

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

APRIL 30, 2019

ARIZONA SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE (ARC)
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As of March 2019

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Presiding Disciplinary Judge

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Court of Appeals

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ATTORNEY REGULATION ADVISORY COMMITTEE
2018 ANNUAL REPORT
April 30, 2019

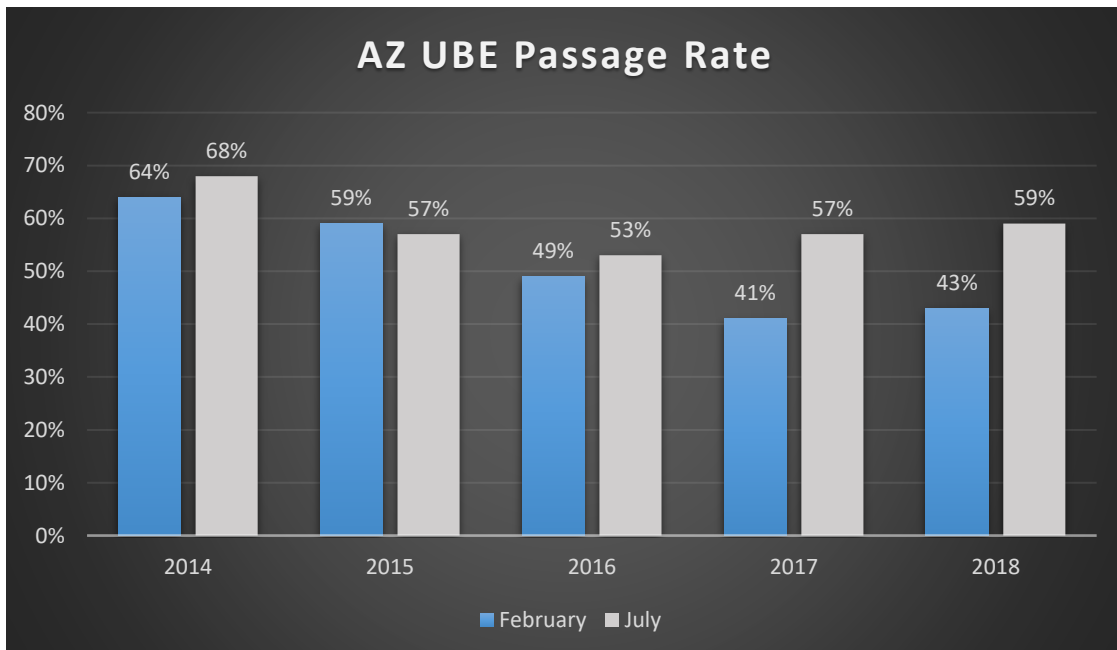
The Attorney Regulation Advisory Committee (“ARC”) was established by the Supreme Court of Arizona to periodically review the entire attorney admission and discipline system for the Court and make recommendations for any further needed changes. (Administrative Order No. 2011-44). ARC’s purpose is to 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. This report is respectfully submitted for the 2018 calendar year.

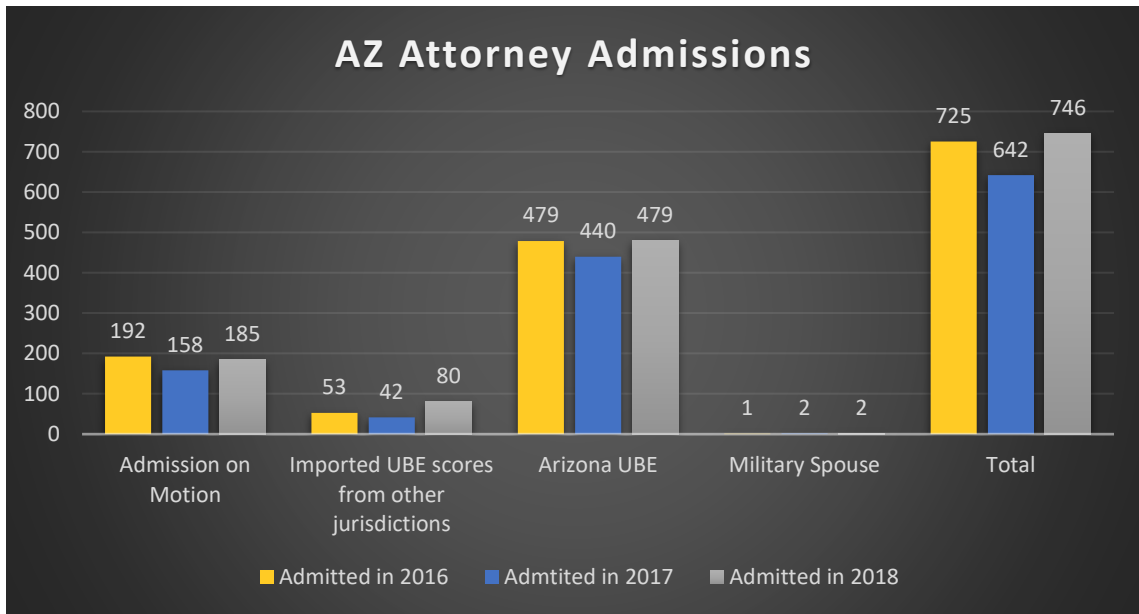
Comparative Number of Attorneys Licensed in Arizona

1990	2000	2010	2015	2018
7,579	12,991	21,374	23,794	24,500

I. The Examination/ Admission Process and Statistics

Arizona adopted the Uniform Bar Examination (“UBE”) in 2012 and has testing opportunities twice a year in February and July. A total of 507 applicants passed the Arizona Uniform Bar Examination in 2018, yielding an overall pass rate of 52.6%. 747 new attorneys were admitted in 2018: 185 by admission on motion, 80 via imported UBE scores earned elsewhere, 2 military spouse admissions, one foreign legal consultant and 479 by exam.





*Not charted: 1 foreign legal consultant was admitted in 2018.

In 2018, a total of 242 applicants who tested in Arizona requested their UBE scores be transferred to 26 different jurisdictions, the most frequently to:

- 58 New Mexico
- 42 District of Columbia
- 28 New York
- 21 Washington

A total of 107 UBE applicants requested their scores be transferred into Arizona. Jurisdictions with the most frequently imported scores were:

- 20 Colorado
- 18 New York
- 13 New Mexico
- 10 Utah

Character and Fitness:

Each applicant for admission must submit a detailed Character and Fitness Report. The Committee on Character and Fitness is charged with reviewing and, as necessary, investigating issues raised by these reports. As part of that process, and in compliance with the 2015 guidelines established by the Arizona Supreme Court, the Committee held a total of 55 informal proceedings in 2018, with the following results:

Informal Inquiries in 2018	
Outcomes	Number of Inquiries
Regular Admission	49
Conditional Admission	1
Referred for Formal Hearing	4
Withdrew Application	1
Pending	0
Deferred	0
Denied	0
Conversion	0
Total	55

28 investigations in 2018 resulted in formal proceedings, with the following results:

Hearings in 2018	
Outcomes	Number of Hearings
Regular Admission	14
Conditional Admission	5
Denied Admission	4
Withdrew Application	5
Pending	0
Total	28

In 2018, the Chairs of the Character and Fitness and Examinations Committees responded to petitions for review regarding the following issues:

Committee on Character and Fitness Response to Petitions for Review		
Issues	Requests	Action by Supreme Court
Waiver of ABA JD Requirement	4	3 granted; 1 denied
Extend Five-Year Requirement for Admission	8	7 granted
Waiver AOM Practice Requirement	1	1 granted
Military Spouse Exemption	1	1 granted
AOM-Diploma Privilege	0	N/A
Comply with MPRE	2	2 granted
Reconsideration	0	N/A
Total	15	14 granted; 1 denied

Committee on Examinations Response to Petitions for Review		
Issues	Requests	Action by Supreme Court
Denial of Testing Accommodations	2	2 denied
Extraordinary Circumstance, Overturn Failing Exam Score	10	10 denied
Total	12	12 denied

Other Admissions Issues

Early Examination

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 for study and student engagement. The Supreme Court officially amended Rule 34 to allow early testing as a permanent admission option effective January 1, 2017. Applicants from any law school, certifying the student qualifies as an early tester, may apply to sit as a third-year student. Of the three Arizona law schools*, the University of Arizona consistently has the highest number of applicants apply as early testers. The overall statistics for 2018 are indicated in the chart below.

EARLY EXAM	Total Participants	Passed Exam	Pass Rate
February 2018	28**	20	71%
University of Arizona	22	14	63.6%
Arizona State University	5	5	100%

*There were no early testers from Arizona Summit in 2018 and no participants from any school in July 2018.

** One non-Arizona law school early tester participated and passed the exam.

Early tester applicants are eligible to sit for the exam; however, are not eligible for admission in accordance with Rule 34(b)(2)(F) until satisfactory proof of award of juris doctor is received by the Committee on Character and Fitness. In addition to earning the minimum passing score on the bar exam, early testers must complete the application for the Character and Fitness investigation in order to be admitted to practice law.

February UBE scores are released the second week in May and many law school conferred degrees after such date; therefore, no February 2018 early testers were recommended to practice at the time of score release. Of the 28 early testers who sat for the February 2018 bar exam, 20 achieved successful scores. Six of the 20 early testers filed a character and fitness application prior to the February UBE administration. After receipt of graduation was received, three early testers were admitted in May; nine were admitted in June and the remaining early testers were admitted thereafter. One early tester has not yet filed an application to complete admission.

II. Lawyer Regulation

Administrative Order 2011-44 directs that the annual ARC report shall contain case statistics on the processing of attorney regulation cases.

Statistical Summary

The following comparative statistics are provided by the State Bar of Arizona, the Attorney Discipline Probable Cause Committee (“ADPCC”) and the Presiding Disciplinary Judge (“PDJ”). The State Bar, ADPCC and the PDJ have distinct responsibilities and capture data in slightly different ways to best reflect the performance of those responsibilities. The differences in the manner in which data has been captured are described in footnotes. The statistics provide a snapshot of the regulatory process, from intake and processing of complaints, investigation and resolution, either through closure, consent, presentation to and disposition by the ADPCC, and through the formal complaint process with orders issued by the PDJ, and review by the Arizona Supreme Court.

Number of Attorneys Licensed to Practice:		
2016	2017	2018
24,088	24,261	24,500

Summary of Regulatory Action Taken¹			
	2016	2017	2018
Disbarred	12	21	15
Suspended	37	44	20
Reprimanded	24	20	29
Number of Informal Sanctions	66	85	34
Number of Diversions	71	93	88 ²
Number of Dismissals with Comment	178	204	219

¹ This chart represents all final orders through appeal as of December 31 of each respective year.

² This includes 3 diversions that were finalized in the intake process rather than as a result of an ADPCC order.

1. Intake and Investigative 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 the investigation phase.

Complainants are encouraged to talk with an Intake lawyer before submitting a written charge. This approach has personalized the process and has allowed for a better and timelier evaluation of the complainant's concerns. Many charges received by Lawyer Regulation represent allegations of low-level misconduct (such as lack of communication with the client) that can be appropriately resolved by means of providing instruction to the lawyer or directing the lawyer to resources that will quickly resolve the issue.

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 that decision.

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 often includes gathering additional information.

Intake and Investigation			
	2016	2017	2018
Total charges received	3,569	3,221	3,047
Number of charges referred to investigation	744	609	555
Number of lawyers investigated relative to the charges referred	499	428	437
Percentage of complaints resolved in Intake (closed)	71%	76%	75%
Average days to resolve complaints in Intake (closed)	27	23	25
Average days to refer from Intake to Investigation	28	24	27
Average days for investigation	161	180	216

2. Attorney Discipline Probable Cause Committee

The Attorney Discipline Probable Cause Committee 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, and assessment of costs and expenses.

Additionally, if the committee believes the ethics violation(s) in question could justify the imposition of a reprimand, suspension or disbarment, it can authorize the State Bar to file a formal complaint with the Presiding Disciplinary Judge.

Before each monthly meeting, the State Bar provides each respondent with a written report of investigation that includes the Bar’s recommendation 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. In 2018, the ADPCC rejected or modified the State Bar’s recommendation in 21 cases. In 6 cases, the ADPCC increased the severity of 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.

The ADPCC organizes its statistics in a slightly different format from that of the State Bar, tracking the number and types of orders issued:

Number of Matters³ the ADPCC Reviewed and Number of Orders Issued			
	2016	2017	2018
Number of Matters Reviewed	363	384	321
Number of Probable Cause Orders Authorizing a Formal Complaint	169	121	129
Number of Orders of Admonition	61	62	33
Number of Orders of Restitution	4	24	4
Number of Orders of Diversion	70	90	86 ⁴

³ A “matter” is defined as a State Bar action that results in an ADPCC order and may involve multiple charges. The statistics in this chart are calculated on a calendar year.

⁴ This includes one diversion from Independent Bar Counsel.

Number of Matters⁵ the ADPCC Reviewed and Number of Orders Issued			
Denial of Appeals from State Bar Orders of Dismissal	42	40	38
Granted Appeals from State Bar Orders of Dismissal	0	2	4
ADPCC increased recommended sanctions (by charge)	10	12	6
ADPCC decreased recommended sanctions (by charge)	12	17	15

Contested ADPCC Orders and Disposition:

Pursuant to Rule 55(c)(4)(B), attorneys receiving an order of diversion, stay, probation, restitution, admonition or assessment of costs and expenses may contest that order by demanding formal proceedings be instituted. In that event, the ADPCC order is vacated, and the State Bar files a formal complaint with the PDJ. In 2018, the following orders were appealed and converted to formal cases, with the following results:

- 17-2015 contested Admonition order; **result:** Diversion
- 17-0949 contested Admonition order; **result:** Admonition
- 17-1487 contested Admonition order; **result:** Still proceeding
- 18-1574 contested Admonition order; **result:** Still proceeding

3. Formal Cases

Office of the Presiding Disciplinary Judge

The Presiding Disciplinary Judge (PDJ) presides over attorney regulation proceedings including ruling on motions and evidentiary rulings. The PDJ individually rules on interim suspension requests, disability matters and requests for protective orders. Other matters are decided by a hearing panel. The Chief Justice appoints a pool of volunteer attorney and public members to serve on hearing panels. Each three-member hearing panel is comprised of the Presiding Disciplinary Judge, one volunteer attorney member and one public member assigned by the disciplinary clerk. The hearing panels have statewide jurisdiction over proceedings on complaints of misconduct, applications for reinstatement, contempt and any other matters

⁵ A “matter” is defined as a State Bar action that results in an ADPCC order and may involve multiple charges. The statistics in this chart are calculated on a calendar year.

designated by the Court. In those matters, the hearing panels prepare findings of fact and conclusions of law. In discipline proceedings, the hearing panel issues a final judgment, subject to appeal to the Court. While hearing panel judgments are final they do not serve as *stare decisis* precedent for future cases nor constitute law. In reinstatement matters, the hearing panel makes a report and recommendation to the Court. The disposition of the matter by the Court establishes the finality of each report and recommendation.

The Office of the Presiding Disciplinary Judge is comprised of three individuals, Judge William J. O’Neil, Paralegal, Michele Smith and Disciplinary Clerk, Amanda McQueen. The decisions of the PDJ or the hearing panels can be found online at: <http://www.azcourts.gov/pdj>.

Under Rule 46(f)(1), the disciplinary clerk is designated by the Court to be the custodian of the record in all discipline, disability, and reinstatement proceedings and maintains the record. Under Supreme Court Rule 51, the PDJ may impose discipline on an attorney, transfer an attorney to and from disability inactive status and serve as a member of a hearing panel in discipline, disability proceedings and reinstatement hearings.

Formal matters include complaints, direct consent agreements, petitions for reinstatement, petitions for interim suspension and petitions for transfer to disability. The PDJ also reviews and issues orders on reciprocal proceedings, protective orders and affidavit-based reinstatement requests under Rule 64. Rule 64 reinstatements do not require a hearing; however, they allow for State Bar objections and require the approval of the PDJ.

Pursuant to Rule 58(j), Ariz. R. Sup. Ct., all discipline hearings on the merits were completed within 150 days of the filing of the complaint, with three exceptions. In one matter the parties jointly requested that time be extended to secure and review medical evaluations. In the second matter, the time was extended after the parties gave notice that a settlement had been reached and the hearing vacated. A party withdrew from the agreement and the hearing was reset. In the third matter, a medical emergency regarding a party necessitated the continuance of the hearing.

The use of hearing panels has provided public insight and participation for the lawyer regulation system that protects the public and provides transparency. The PDJ has the authority to issue a final judgment or order imposing any sanction, including disbarment. Statistically, using the PDJ has streamlined the processing of formal proceedings.

“Formal matters” reflected in the chart below include formal complaints, pre-complaint consent agreements and reciprocal discipline proceedings. For some matters, such as agreements, it should be noted that the PDJ’s Office organizes its statistics in a slightly different format from that of the State Bar.

Number of Formal Matters, Consent Agreements, Interim Suspension, and Reciprocal cases for the Past Three Years			
	2016	2017	2018
Formal Matters	95*	88	96
Pre-Complaint Consent Agreements	29*	25	29

Number of Formal Matters, Consent Agreements, Interim Suspension, and Reciprocal cases for the Past Three Years			
	2016	2017	2018
Post-Complaint Consent Agreements	22	40	27
Interim Suspensions	6	6	8
Reciprocal Discipline	6	6	10

*After an audit, 2016 numbers for Formal Matters and Pre-Complaint Consent Agreements were amended to report the actual count.

Average Time for Formal matters: These include formal complaints, pre-complaint consent agreements and reciprocal discipline proceedings. Pre-complaint consent agreements may be filed in lieu of a formal complaint. Pre-complaint consent agreements are a subset of the numbers in the formal-matters row. The charts below describe the average time from formal complaint to decision for all contested cases, consent agreements and defaults.

Average Time from Formal Complaint to Decision Order for All Types of Cases			
	2016	2017⁶	2018
Number of Days	108	122 (118.5 ⁷)	106

Average Time from a Formal Complaint to Decision Order for Contested Cases			
	2016	2017	2018
Number of Days	148	164.5 (157 ⁶)	186 ⁸

Average Time from a Formal Complaint to Decision Order for Default Cases			
	2016	2017⁵	2018
Number of Days	88	97.5 (94.5 ⁶)	86

Average Time from a Formal Complaint to Final Order for Consent Agreements			
	2016	2017	2018
Number of Days	107	116	107

⁶ The 2017 average time was modified to remove the Rorex matter, which was stayed for 324 days due to his transfer to inactive disability status.

⁷ Three matters contained amended complaints. The average time was calculated using the start date of when the amended complaints were filed instead of the initial complaint date. The average time was primarily increased by requests by parties for written closing arguments and transcripts.

⁸ 3 cases in 2018 extended this number: Rocco (224 days); Carter (221 days); and Harris (200 days).

Sanctions or Outcomes: Matters handled by the PDJ may result in various sanctions or outcomes including discipline, diversion or dismissal; protective orders; resignation orders; and reinstatements. The chart below describes the sanctions or outcomes for the last three years. ADPCC informal sanctions include Orders of Admonition, Restitution and Probation.

Sanctions & Outcomes⁹			
	2016	2017	2018
Disbarment*	14	18	16
Suspension	41	44	21
Reprimand	24	21	29
Hearing Panel Dismissals	2	6	0
Informal Sanctions by ADPCC ¹⁰	66	86	39
Diversions by ADPCC	71	91	86

*In 2016, 5 (36%) of the 14 disbarments were by consent; in 2017, 9 (50%) of the 18 disbarments were by consent; and in 2018, 11 (69%) of the 16 disbarments were by consent.

Protective Orders Issued by PDJ¹¹			
	2016	2017	2018
Number of Protective Orders	69	59	105

Resignation Orders in Lieu of Reinstatement Issued by PDJ			
	2016	2017	2018
Number of Resignation Orders	7	15	7

⁹ This chart provides statistics of decisions issued by the Presiding Disciplinary Judge as of December 31 of the corresponding year and may include orders that were on appeal to the Supreme Court.

¹⁰ This number does not include probation as a term of a sanction.

¹¹ Protective Orders typically address concerns of public disclosure of confidential or personal information.

Rule 64 & Rule 65 Reinstatement Applications			
	2016	2017	2018
Rule 64 (e) ¹²	15	13	8
Rule 65 ¹³	6	13	12

Rule 65 Reinstatements Filed, Pending or Concluded in 2018 with Status			
Cause Number*	Applicant	Recommendation by Hearing Panel	Status (As of date of report)
2016-9097-R	Torre	Reinstate	Dismissed 3/23/18
2017-9037-R	Kramer	Reinstate	Reinstated 1/10/18
2017-9055-R	Vingelli	Reinstate	Reinstated 2/13/18
2017-9080-R	Torres (Gonzalez)	Reinstate w/ terms	Reinstated w/ terms 7/3/18
2017-9101-R	Ward	Reinstate w/ terms	Reinstated w/ terms 5/31/18
2017-9111-R	Standage	Reinstate w/ terms	Reinstated w/ terms 7/3/18
2017-9121-R	Geller	Reinstate	Reinstated 5/31/18
2018-9016-R	Hamula	Reinstate	Reinstated 9/26/18
2018-9022-R	Reade	Reinstate	Pending w/ Supreme Court
2018-9026-R	Edwards	Reinstate	Reinstated 11/21/18
2018-9027-R	Yoder	Reinstate	Reinstated 9/25/18
2018-9037-R	Whipple	Deny	Supreme Court dismissed 3/8/19
2018-9039-R	Germuska	Reinstate	Reinstated 3/5/19
2018-9064-R	Swart	Reinstate	Reinstated 2/5/19
2018-9086-R	Levine	Pending	Hearing set for 6/11/19

¹² Suspensions of six months or less.

¹³ Suspensions of six months and one day or more.

Rule 65 Reinstatements Filed, Pending or Concluded in 2018 with Status			
2018-9089-R	Inserra	Deny with ability to re-open	Pending w/ Supreme Court
2018-9091-R	Brown	n/a	Application withdrawn
2018-9117-R	Rhoads	Pending	Hearing concluded 4/17/19
2018-9120-R	Tacker	n/a	Application withdrawn

* The case number assigned identifies the year the application was filed.

Appeals to the Supreme Court: Sanctions or outcomes of matters handled by the PDJ may be appealed to the Supreme Court. The chart below describes the notices of appeal and special actions filed with the Disciplinary Clerk in 2018.

2018 Notices of Appeal filed with the Disciplinary Clerk, with Status			
Case Number	Case Name	Action or Sanction	Status (As of Date of Report)
2017-9086	Harris	Reprimand	appeal denied, sanction affirmed
2017-9053	Thomas	Costs	costs affirmed
2017-9119	Wilson	6m 1d suspension	Pending w/ Supreme Court
2017-9126	Cartier	6m 1d suspension	Sanction Affirmed
2018-9018	Strojnik	Interim Suspension	appeal denied
2018-9058-R	Levine	Order striking Application	Spec. Action Declined
2016-9042	Fitzhugh	Order striking/precluding	Spec. Action Declined - Jurisdiction
2018-9084	Maasen	6m 1d suspension	appeal dismissed
2018-9051	Billar	disbarment	appeal dismissed
2018-9032	Rocco	90 days suspension	Pending w/ Supreme Court

Certificates of Good Standing and Discipline History reports: COGS and DHs are processed by the Certification and Licensing Division and then they are reviewed and issued by the Disciplinary Clerk, pursuant to Ariz. Sup. Ct. Rule 74.

Certificates of Good Standing & Discipline History Requests			
	2016	2017	2018
COGS	1603	1795	1719
DH	714	185	551

4. 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. 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 2018.

Independent Bar Counsel’s Report Pursuant to Admin. Order 2018-20, 6(b)

6(b)(i) General description of the nature and disposition of Qualifying Matters resolved by Independent Bar Counsel during the preceding year.

This report includes cases for calendar year 2018. During that time, Independent Bar Counsel (“IBC”) received a total of thirteen (13) new complaints. While this is greater than the

number of new complaints IBC received in 2017¹⁴, it is still fewer than those received in 2015 and 2014.¹⁵

Below is a breakdown showing details regarding the nature of the qualifying matter:

4(a)(i) (Board member)	4(a)(ii) (State Bar staff)	4(a)(iii) (ADPCC member)	4(a)(iv) (lawyer previously with the State Bar)	4(a)(v) (Hearing Panel member)	4(b) (Other matters assigned by Chief Justice)	4(c) (Related matter)	4(d) (Hearing Panel members)
1	3	1	0	4	0	4	0

Five (5) matters were carried over from 2017. Formal charges were filed in 2018 related to four (4) of the carryover matters and the fifth matter was resolved in 2018.

A total of four (4) cases were resolved in 2018 with the following breakdown:

Disbarment	Suspension	Reprimand	Admonition	Diversion or “other appropriate action” per Rule 55(a)(2)(B)	Dismissal with Comment	Dismissal by IBC
0	0	0	0	1	0	3

Regarding the remaining matters: one (1) matter was dismissed on January 8, 2019; one (1) matter was heard by ADPCC in February 2019; one (1) is expected to be considered by ADPCC in April 2019; and seven (7) other matters remain under active investigation.

6(b)(ii) IBC’s recommendations for improvements to Arizona lawyer admission, discipline, disability and reinstatement procedures.

IBC has not yet had an opportunity to become involved in matters of lawyer admission, disability or reinstatement proceedings and consequently has no recommendations other than remind those involved with lawyer admission, disability or reinstatement that she is available to assist.

Regarding the attorney discipline process, IBC suggests consideration be given to whether it would be better for a separate three (3) member panel to hear and decide Rule 48(m) matters

¹⁴ In 2017, IBC received eight (8) new complaints.

¹⁵ IBC received fifteen (15) new complaints in 2015 and twenty-one (21) complaints in 2014.

and, to the extent a matter is permitted to proceed against bar counsel, whether IBC's ultimate recommendation should be presented to the same three-member panel, rather than ADPCC.

Although all individual members of ADPCC are trusted to recuse if he or she feels he or she cannot properly evaluate a complaint made against bar counsel, ADPCC's proceedings are closed to the public. Complainants and the public may speculate that bar counsel, who routinely appear before ADPCC members, are treated differently by ADPCC.¹⁶ To remove any appearance issue, a three-member panel, perhaps comprised of random members on the Presiding Disciplinary Judge's volunteer hearing panel list, could be called upon to hear matters involving bar counsel.

In addition to work investigating qualifying matters under Admin. Order 2016-44, IBC spent the balance of her time as acting disciplinary counsel, investigating complaints about judges made to the Commission on Judicial Conduct ("CJC"). This activity is authorized by paragraph 2 of Admin. Order 2018-20.¹⁷ IBC also helped investigate one matter regarding a fiduciary licensee for the Certification & Licensing Division.

III. ARC Action on Rule-Change Petitions

During 2018, ARC participated in drafting portions of proposed rule changes or provided comments on the following rule petitions:

R-17-0035: Amend Rule 49 regarding posting of probation on the State Bar website.

R-17-0044: Amend Rule 43 regarding overdraft protection for client trust accounts.

R-18-0004: Amend Rule 31 to improve access to justice for small business.

R-18-0006: Creating the Attorney Ethics Advisory Committee.

R-18-0009: Amend Rule 42, ER 1.2.

R-18-0014: Clarify appointment and functions of the Chief Bar Counsel.

R-18-0015: State Bar Executive Director authority to waive bar dues for personal hardship.

¹⁶ IBC has no basis to suggest this is true as a point of fact.

¹⁷ IBC investigated and analyzed 46 of the CJC's 410 cases in 2018 or 11%. This is down from the 20% of CJC cases IBC investigated in 2017. However, one CJC matter IBC handled in 2018 resulted in formal charges.