

**ANNUAL REPORT
OF THE
ATTORNEY REGULATION
ADVISORY COMMITTEE
TO THE
ARIZONA SUPREME COURT**

APRIL 30, 2015



ARIZONA SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE (ARC)
Committee Member List
as of May 5, 2014

NOTE: Pursuant to the Administrative Order No. 2014-44, membership consists of:

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Court of Appeals

Hon. William J. O’Neil, Vice Chair
Presiding Disciplinary Judge

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Attorney Member

Maret Vessella
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ATTORNEY REGULATION ADVISORY COMMITTEE
ANNUAL REPORT
April 30, 2015

The Attorney Regulation Advisory Committee (ARC) was established by the Supreme Court of Arizona to periodically review the entire attorney admission and discipline systems and make recommendations for any changes. (Administrative Order No. 2011-44). ARC's purpose is to review the rules governing attorney examination, admissions, reinstatement, and the disability and disciplinary processes and make recommendations regarding these rules "to reinforce lawyer competency and professionalism and strengthen the Supreme Court's oversight of the regulation and practice of law in this state." The Court directed ARC to submit an annual report each year by April 30. That report "shall contain case statistics on the processing of attorney admission and discipline cases and recommendations on specific issues addressed by the Committee." ARC now files its report for 2014.

ARC Action on Proposed Rule Revisions

1. R-14-0011: Amendments to Rule 36

In January 2014, ARC filed a petition for rule change to significantly revise the character and fitness procedure in Rule 36. ([R-14-0011](#)). On October 14, 2014, the Court adopted most of the proposed changes. The resulting changes are significant to the process before the Committee on Character and Fitness. The Court's [order](#) amended Rule 36 in the following manner:

- The attorney admissions manager will be able to make a "direct" recommendation for admission based on preliminary review. Most applications raise no issues, but previously still had to be referred to a member of the Committee for review. Under the revised procedure, the attorney admissions manager will be able to certify to the Court names of those applicants who appear qualified without referral to a committee member. This change will speed the application process for most applicants.
- For matters needing further investigation, the investigating Committee member may call for an "informal inquiry." The informal inquiry is explicitly *not* a hearing but a less rigid proceeding during which three Committee members can meet with the applicant and informally resolve any concerns.
- If an application results in a formal hearing, five committee members (at least two attorneys and at least one public member) will constitute the hearing panel, with the Chair of the Committee to preside. Under the former procedure, the

hearing panel had to consist of at least a majority of the committee (currently 17 members). Members of the hearing panel cannot have participated as the investigative member or as a member of any informal inquiry panel. The investigative member may not participate in the panel's deliberations. All recommendations require a concurrence of the majority of the hearing panel.

A new section of Rule 36 gives the Committee on Character and Fitness additional authority and options over the conditional admission process. Under the new rules, a violation of the terms of conditional admission is addressed before the Committee and treated more like a probation violation rather than automatically proceeding as a disciplinary matter:

- If an applicant is granted conditional admission and violates the terms, the State Bar's Lawyer Regulation Office, which supervises conditional admittees, must file a notice of violation with the Committee and only needs to prove a violation by a preponderance of the evidence.
- Upon a finding of material violation, the Committee may revoke, extend, or modify the Order of Conditional Admission. If the Committee finds a violation of the ethical rules but does not revoke the Order, it may refer the matter to the State Bar's Lawyer Regulation Office for disciplinary proceedings.
- At the end of the period of conditional admission, the admittee must make an affirmative showing of compliance with the Order of Conditional Admission in order to convert to regular admission status.

2. R-14-0016: Rule 38 Special Exceptions

Rule 38 provides special exceptions to the standard admissions procedures under which non-Arizona lawyers may practice law in this state. The special exceptions include full-time law faculty members, clinical law professors, lawyers volunteering with or working for approved legal services organizations, lawyers employed by indigent defense offices in smaller counties, and in-house counsel. Petition [R-14-0016](#) proposed a new requirement that applicants for these exceptions be required to take the course on Arizona law. It is important to expose attorneys to the information in this course if they will potentially represent clients on a range of issues or in multiple matters in Arizona courts. ARC supported this proposed amendment and the Court adopted the new requirement.

3. R-13-0033: Discipline Process

This [petition](#) was filed by the Presiding Disciplinary Judge to clarify certain discipline procedure rules. ARC supported the proposed amendments. The Court adopted some of the proposals. ([See order.](#)) One of the substantive changes adopted by the Court establishes a procedure in Rule 60(a)(5)(C) for addressing probation violations.

4. R-12-0002: Early Examination Update

In 2012, the Court approved a pilot program of early testing for law students in their last semester of law school, provided the semester was structured to allow study and student engagement. ([See order.](#)) In its order, the Supreme Court tasked ARC with submission of an interim report regarding the program. On December 10, 2014, ARC filed its [report](#) on the Early Examination pilot project. In February 2014, 37 early examinees tested with a passage rate of 89%. The passage rate for regular testers was 64%. By May 31, 2014, 65% of February's early examinees had completed all necessary admission requirements and were admitted to the practice, while only 33% of regular examinees were admitted by this time. Students who participated in the early exam process were surveyed and voiced strong approval and support for the program. In completing its report, ARC considered comments from and interviewed law school administrators and students. ARC recommended that the Court continue the pilot program for at least two years to allow additional time to gather information and measure outcomes.

Following the report, the Supreme Court issued an [order](#) extending the pilot project of early testing through the February 2017 Uniform Bar Examination (UBE).

Admissions

In 2014, 710 applicants passed the Arizona Uniform Bar Examination, which had an overall pass rate of 66%. The State admitted 893 attorneys in 2014.

Method of Admission	Admitted in 2013	Admitted in 2014
Admission on motion	176	171
Imported UBE scores from other jurisdictions	8	38
Arizona Uniform Bar Examination	538	683
Military Spouse	0	1
Total:	722	893

In 2014, a total of 113 applicants testing in Arizona requested their Uniform Bar Examination scores be transferred to twelve of the fifteen UBE states. The top three states to which scores were transferred are:

Washington 28
Colorado 27
Utah 17

A total of 60 UBE applicants requested their scores be transferred into Arizona. Jurisdictions with the most frequently imported scores were:

Colorado 15
Utah 12
Washington 9
Missouri 9

The Committee on Character and Fitness held 39 informal hearings, recommending regular admission in 23 cases, conditional admission in nine cases, and referring three applicants for formal hearings. Four applicants withdrew their applications while their matter was pending before the Committee at the informal hearing stage.

The Supreme Court denied admission for two conditional admission candidates, with leave to reapply when they could prove at least six months' sobriety and abstention from drugs/alcohol.

The Committee held eight formal hearings, resulting in three regular admissions, two conditional admissions, and three denials of admission. One of the applicants whose application for admission was denied filed a petition for review; the Court declined review.

Informal Hearings in 2014		
Outcomes		Comments
Regular Admission	23	
Conditional Admission	9	2 denied by Court with leave to reapply with proof of 6 months' sobriety
Referred for Formal Hearing	3	
Withdrew	4	
Total	39	

Formal Hearings in 2014		
Outcomes		Comments
Regular Admission	3	
Conditional Admission	2	
Denial	3	One applicant sought review of denial; Court denied review
Total	8	

In 2014, the Chairs of the Committee on Character and Fitness and Examinations responded to petitions for review regarding the following issues:

CCF Response to Petitions for Review		
Issues		Action by Supreme Court
Waiver of ABA JD Requirement	4	3 granted, 1 denied
Extend Exam Score	3	3 granted
Waive AOM Practice Requirement	1	Granted
Denial of Admission	1	Request for review denied
Total	9	

Committee on Examination Response to Petitions for Review		
Issues		Action by Supreme Court
Denial of Accommodations	1	Request for review denied
Extraordinary Circumstance, Overturn Failing Exam Score	2	Requests for review denied
Total	3	

Other Admissions Issues

Termination of pre-score release review procedure: The Supreme Court Committee on Examinations decided to terminate its pre-score release re-grade procedure, beginning with the February 2015 UBE. The review was a process whereby examiners reviewed scores assigned to all written answers of persons whose scores brought them very close to the score required for admission.

The Committee determined that such review was not appropriate because the answers are scaled to the Multistate Bar Examination (MBE). In effect, the primary purpose of assigning grades of 1-6 for each answer is to rank in order the answers of all candidates. Isolated review of a few candidates' answers was premised on a pre-UBE model of grading, in which grades were assigned according to an objective standard of merit, rather than the rank ordering of candidates. Review of a single answer, without considering many other answers, would not be valid and might unjustifiably increase or decrease the candidate's rank order relative to other candidates.

To better assure that initial scores are applied fairly, the Committee adopted best practices of rigorous, standardized procedures for calibration and grading as approved by the National Conference of Bar Examiners ("NCBE"). Not only must graders participate in the NCBE grading workshop, and apply NCBE-prescribed grading standards, they must meet with examiners to calibrate before any answers are graded. Following that process graders report the scores assigned to the answers whenever they have graded 30 answers, and examiners and staff review the reports to assure that scores are appropriate when applied across all written answers.

Lawyer Regulation

As cited above, Administrative Order 2011-44 directs that the annual ARC report “shall contain case statistics on the processing of attorney regulation cases.”

1. Intake Process

The Intake process is designed to achieve two specific goals: (1) resolve the greatest number of inquiries/charges at the earliest stage of the process, and (2) expeditiously move the most serious charges of misconduct into investigation.

Complainants are encouraged to talk with an Intake lawyer before submitting a written charge. This has personalized the process and allowed for a better and more timely evaluation of the complainant’s concerns. Many charges received by Lawyer Regulation represent allegations of low-level misconduct that can be appropriately resolved by means of providing instruction to the lawyer or directing the lawyer to resources that will resolve the issue.¹ The system provides for immediate outreach to complainants and lawyers, which provides opportunities for lawyers to resolve the issue and complainants to receive an expedient resolution. In all cases where the State Bar decides not to proceed to investigation, the rules require an explanation to complainants regarding the decision.²

The Number of Inquires/Charges			
	2012	2013	2014
Number of inquiries/charges	3,307	3,492	3,549

In addition, the Intake process moves the most serious allegations into investigation where the Bar can devote significant attention to the case.

Average Time to Resolve a Charge Through Intake and Average Time to Recommended Full Investigation			
	2012	2013	2014
Average Number of days to Resolve through Intake	27	21	29
Average Time to Recommend a Full Investigation	29	19	24

¹ Generally, the issues involve practice management concerns or personal matters that detract from the lawyer’s ability to adequately discharge his or her duties.

² See Rule 53(b)(2).

The charges that are not resolved in Intake are moved on to investigation. The process of determining what charges are referred for investigation usually includes securing a written statement from the complainant and oftentimes includes gathering additional information.

The Number of Charges Referred to a Full Investigation and Number of Attorneys Investigated			
	2012	2013	2014
Number of Referrals to a Full Investigation	695	792	751
Number of Attorneys Investigated	444	475	422

2. Investigation of Charges

The Average Time from Referral to Investigation through the Investigative Process			
	2012	2013	2014
Average Days	170	174	247

Overall, there was an increase in the average time to investigate a charge. This was likely the result of a number of internal factors, including staffing availability, a new case management system and a particularly sizable investigation involving one lawyer. The State Bar expects the average time to investigate a charge to decrease in 2015.

3. Attorney Discipline Probable Cause Committee

The Attorney Discipline Probable Cause Committee (“ADPCC”) is a permanent committee of the Supreme Court. (*See* Rule 50.) The ADPCC has three public members and six attorney members, and it meets monthly to review the Bar’s recommendations on charges. This committee is the gatekeeper for the discipline system, and it benefits from the public members’ participation and their insight. After deliberation, the ADPCC may direct bar counsel to conduct further investigation, dismiss the allegations, or order one or more of the following: diversion, admonition, probation, restitution, assessment of costs and expenses, or authorize formal proceedings.

Before each monthly meeting, the State Bar provides respondent with a written report of investigation that includes the Bar’s recommendations on the case. Respondent may provide a written response to the ADPCC. Pursuant to Rule 55(b)(2)(B), the State Bar also informs the complainant of the recommendation and the right to submit a written objection to that recommendation. At each meeting, the Bar

presents its cases orally and ADPCC members may ask questions, request additional facts, challenge the Bar’s recommendations, or offer their own recommendations. The members thoroughly discuss each individual case. Upon motion, the ADPCC votes on the disposition of each case. In 2014, the ADPCC rejected or modified the State Bar’s recommendation on 19 cases. In four cases, the ADPCC increased the recommended sanction or disposition. In 15 cases, it decreased the State Bar’s recommended sanction or disposition. The ADPCC meetings are confidential, and are not open to respondents, complainants, or the public.

Number of Charges the ADPCC Reviewed and Number of Orders			
	2012	2013	2014
Number of Charges Reviewed ³	490	348	305
Number of Probable Cause Orders Authorizing a Formal Complaint	166	136	132
Number of Orders of Admonition	39	28	29
Number of Orders of Probation		3	0
Number of Orders of Restitution	18	18	17
Number of Orders of Diversion	81	63	59

4. The Office of the Presiding Disciplinary Judge (“PDJ”)

The Office of the Presiding Disciplinary Judge is comprised of the PDJ, former superior court judge William O’Neil, and two other individuals. The Disciplinary Clerk is Jennifer Albright, who holds a Juris Doctor and master of laws (L.L.M.) degree. Under Supreme Court Rule 46(f)(11), the Disciplinary Clerk is designated by the Court to be the custodian of the record in all discipline, disability, and reinstatement proceedings before the attorney discipline probable cause committee, the presiding disciplinary judge and the hearing panel and maintains the records. Michele Smith, is the paralegal to the judge and has worked as a paralegal in attorney regulation in Arizona for the Court since 1999.

³ This number does not include dismissal appeals. In 2014, the ADPCC considered 46 appeals from dismissal by the State Bar of charges brought by complainants. After careful consideration, most of these appeals were denied. Some matters, however, were referred back to the State Bar for further investigation. After consideration of the additional information presented by the State Bar, these appeals were also denied. *See generally* Rule 55(b)(2)(A)(ii).

The PDJ presides over formal attorney regulation proceedings. Acting as chair, the PDJ serves with a hearing panel consisting of a volunteer attorney member and a volunteer public member. Under Supreme Court Rule 60, the PDJ and the hearing panel are authorized to impose discipline on an attorney, or recommend to the Court the reinstatement of an attorney to the active practice of law. The PDJ may individually accept agreements for discipline by consent and issue sanctions in accordance with those agreements. The PDJ hears probation violation hearings, may transfer an attorney to disability inactive status, issue protective orders and interim orders of probation or suspension. The decisions of the PDJ and the hearing panels are final orders in an individual case and may be appealed to the Supreme Court as authorized under Supreme Court Rule 59. Although the decisions of the PDJ or the hearing panel are final orders in the case in which they are issued, they do not serve as *stare decisis* precedent for future cases nor constitute the law of the jurisdiction.

The PDJ has the authority to issue a final order imposing any sanction, including disbarment. The use of the PDJ continues to significantly streamline the processing of formal proceedings. Formal matters include both formal complaints and pre-complaint consent agreements.⁴

Number of Formal Matters and Pre-Complaint Consent Agreements for the Past Three Years			
	2012	2013	2014
Formal Matters	72	79	67
Pre-Complaint Consent Agreements ⁵	31	27	18

Average Time from Formal Complaint to Final Order for All Types of Cases			
	2012	2013	2014
Number of Days	66	88	96

Average Time from a Formal Complaint to Final Order for Contested Cases			
	2012	2013	2014
Number of Days	235	179	151

After the filing of a formal complaint, the PDJ may still accept, reject, or recommend modifications of proposed consent agreements. In 2014, the average time

⁴ Pre-complaint consent agreements may be filed in lieu of a formal complaint. Such an agreement contains a stipulated set of facts and stipulated sanction.

⁵ The numbers in this row are a subset of the numbers in the formal-matters row.

to a final order on consent agreements from the filing of the formal complaint to formal order increased. Each case involves unique circumstances. Unlike in prior years, agreements in seven cases were delayed for various reasons or reached shortly before trial. These seven cases averaged 159 days to final order, significantly altering the average time. Overall, this remains an efficient and swift process for consent agreement cases.

Average Time from a Formal Complaint to Final Order for Post-Complaint Consent Agreements			
	2012	2013	2014
Number of Days	50	74	85

Average Time from a Formal Complaint to Final Order for Default Cases ⁶			
	2012	2013	2014
Number of Days	85	82	110

Sanctions & Outcomes		
	2013	2014
Disbarment	25	13
Suspension	28	38
Reprimanded	26	18
Informal Sanctions by ADPCC	49	39
Diversions	88	73
Charges dismissed with comment by State Bar or ADPCC	209	202

⁶ The time limits imposed by rule in default cases substantially dictate the average time for a final order. As a result it is typical for the average time to final order in a case in which an attorney does not appear and is defaulted to be significantly longer than in a consent agreement case where an attorney appears.

Reinstatements		
	2013	2014
Application Filed	14	10
Approved	3	3
Denied	1	1
Voluntarily Withdrawn	2	0
Action Stayed	4	1
Applications pending at the end of the year	4	5

Appeals Filed in Supreme Court			
	2012	2013	2014
Appeals Filed with Supreme Court	6	7	8

Independent Bar Counsel

In 2001, the State Bar Board of Governors created a volunteer Conflict Case Committee (“Committee”) to timely process, investigate and prosecute all aspects of disciplinary matters that, because of the involvement (as applicants, complainants, respondents, material witnesses, or otherwise) of lawyers or others connected with the lawyer discipline system or the State Bar Board of Governors, should not be handled by counsel in the State Bar Lawyer Regulation Office due to conflict of interest concerns. Effective January 1, 2011, the Arizona Supreme Court substantially modified Arizona’s lawyer discipline system, eliminating the Hearing Officer and Disciplinary Commission positions that generated much of the Committee’s work, and replacing the State Bar Probable Cause Panelist with the Attorney Discipline Probable Cause Committee (“ADPCC”). The Court further determined that the timely, fair and impartial resolution of the cases previously assigned to the Committee and similar cases would be improved by devoting personnel and administrative resources in addition to those available using volunteers.

Accordingly, by Administrative Order 2014-11, the Court established the position of Independent Bar Counsel (“IBC”), and appointed a volunteer attorney panel to assist as necessary with the investigation and prosecution of matters assigned to IBC by the State Bar. The IBC reports quarterly to the chair of the ADPCC as to the status of all matters pending, and issues a report annually generally describing the nature and disposition of qualifying matters resolved during the preceding year. The annual report also allows IBC to make any recommendations for improving Arizona’s lawyer admission, discipline, disability and reinstatement procedures. The following is the IBC report for 2014.

2014 Case Statistics

Ms. Meredith Vivona was appointed as IBC, and assumed her position effective April 1, 2014. The preceding year was a nine month period beginning on April 1, 2014 and ending on December 31, 2014. During that time, IBC received, by transfer from the Case Conflict Committee or by new assignments, a total of 28 charges. The vast majority of cases referred to IBC were qualifying matters under §4(a) of the Administrative Order (cases involving a Board of Governors’ member/spouse/domestic partner, a member of the ADPCC, State Bar staff/spouse/domestic partner, a lawyer who worked for the State Bar within one year of the receipt of the ethics charge, or a Hearing Panel member/spouse/domestic partner). 19 of 28 cases were transferred from the State Bar to IBC under section 4(a) of the Administrative Order.

The following chart provides details regarding the nature of the qualifying matters assigned in 2014:

4(a)(i) (Board member)	4(a)(ii) (State Bar staff)	4(a)(iii) (ADPCC member)	4(a)(iv) (lawyer previously with State Bar)	4(a)(v) (Hearing Panel member)	4(b) (Other matters assigned by the C.J.)	4(c) (Hearing Panel members)
10	5	4	0	0	1	0

The remaining eight cases were assigned to IBC because the State Bar, as a matter of practice, groups case files that involve the same Respondent. Thus, eight cases were sent to IBC because there was a pending qualifying case against a specific respondent that IBC was handling at the time a new charge about the same respondent was received by the State Bar.

Of those 28 matters, many were expeditiously investigated and resolved before the end of the year. Those resolutions included dismissal, recommendation of terms of diversion and consent to disbarment.

The cases that remain open and pending as of December 31, 2014 are as follows:

Formal Cases	Cases appealed & to be heard by ADPCC on Jan. 9, 2015	Cases appealed to Arizona Supreme Court	Cases where execution of a settlement agreement is pending	Cases under investigation
1	2	1	7	3

IBC has not yet had an opportunity to become involved in matters of lawyer admission, disability or reinstatement procedures and consequently has no suggested recommendations.

Although IBC has been involved in numerous attorney discipline cases, IBC does not have any recommended improvements at this time.

Issues for ARC in 2015

ARC has identified a number of issues in the attorney discipline and admissions areas that it intends to explore in the current year.

1. Review and provide comments to pending petitions for rule change. In particular,
 - R-15-0018 (Justice Timmer Committee Proposals: Conform rules to ABA 20/20 Commission and additional changes to accommodate the changing nature of the practice of law)
 - R-15-0022 (Allow law students to be eligible for limited practice after two semesters of school)
2. Review current Rule 38 special exceptions to admission and consider drafting rule petition to provide better clarity and consistency in this area.
3. Review Rule 46(c) and (d) dealing with attorney discipline jurisdiction over former and incumbent judges and consider drafting a rule petition.
4. Review rules relating to bar examination protocols and discuss issues that may arise if the Committee decides not to grade an exam, etc.
5. Continue to monitor the early exam process.
6. Explore issues involving access to justice.