

Discipline System Oversight Committee

State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016

May 10, 2023
1:00 p.m. – 3:00 p.m.
Location: State Bar of
Arizona

Open Session Minutes

MEMBER ATTENDANCE:

P = present in person; T = present telephonically; A = absent.

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|-----------------------|---|
| Justice Lopez (Chair) | T |
| Mr. David K. Byers | T |
| Mr. Joel F. England | P |
| Mr. Jonathan Martone | A |
| Ms. Jessica Sanchez | T |
| Ms. Jennifer Rebholz | P |
| Ms. Robyn Austin | A |

OTHER ATTENDEES: None

Guests: Meredith Vivona

State Bar Staff: Maret Vessella, Amy Rehm, Jackie Brokaw

Minutes taken by: Jackie Brokaw

Meeting Agenda

1. CALL TO ORDER –Time 1:16pm
2. Call to the Public: No public joined.
3. Meeting minutes approved from 1.30.23.

4. Follow up on the study of racial disparity in discipline.

Following the January meeting, Joel England has reached out to Aaron Nash regarding the demographics that are collected during the bar exam. The information is voluntary. Overall, there are approximately 30-33% of members that have not supplied gender/race/ethnicity information. Joel also reached out to Tammy Walker with University of Arizona to inquire about how the gaps in information would affect a study of racial disparity in discipline. Joel will speak to Tammy Walker prior to next DOSC meeting. Maret provided information about the variables that would need to be included in any study to obtain a useful outcome. This list is long, including prior discipline, nature of misconduct, strength of evidence, area of practice, solo/firm size, default/consent/hearing, among others. Discussion of the feasibility of being able to obtain useful information from a study with so many factors and a desire not to undertake the study if it will not produce meaningful insight.

There was discussion about the possibility that committee may go back to the diversity task force to explain the intricacies that exist due to the gap in reporting and work to narrow down the focus of what the task force would like to see from the study. Discussion regarding the ability to go back to the diversity task force to ask whether there is an issue, a specific concern, or complaint, that prompted this suggestion or whether it was just a curiosity. Taking on generalized task to investigate the data that is available may not be feasible.

The diversity of bar counsel in attorney discipline was discussed. The makeup of the staff has not affected the outcome of discipline cases and no concerns have been raised at exit interviews.

In the future, a pop-up will be added when a member pays dues to invite people to update their demographic information. Completion of the pop-up will remain voluntary and can be bypassed if members choose not to answer.

Jessica suggested creating a complaint process to look at any allegations of bias.

5. Look at the Independent Bar Counsel resources for cases and the volume, type of cases. Maret presented the numbers for the IBC case load.

Case numbers and length of time to disposition of Independent Bar Counsel cases from 2019-2022 were presented to the committee. The decision to move away from volunteer attorneys to the Independent Bar Counsel position was originally to decrease the length of time to disposition on cases. When discipline caseloads were lower, the Independent Bar Counsel would work on Commission on Judicial Conduct matters. In the numbers presented, the Independent Bar Counsel matters were approximately twice the length of time to disposition as the discipline matters handled by Lawyer Regulation Bar Counsel. Meredith Vivona was hired as Independent Bar Counsel as a part-time position. The purpose of this discussion is to discuss the

difference in the length of time to disposition and whether it comes from a resourcing issue and how that resourcing issue could be resolved. Currently the Independent Bar Counsel position has been modified to be 27.5 hours per week.

Meredith presented case numbers prior to 2019. The office of the Independent Bar Counsel as established is not equipped for an influx of cases. Outside of the number of cases there are other circumstances that lead to a longer time to disposition including the complexity of the case, formal cases that involve more than one charge, Independent Bar Counsel status due to leave and 2020 lockdown with no one to take on files in Independent Bar Counsel's absence. There is a volunteer panel that has changed over the year, but it is difficult to find private practitioners who can take on a case involving attorney discipline and ethics due to their own caseload. Once there is a backlog or an influx occurs, it is difficult to catch up.

Meredith Vivona provided discussion on suggested solutions including: Using retired judges or lawyers in the volunteer panel; A review regarding how and when cases are sent to Independent Bar Counsel and what cases may be kept or sent back to the State Bar to handle if the conflict is immaterial; A case triage system which would allow for another person to be assigned if a case looks like it will be complicated; Possibility of the position becoming a full-time position.

SBA discipline bar counsel have the support of other attorneys within the office who can assist with analyzing fact patterns to determine which cases to work through and which cases may be frivolous. Currently, the intake of a staff or board member charge is done prior to sending the case to the Independent Bar Counsel unless it cannot be done due to the conflict.

Discussion regarding the possibility of a new influx of cases in the future following the 2024 election. A solution should be in place in anticipation of an influx.

6. Supreme Court Rule 59(c) stay pending appeal in a disciplinary proceeding.

Justice Lopez and Maret have spoken to Judge Downie regarding the rule-based presumption that discipline will be stayed during appeal. In a recent ruling denying a request to stay, the Arizona Supreme Court cited *Smith v. Arizona Citizens Clean Elections Comm'n*. This case provides guidance to use in drafting a rule change petition to amend Rule 59(c). After discussion, it was decided the rule change petition could be filed by this Committee. Maret and Amy will have a draft rule change petition for review at the next meeting.

7. Agenda for next meeting-

- A. Rule 59(c) draft petition
- B. Update on racial disparity in discipline and follow up information from Joel's meeting with Tammy Walker
- C. Continue discussion regarding Independent Bar Counsel Resources including plans and options for moving forward to generate an action item to forward to the

board or court

- D. Next meeting – 3 to 4 months out – Lori will reach out to get date

Meeting ends 2:52 p.m.