion to  
8 delay disposing of charges not yet filed as a complaint if there are substantially  
9 similar proceedings elsewhere that may assist it in determining an appropriate  
10 disposition of a charge. Granting this discretion to Unauthorized Practice of Law  
11 Counsel will limit the expenditure of resources in matters where the outcome of  
12 the same or similar charges may have a bearing on the disposition of the  
13 unauthorized practice of law charges.

14           Rule 80(a)(2) – Unauthorized Practice of Law Counsel should have the  
15 discretion to determine whether a lack of cooperation by witnesses, an agreement  
16 between the complainant and respondent, or restitution can adequately address  
17 the nature of the misconduct.

18           Rule 80(a)(6) – The language in the current rule is limited to “testimony  
19 given in the [unauthorized practice of law] proceedings,” whereas Rule 48(l),

1 which grants immunity in cases involving lawyer misconduct, applies to both  
2 communications “related to lawyer misconduct, lack of professionalism or  
3 disability, *and* testimony given in the proceedings.” (Emphasis added). The  
4 additional language and the deletion of “as provided by law” will result in  
5 immunity language consistent with that in Rule 48(l).

6 Rule 80(b)(1) – The additional language clarifies when information related  
7 to unauthorized practice of law proceedings becomes available to the public.

8 Rule 80(b)(2)(A) – The deletion of “a panelist” is appropriate because  
9 panelists are not involved in unauthorized practice of law proceedings. The  
10 addition of a short list of examples clarifies the types of documents that do not  
11 become matters of public record, and is consistent with the rule pertaining to  
12 lawyer discipline proceedings (*see* Rule 70(b)(1)).

13 Rule 80(b)(2)(B) – The deletion of “a panelist” is appropriate because  
14 panelists are not involved in unauthorized practice of law proceedings.  
15 “[C]ommittee” was added because limited matters may be addressed by the  
16 Attorney Discipline Probable Cause Committee (*see* Rule 75(b)(4) (Definitions),  
17 and Rules 77(c)).

18 Rule 80(b)(2)(D) – Amending the phrase “Attorney Consumer Assistance  
19 Program” to “intake department” is appropriate because the “Attorney Consumer

1 Assistance Program” is a term that is no longer used by the State Bar.  
2 “[T]elephonic requests” was changed to “requests” to protect non-telephonic  
3 requests for information and to be consistent with the rules pertaining to lawyer  
4 discipline proceedings (*see* Rule 70(b)(8)).

5 Rules 80(b)(2)(E) through (I) – Several categories of information were  
6 included to allow the state bar to redact or seal information or documents for  
7 which a motion to seal would otherwise need to be filed with the superior court,  
8 and to make the rule consistent with the rules pertaining to lawyer discipline  
9 proceedings (*see* Rule 70(b)(11) through (15)).

10 Rule 80(b)(3) – The current rule does not state when unauthorized practice  
11 of law information or documents become matters of public record, or when the  
12 State Bar may disclose its file when the file is not a matter of public record. The  
13 proposed language is consistent with the rules pertaining to lawyer discipline  
14 proceedings (*see* Rule 70(c)).

15 Rule 80(b)(4) – The proposed rule clarifies the ability of a complainant,  
16 respondent or witness to disclose documents, and is consistent with the rules  
17 pertaining to lawyer discipline proceedings (*see* Rule 70(d)).

18 Rule 80(b)(5) – The addition of language regarding the impact of disclosure  
19 of information or documents in unauthorized practice of law proceedings is

1 consistent with the rules pertaining to lawyer discipline proceedings (*see* Rule  
2 70(f)).

3 Rule 80(b)(7) – The addition of a subsection regarding the retention of  
4 records is appropriate and necessary to clarify the State Bar’s duty to retain  
5 documents and information related to unauthorized practice of law matters.  
6 Based on the incorporation of Rule 70(h), the retention of records in unauthorized  
7 practice of law matters will be the same as that for lawyer regulation matters. On  
8 September 30, 2020, the Supreme Court entered Administrative Order No. 2020-  
9 153, which establishes the State Bar’s duties regarding records retention and  
10 disposition. That administrative order specifically referenced unauthorized  
11 practice of law records.

12 Rule 80(c) – The addition of an expungement rule is necessary to allow the  
13 State Bar to expunge certain unauthorized practice of law records. The proposed  
14 rule incorporates Supreme Court Rule 71, which addresses the expungement of  
15 State Bar records in lawyer regulation matters. Based on the incorporation of  
16 Rule 71, the expungement of records in unauthorized practice of law matters will  
17 be the same as that for lawyer regulation matters.

1 **CONCLUSION**

2 For the reasons set forth above, the State Bar of Arizona respectfully  
3 requests that this Court amend Supreme Court Rules 75 through 80, as set forth  
4 in the Appendices.

5 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of January 2021.

6  
7 /s/ Lisa M. Panahi

8 Lisa M. Panahi  
9 General Counsel

10 Electronic copy filed with the  
11 Clerk of the Supreme Court of Arizona  
12 this 8<sup>th</sup> day of January 2021.

13 by: /s/ Patricia Seguin

## VI. Unauthorized Practice of Law

[The following rules include the Court-ordered amendments taking effect January 1, 2021, as amended by the Supreme Court on November 4, 2020]

### **Rule 75. Jurisdiction; Definitions**

(a) [No change].

(b) **Definitions.** The following definitions shall apply in unauthorized practice of law proceedings.

1. – 9. [No change.]

10. “Order” means an order signed by the superior court, the court of appeals or the supreme court in unauthorized practice of law matters.

11. – 16. [No change.]

### **Rule 76. Grounds for Sanctions, Sanctions, and Implementation**

(a) **Grounds for Sanctions.** Grounds for sanctions include the following:

1. [No change]

2. Willful disobedience or violation of a court ruling or order requiring the individual, entity or alternative business structure to do or forbear to do an act connected with the unauthorized practice of law.

3. – 4. [No change.]

5. Violation of any cease and desist order or injunction imposed during an unauthorized practice of law proceeding.

(b) **Sanctions and Dispositions.**

1. Consent Agreement to Cease And Desist. Respondent and unauthorized practice of law counsel may enter into a “~~Consent to Cease and Desist Agreement~~” ~~prior to formal proceedings~~ that states respondent agrees to cease and desist from engaging in acts found to be the unauthorized practice of law, to refund fees collected, to pay costs and expenses, ~~and~~ to make ~~any other~~ appropriate restitution, to the entry of an injunction or finding of contempt, or any other lawful sanction agreed to by the parties.

2. *Cease and Desist Order.* The superior court may enter an order for a respondent to immediately cease and desist from conduct that constitutes engaging in the unauthorized practice of law. After entry of a cease and desist order or judgment, and service thereof upon the respondent, respondent shall:

A. – B. [No change.]

C. cease use of any reference to titles or descriptions prohibited in the order or judgment on all advertising, business cards, ~~and~~ letterhead, and Internet sites, including social media.

3. [No change.]

4. *Civil or Criminal Contempt.* The superior court may issue a civil or criminal contempt citation and determine if the respondent is guilty of contempt and, by order, prescribe the sanction, including assessment of costs, expenses and reasonable attorney fees, and the imposition of any other sanction authorized by law.

5. [No change.]

6. *Civil Penalty.* The superior court may order a civil penalty up to \$25,000 against every respondent upon whom another sanction is imposed. Civil penalties against an alternative business structure shall be deposited in the Alternative Business Structure Fund. Civil fines against a legal paraprofessional shall be deposited in the fund established by the supreme court for that program. Civil penalties against all others shall be payable to the State Bar.

7. *Costs and expenses.* Costs, expenses, and attorney's fees relating to the proceedings shall be assessed against every respondent upon whom another sanction is imposed, unless waived by the State Bar. Assessment shall be included in the order or judgment.

**(c) Implementation of Cease and Desist Sanction Orders and Judgments.** Orders or judgments of the superior court ~~imposing cease and desist sanctions in~~ unauthorized practice of law matters shall be effective thirty days after entry, unless another date is specified.

## **Rule 77. Participants in Unauthorized Practice of Law Proceedings**

**(a) Complainant.** The complainant is not a party to an unauthorized practice of law proceeding. However, by becoming a complainant, a person submits himself or herself to the jurisdiction of the supreme court and the superior court for all purposes

relating to these rules. A complainant shall maintain confidentiality of proceedings, if so directed by the superior court. The ~~superior court~~ State Bar shall send a copy of any answer or response filed by respondent, as well as a notice of the final disposition of the matter, to the complainant. The complainant may file a complaint on his or her own behalf in superior court if the state bar ~~does not proceed with the case~~ dismisses the charge prior to a complaint being filed in superior court.

**(b) Unauthorized Practice of Law Counsel; Powers and Duties.** Acting under the authority of the board, and under the direction and by appointment of the executive director, unauthorized practice of law counsel shall have the following powers and duties:

1. – 2. [No change.]

3. ~~recommend dispositions prior to formal proceedings~~ enter into consent agreements with respondents;

4. – 5. [No change.]

6. send to complainants a copy of any answer or response filed by respondents in superior court and promptly notify the complainant and respondent of the final disposition of each matter.

**(c)** [No change.]

## **Rule 78. ~~Initial~~ Proceedings**

**(a) Commencement.** An unauthorized practice of law proceeding commences upon receipt by the state bar of a charge against a respondent. An unauthorized practice of law proceeding shall be disposed of by dismissal or by the filing of a consent agreement or complaint in the superior court seeking imposition of one or more sanctions as provided in these rules.

**(b) Screening and Investigation.** Upon the commencement of an unauthorized practice of law proceeding against a respondent, the matter shall proceed as provided in this section.

1. *Screening.* Unauthorized practice of law counsel shall evaluate all information coming to his or her attention, in any form, by charge or otherwise alleging the respondent engaged in unauthorized practice of law or violated any order or

judgment previously entered in an unauthorized practice of law proceeding. If the allegations, if true, would not constitute unauthorized practice of law under these rules or contempt of court, the matter shall be dismissed. If the information alleges facts which, if true, would constitute unauthorized practice of law or contempt of court, unauthorized practice of law counsel shall conduct an investigation.

2. *Investigation*. All investigations shall be conducted by unauthorized practice of law counsel, volunteer bar counsel, or staff investigators. Unauthorized practice of law counsel may request information through an investigative subpoena pursuant to Rule 78(b)(4). Following an investigation, unauthorized practice of law counsel may dismiss the matter; enter into a consent ~~cease and desist~~ agreement with the respondent pursuant to Rule 78(c); ~~or~~ file a complaint in superior court seeking injunctive relief, assessment of costs and expenses, and restitution, or file an application for an order to show cause regarding contempt in superior court. Unauthorized practice of law counsel shall not commence a superior court proceeding until the respondent is afforded an opportunity to respond in writing to the charge. Respondent shall have twenty days from notice of the request for information to respond.

3. – 4. [No change.]

5. *Dismissal by Unauthorized Practice of Law Counsel*. After conducting an investigation, unauthorized practice of law counsel may dismiss an unauthorized practice of law proceeding if there is no probable cause to determine that unauthorized practice of law occurred or that the respondent has failed to comply with an order or judgment previously entered by a court in an unauthorized practice of law proceeding. Unauthorized practice of law counsel shall provide complainants with a right-to-sue letter upon dismissal of the charge.

**(c) Consent to ~~Cease and Desist~~ Agreement.**

1. ~~*Consent to Cease and Desist*~~. A respondent against whom a charge has been made or a complaint has been filed may tender a conditional admission to the charge or complaint or to a particular count in exchange for the imposition of a stated sanction at any stage of the proceedings. In contempt proceedings, Unauthorized Practice of Law Counsel and respondents may enter into consent agreements, which may be in the form of a stipulation, in exchange for the imposition of stated sanctions.

2. *Procedure*. A ~~tender of admissions and consent to cease and desist~~ agreement, signed by respondent, respondent's counsel, if any, and unauthorized practice of

law counsel, shall be filed with the clerk of the superior court. ~~All agreements must be accompanied by a joint memorandum in support of consent to cease and desist agreement, as set forth below.~~ Exhibits in support of the agreement or the sanction to be imposed must be filed with the agreement and joint memorandum, in addition to a statement of costs and expenses on proven counts. The agreement must state that the agreement and joint memorandum have been approved as to form and content by the chief bar counsel.

3. *Form of Agreement.* All consent agreements must include the following:

A. Rule, Order or Judgment Violation. Each count alleged in the ~~charge or complaint or application for contempt~~ must be addressed in the agreement, including a statement as to the specific rule, order or judgment that was violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count. Pre-complaint consent agreements must include a statement as to the specific rule, order or judgment that was violated and the facts necessary to support the alleged violation or conditional admission.

B. Form of Sanction. The form of sanction to be imposed must be set forth in the agreement, along with an analysis of the proposed sanction, including a discussion as to why a greater or lesser sanction would not be appropriate under the circumstances of the case.

C. – D. [No change.]

~~4. *Joint Memorandum in Support of Consent to Cease and Desist Agreement.* Each agreement must be accompanied by a Joint Memorandum in Support of Consent to Cease and Desist Agreement that includes an analysis of the proposed sanction, including a discussion as to why a greater or lesser sanction would not be appropriate under the circumstances of the case.~~

~~45. *Superior Court Hearing.* The superior court may hold an evidentiary hearing within thirty days of the filing of the consent agreement to establish a factual basis for the agreement and may accept, reject, or order the agreement modified.~~

A. [No change.]

B. Modification. The superior court may recommend the modification of an consent agreement and shall clearly state the nature and substance of the proposed modifications and give the parties not less than ten nor more than thirty days to execute the proposed modifications and file the amended agreement and joint memorandum for consideration. If the parties fail to

submit a modified agreement within the time provided, and no request for additional time has been submitted, the agreement shall be deemed rejected. For good cause shown, the superior court may grant one thirty day extension of time to file the agreement.

C. Rejection. Upon rejection, the agreement and all admissions contained therein are withdrawn and cannot be used against the parties in any subsequent proceeding. The parties may file ~~an appeal for review by a special action with~~ the court of appeals within ten days after service of the superior court's report. If a special action is not timely ~~appeal is not~~ filed, the superior court shall proceed with a hearing on the merits ~~the adjudication hearing within thirty days~~.

56. Judgment. Upon the acceptance of the consent ~~to cease and desist~~ agreement by the superior court the clerk of the superior shall promptly enter a judgment that includes a cease and desist order and an order enjoining the respondent from engaging in the unauthorized practice of law, and stating that the respondent shall remain subject to the jurisdiction of this court with respect to unauthorized practice of law matters. Unless otherwise ordered, no further sanctions shall be taken in reference to the matters that were the subject of the charges or complaint upon which the consent agreement ~~to cease and desist~~ and the judgment enjoining the respondent from engaging in the unauthorized practice of law were based. The form of judgment signed and entered by the superior court clerk for cease and desist orders and injunctions shall be:

This matter having come on for hearing before the superior court, said court having duly rendered its decision.

IT IS ORDERED, ADJUDGED AND DECREED that (Respondent) must cease and desist engaging in activity that amounts to the unauthorized practice of law.

IT IS FURTHER ORDERED, ~~ADJUDGED AND DECREED~~ that (Respondent); is hereby enjoined from engaging in the unauthorized practice of law in Arizona.

(IT IS FURTHER ORDERED that (Respondent) shall pay restitution (in the following amounts to the following individual(s): \_\_\_\_\_))

(IT IS FURTHER ORDERED that (Respondent) shall be assessed the costs and expenses of these proceedings in the amount of \_\_\_\_\_.)

(IT IS FURTHER ORDERED that (Respondent) is (specific language of other sanctions))

### **Rule 79. Formal Proceedings Before the Superior Court; Appeal**

**(a) Commencement.** Formal unauthorized practice of law proceedings shall be instituted by unauthorized practice of law counsel filing a consent to cease and desist agreement or a complaint with the clerk of the superior court.

**(b) – (d)** [No change.]

**(e) Order.** Within thirty days after final submission of the matter, the superior court shall prepare and file with the clerk a written order containing findings of fact, conclusions of law and ~~recommendations regarding sanctions~~, and shall serve a copy of the order on respondent and unauthorized practice of law counsel. The order of the superior court is final if no motion for reconsideration or appeal is timely filed.

**(f) Enforcement.** An order or judgment of the superior court in unauthorized practice of law proceedings shall be enforceable like any other judgment, including through civil contempt proceedings pursuant to Rule 65(f), Ariz. R. Civ. P., or criminal contempt proceedings pursuant to Rule 35, Ariz. R. Crim. P.

**(g) Appeal.** Final orders or judgments issued by the superior court in unauthorized practice of law proceedings shall be reviewable by the court of appeals and this court pursuant to the Arizona Rules of Civil Appellate Procedure. Failure of a party to appeal timely shall constitute consent to the ~~discipline~~ sanction imposed by the superior court.

### **Rule 80. Rules of Construction and Access to Information**

#### **(a) Rules of Construction.**

1. *Related Pending Litigation.* The processing of an unauthorized practice of law matter in superior court shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation, unless the superior court, in its discretion, authorizes a stay for good cause shown.

2. *Non-abatement.* Unwillingness or failure of the complainant to cooperate with the state bar, withdrawal of a charge by a complainant, settlement, compromise between the complainant and the respondent, or restitution by the respondent shall not abate the processing of any charge or complaint unless deemed appropriate by unauthorized practice of law counsel.

3. – 5. [No change.]

6. *Immunity from Civil Suit.* Communications to the court, state bar, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, or investigators relating to alleged unauthorized practice of law, and testimony given in the proceedings shall be absolutely privileged conduct ~~as provided by law~~, and no civil action predicated thereon may be instituted against any complainant or witness. Board members, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, investigators, and state bar and court staff shall be immune from suit ~~as provided by law~~ for any conduct in the course of their official duties.

**(b) Public Access to Information.**

1. *Availability of Information.* Except as otherwise provided in these rules, the state bar file maintained by the state bar, the record maintained by the superior court clerk, and all proceedings shall be open to the public upon:

A. waiver of confidentiality by respondent;

B. dismissal by unauthorized practice of law counsel; or

C. the filing of a complaint, consent agreement, application for order to show cause regarding contempt, or other document in superior court.

2. *Exceptions.* Notwithstanding other provisions of these rules, the following do not become public:

A. work product and working files of state bar staff, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, investigators, ~~a panelist,~~ the committee, or a court or court staff, including but not limited to internal memoranda, internal correspondence, internal emails, notes, and similar documents and files;

B. deliberations ~~upon decisions to be rendered by~~ pertaining to decisions of unauthorized practice of law counsel, ~~a panelist~~ the committee, or any court;

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

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

E. 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);

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

G. medical records;

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

I. tax returns and official tax records.

3. *Authorized Disclosures.* The state bar file shall not be disclosed by the state bar, except that:

A. Before the state bar file becomes public:

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

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

B. The state bar, pursuant to a valid subpoena, may provide documents not otherwise confidential under subparagraph 2, except for charges under investigation or in the prescreening process;

C. The state bar may disclose documents or records related to unauthorized practice of law charges, including documents deemed confidential under subparagraph 2, unless sealed by protective order, to:

i. other lawyer disciplinary entities or agencies;

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

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

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

D. If a proceeding is based on allegations that have become generally known to the public, the state bar's board of governors may authorize disclosure of information;

E. the state bar's board of governors may authorize other disclosures that are necessary to protect the public, the administration of justice, or the legal profession; and

F. documents deemed confidential under subparagraph 2 can be used in superior court proceedings.

4. Disclosure by Others. Unless otherwise ordered by a 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.

5. 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.

3 6. Sealing the Record/Protective Orders. Upon motion by a party or by a person from whom the information or evidence was obtained, and for good cause shown, the superior court or this court may order that a portion of the record and/or state bar file be sealed and take other measures to assure the confidentiality of the sealed information. Material sealed shall remain confidential notwithstanding the remaining record in the matter is made public. Sealed material shall be opened and viewed only by an order of a court for use by such body and the parties in proceedings then pending before it, and otherwise only upon notice to and an opportunity to be heard by the parties and the witness or other person furnishing the information.

7. Retention of Records. Records of unauthorized practice of law proceedings maintained by the state bar are subject to the provisions of Rule 70(h) of these rules and administrative orders entered by the court

**(c) Expungement of State Bar Records. State Bar records may be expunged as set forth in Rule 71 of these rules and administrative orders entered by the court.**

## **VI. Unauthorized Practice of Law**

[The following rules include the Court-ordered amendments taking effect January 1, 2021, as amended by the Supreme Court on November 4, 2020]

### **Rule 75. Jurisdiction; Definitions**

(a) [No change].

(b) **Definitions.** The following definitions shall apply in unauthorized practice of law proceedings.

1. – 9. [No change.]

10. “Order” means an order signed by the superior court, the court of appeals or the supreme court in unauthorized practice of law matters.

11. – 16. [No change.]

### **Rule 76. Grounds for Sanctions, Sanctions, and Implementation**

(a) **Grounds for Sanctions.** Grounds for sanctions include the following:

1. [No change]

2. Willful disobedience or violation of a court ruling or order requiring the individual, entity or alternative business structure to do or forbear to do an act connected with the unauthorized practice of law.

3. – 4. [No change.]

5. Violation of any cease and desist order or injunction imposed during an unauthorized practice of law proceeding.

(b) **Sanctions and Dispositions.**

1. *Consent Agreement.* Respondent and unauthorized practice of law counsel may enter into a “Consent Agreement” that states respondent agrees to cease and desist from engaging in acts found to be the unauthorized practice of law, to refund fees collected, to pay costs and expenses, to make appropriate restitution, to the entry of an injunction or finding of contempt, or any other lawful sanction agreed to by the parties.

2. *Cease and Desist Order.* The superior court may enter an order for a respondent to immediately cease and desist from conduct that constitutes

engaging in the unauthorized practice of law. After entry of a cease and desist order or judgment, and service thereof upon the respondent, respondent shall:

A. – B. [No change.]

C. cease use of any reference to titles or descriptions prohibited in the order or judgment on all advertising, business cards, letterhead, and Internet sites, including social media.

3. [No change.]

4. *Civil or Criminal Contempt.* The superior court may issue a civil or criminal contempt citation and determine if the respondent is guilty of contempt and, by order, prescribe the sanction, including assessment of costs, expenses and reasonable attorney fees, and the imposition of any other sanction authorized by law.

5. [No change.]

6. *Civil Penalty.* The superior court may order a civil penalty up to \$25,000 against every respondent upon whom another sanction is imposed. Civil penalties against an alternative business structure shall be deposited in the Alternative Business Structure Fund. Civil fines against a legal paraprofessional shall be deposited in the fund established by the supreme court for that program. Civil fines against all others shall be payable to the State Bar.

7. *Costs and expenses.* Costs, expenses, and attorney's fees relating to the proceedings shall be assessed against every respondent upon whom another sanction is imposed, unless waived by the state bar. Assessment shall be included in the order or judgment.

**(c) Implementation of Orders and Judgments.** Orders or judgments of the superior court in unauthorized practice of law matters shall be effective thirty days after entry, unless another date is specified.

## **Rule 77. Participants in Unauthorized Practice of Law Proceedings**

**(a) Complainant.** The complainant is not a party to an unauthorized practice of law proceeding. However, by becoming a complainant, a person submits himself or herself to the jurisdiction of the supreme court and the superior court for all purposes relating to these rules. A complainant shall maintain confidentiality of proceedings, if so directed by the superior court. The state bar shall send a copy of any answer or response filed by respondent, as well as a notice of the final disposition of the matter,

to the complainant. The complainant may file a complaint on his or her own behalf in superior court if the state bar dismisses the charge prior to a complaint being filed in superior court.

**(b) Unauthorized Practice of Law Counsel; Powers and Duties.** Acting under the authority of the board, and under the direction and by appointment of the executive director, unauthorized practice of law counsel shall have the following powers and duties:

1. – 2. [No change.]

3. enter into consent agreements with respondents;

4. – 5. [No change.]

6. send to complainants a copy of any answer or response filed by respondents in superior court and promptly notify the complainant and respondent of the final disposition of each matter.

**(c)** [No change.]

## **Rule 78. Proceedings**

**(a) Commencement.** An unauthorized practice of law proceeding commences upon receipt by the state bar of a charge against a respondent. An unauthorized practice of law proceeding shall be disposed of by dismissal or by the filing of a consent agreement or complaint in the superior court seeking imposition of one or more sanctions as provided in these rules.

**(b) Screening and Investigation.** Upon the commencement of an unauthorized practice of law proceeding against a respondent, the matter shall proceed as provided in this section.

1. *Screening.* Unauthorized practice of law counsel shall evaluate all information coming to his or her attention, in any form, by charge or otherwise alleging the respondent engaged in unauthorized practice of law or violated any order or judgment previously entered in an unauthorized practice of law proceeding. If the allegations, if true, would not constitute unauthorized practice of law under these rules or contempt of court, the matter shall be dismissed. If the information alleges facts which, if true, would constitute unauthorized practice of law or contempt of court, unauthorized practice of law counsel shall conduct an investigation.

2. *Investigation.* All investigations shall be conducted by unauthorized practice of law counsel, volunteer bar counsel, or staff investigators. Unauthorized practice of law counsel may request information through an investigative subpoena pursuant to Rule 78(b)(4). Following an investigation, unauthorized practice of law counsel may dismiss the matter; enter into a consent to consent agreement with the respondent pursuant to Rule 78(c); file a complaint in superior court seeking injunctive relief, assessment of costs and expenses, and restitution, or file an application for order to show cause regarding contempt in superior court. Unauthorized practice of law counsel shall not commence a superior court proceeding until the respondent is afforded an opportunity to respond in writing to the charge. Respondent shall have twenty days from notice of the request for information to respond.

3. – 4. [No change.]

5. *Dismissal by Unauthorized Practice of Law Counsel.* After conducting an investigation, unauthorized practice of law counsel may dismiss an unauthorized practice of law proceeding if there is no probable cause to determine that unauthorized practice of law occurred or that the respondent has failed to comply with an order or judgment previously entered by a court in an unauthorized practice of law proceeding. Unauthorized practice of law counsel shall provide complainants with a right-to-sue letter upon dismissal of the charge.

**(c) Consent Agreement.**

1. A respondent against whom a charge has been made or a complaint has been filed may tender a conditional admission to the charge or complaint or to a particular count in exchange for the imposition of a stated sanction at any stage of the proceedings. In contempt proceedings, Unauthorized Practice of Law Counsel and respondents may enter into consent agreements, which may be in the form of a stipulation, in exchange for the imposition of stated sanctions.

2. *Procedure.* A consent agreement, signed by respondent, respondent's counsel, if any, and unauthorized practice of law counsel, shall be filed with the clerk of the superior court. Exhibits in support of the agreement or the sanction to be imposed must be filed with the agreement and joint memorandum, in addition to a statement of costs and expenses on proven counts. The agreement must state that the agreement and joint memorandum have been approved as to form and content by the chief bar counsel.

3. *Form of Agreement.* All consent agreements must include the following:

A. Rule, Order or Judgment Violation. Each count alleged in the complaint or application for contempt must be addressed in the agreement, including a statement as to the specific rule, order or judgment that was violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count. Pre-complaint consent agreements must include a statement as to the specific rule, order or judgment that was violated and the facts necessary to support the alleged violation or conditional admission.

B. Form of Sanction. The form of sanction to be imposed must be set forth in the agreement, along with an analysis of the proposed sanction, including a discussion as to why a greater or lesser sanction would not be appropriate under the circumstances of the case.

C. – D. [No change.]

4. *Superior Court Hearing.* The superior court may hold an evidentiary hearing within thirty days of the filing of the consent agreement to establish a factual basis for the agreement and may accept, reject, or order the agreement modified.

A. [No change.]

B. Modification. The superior court may recommend the modification of a consent agreement and shall clearly state the nature and substance of the proposed modifications and give the parties not less than ten nor more than thirty days to execute the proposed modifications and file the amended agreement and joint memorandum for consideration. If the parties fail to submit a modified agreement within the time provided, and no request for additional time has been submitted, the agreement shall be deemed rejected. For good cause shown, the superior court may grant one thirty day extension of time to file the agreement.

C. Rejection. Upon rejection, the agreement and all admissions contained therein are withdrawn and cannot be used against the parties in any subsequent proceeding. The parties may file a special action with the court of appeals within ten days after service of the superior court's report. If a special action is not timely filed, the superior court shall proceed with a hearing on the merits.

5. *Judgment.* Upon the acceptance of the consent agreement by the superior court the clerk of the superior shall promptly enter a judgment that includes a cease and desist order and an order enjoining the respondent from engaging in the unauthorized practice of law, and stating that the respondent shall remain subject

to the jurisdiction of this court with respect to unauthorized practice of law matters. Unless otherwise ordered, no further sanctions shall be taken in reference to the matters that were the subject of the charges or complaint upon which the consent agreement and the judgment enjoining the respondent from engaging in the unauthorized practice of law were based. The form of judgment signed and entered by the superior court clerk for cease and desist orders and injunctions shall be:

This matter having come on for hearing before the superior court, said court having duly rendered its decision.

IT IS ORDERED, ADJUDGED AND DECREED that (Respondent) must cease and desist engaging in activity that amounts to the unauthorized practice of law.

IT IS FURTHER ORDERED that (Respondent) is hereby enjoined from engaging in the unauthorized practice of law in Arizona.

(IT IS FURTHER ORDERED that (Respondent) shall pay restitution (in the following amounts to the following individual(s): \_\_\_\_\_))

(IT IS FURTHER ORDERED that (Respondent) shall be assessed the costs and expenses of these proceedings in the amount of \_\_\_\_\_.)

(IT IS FURTHER ORDERED that (Respondent) is (specific language of other sanctions))

### **Rule 79. Formal Proceedings Before the Superior Court; Appeal**

**(a) Commencement.** Formal unauthorized practice of law proceedings shall be instituted by unauthorized practice of law counsel filing a consent agreement or a complaint with the clerk of the superior court.

**(b) – (d)** [No change.]

**(e) Order.** Within thirty days after final submission of the matter, the superior court shall prepare and file with the clerk a written order containing findings of fact, conclusions of law and sanctions, and shall serve a copy of the order on respondent and unauthorized practice of law counsel. The order of the superior court is final if no motion for reconsideration or appeal is timely filed.

**(f) Enforcement.** An order or judgment of the superior court in unauthorized practice of law proceedings shall be enforceable like any other judgment, including

through civil contempt proceedings pursuant to Rule 65(f), Ariz. R. Civ. P., or criminal contempt proceedings pursuant to Rule 35, Ariz. R. Crim. P.

**(g) Appeal.** Final orders or judgments issued by the superior court in unauthorized practice of law proceedings shall be reviewable by the court of appeals and this court pursuant to the Arizona Rules of Civil Appellate Procedure. Failure of a party to appeal timely shall constitute consent to the sanction imposed by the superior court.

## **Rule 80. Rules of Construction and Access to Information**

### **(a) Rules of Construction.**

1. *Related Pending Litigation.* The processing of an unauthorized practice of law matter in superior court shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation, unless the superior court, in its discretion, authorizes a stay for good cause shown.

2. *Non-abatement.* Unwillingness or failure of the complainant to cooperate with the state bar, withdrawal of a charge by a complainant, settlement, compromise between the complainant and the respondent, or restitution by the respondent shall not abate the processing of any charge or complaint unless deemed appropriate by unauthorized practice of law counsel.

3. – 5. [No change.]

6. *Immunity from Civil Suit.* Communications to the court, state bar, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, or investigators relating to alleged unauthorized practice of law, and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Board members, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, investigators, and state bar and court staff shall be immune from suit for any conduct in the course of their official duties.

### **(b) Public Access to Information.**

1. *Availability of Information.* Except as otherwise provided in these rules, the state bar file maintained by the state bar, the record maintained by the superior court clerk, and all proceedings shall be open to the public upon:

A. waiver of confidentiality by respondent;

B. dismissal by unauthorized practice of law counsel; or

C. the filing of a complaint, consent agreement, application for order to show cause regarding contempt, or other document in superior court.

2. *Exceptions.* Notwithstanding other provisions of these rules, the following do not become public:

A. work product and working files of state bar staff, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, investigators, the committee, or a court or court staff, including but not limited to internal memoranda, internal correspondence, internal emails, notes, and similar documents and files;

B. deliberations pertaining to decisions of unauthorized practice of law counsel, the committee, or any court;

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

D. records of requests for information received by the state bar's intake department;

E. 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);

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

G. medical records;

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

I. tax returns and official tax records.

3. *Authorized Disclosures.* The state bar file shall not be disclosed by the state bar, except that:

A. Before the state bar file becomes public:

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

- ii. the state bar may confirm, upon inquiry concerning the person or entity, and the particular conduct, that a charge has been received and is under investigation or in the prescreening process;
  - B. The state bar, pursuant to a valid subpoena, may provide documents not otherwise confidential under subparagraph 2, except for charges under investigation or in the prescreening process;
  - C. The state bar may disclose documents or records related to unauthorized practice of law charges, including documents deemed confidential under subparagraph 2, unless sealed by protective order, to:
    - i. other lawyer disciplinary entities or agencies;
    - ii. agencies or individuals authorized to investigate the qualifications of persons for admission to practice law;
    - iii. agencies or individuals authorized to investigate the qualifications of candidates for judicial office or governmental employment; and
    - iv. public or prosecuting authorities if it appears that the lawyer has engaged in conduct that may be criminal in nature;
  - D. If a proceeding is based on allegations that have become generally known to the public, the state bar's board of governors may authorize disclosure of information;
  - E. the state bar's board of governors may authorize other disclosures that are necessary to protect the public, the administration of justice, or the legal profession; and
  - F. documents deemed confidential under subparagraph 2 can be used in superior court proceedings.
4. *Disclosure by Others.* Unless otherwise ordered by a 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.
5. *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.

6. *Sealing the Record/Protective Orders.* Upon motion by a party or by a person from whom the information or evidence was obtained, and for good cause shown, the superior court or this court may order that a portion of the record and/or state bar file be sealed and take other measures to assure the confidentiality of the sealed information. Material sealed shall remain confidential notwithstanding the remaining record in the matter is made public. Sealed material shall be opened and viewed only by an order of a court for use by such body and the parties in proceedings then pending before it, and otherwise only upon notice to and an opportunity to be heard by the parties and the witness or other person furnishing the information.

7. *Retention of Records.* Records of unauthorized practice of law proceedings maintained by the state bar are subject to the provisions of Rule 70(h) of these rules and administrative orders entered by the court

**(c) Expungement of State Bar Records.** State Bar records may be expunged as set forth in Rule 71 of these rules and administrative orders entered by the court.