

Discipline Changes in the Works

There may be no topic of more interest to lawyers than the question of how the mechanics of discipline work. After all, every attorney has worked long and hard to enter this profession. Once we get

here, we soon see that we must now ... work longer and harder. Whatever else it may be, our law practice is our livelihood, a valuable asset that we grow and protect. Anything that could endanger that—even the legitimate inquiries of a regulatory body—can get lawyers' attention.

Well, Arizona lawyers should pay even more attention than usual, because the rules governing the discipline process may change in the coming year. The changes, if they occur, will be made by the Arizona Supreme Court, acting in response to a rule change petition that the State Bar submitted by November 1.

What are the proposals, and why were they made?

HOW DID WE GET HERE?

The proposals were submitted to the Board of Governors by the Discipline Oversight Committee, which appointed a Rules subcommittee to draft proposals. That subcommittee included Board members and bar counsel.

We also made sure we got member input, primarily at our September Board meeting, where we heard from lawyers who represent lawyers in discipline matters. And we got letters and e-mails from members and local bar associations, which led to some original ideas being shelved.

The committee's proposal was addressed at the October 20 board meeting. The board adopted most, but not all, of the committee's recommended changes.

After the Bar submits a Rule 28 petition to the Supreme Court, the Court will place the matter for public comment; the comment period will end on May 21, 2007. Comments can be submitted electronically through the Court's Web site. (**Go to www.supreme.state.az.us and click on "Court Rules Forum."**)

The Court may adopt the proposals, modify and adopt them, or reject them. If the Court adopts any proposal (or modified proposal), the new rules will become effective on January 1, 2008.

THE PROPOSALS


The proposed rules are a combination of minor and substantive changes. Many aim to shorten the length of time it takes to formally prosecute a discipline case; this is in response to the Supreme Court, which has indicated it wants discipline cases resolved more quickly.

The proposal also includes some provisions intended to protect the public. One of those will likely generate a lot of interest and concern among attorneys: the proposal to permit random examinations of trust accounts, once the State Bar Board of Governors adopts implementation guidelines.

Here are some of the more significant proposals:

- permit random trust account examinations pursuant to guidelines to be established by the Board;
- create a rebuttable presumption that a lawyer has failed to safeguard client or third-party funds or property if she or he does not maintain trust account records required by ER 1.15 or fails to provide them to the State Bar when requested or ordered;
- permit the State Bar to investigate and prosecute lawyers who made false statements or misrepresentations during the application process, if the false statements or misrepresentations are first discovered subsequent to the lawyer's admission to the practice of law;
- require lawyers to self-report convictions of felonies and misdemeanors involving a serious crime;
- delete a lawyer's right to request a formal hearing when a Probable Cause Panelist enters an order of diversion, stay, informal reprimand, probation, restitution or costs—instead, lawyers can appeal to an alternate panelist, whose decision will be final;
- shorten the time to respond to discovery requests;
- change the burden of proof in probation violation cases from clear and convincing evidence to preponderance of the evidence;
- change the burden of proof regarding restitution from clear and convincing evidence to preponderance of the evidence; and

Not everyone will agree on the value of all these proposed rules. In fact, even members of the Board disagreed on some topics, especially the notion of random trust account exams. But that's why you should look over the proposals and let the Court know what you think.

And while you're at it, let me know what you think, too. E-mail me at president@azbar.org 

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