

## SC Bar Comment to the ABA's Report on Lawyer Regulation System

*Recommendation 1 – The Court Should Increase Public Representation on the Lawyer Conduct Commission and Streamline the Functions of the Investigative Panels.*

The Bar supports this recommendation.

*Recommendation 2 – The Court Should Create an Oversight Committee for the Commission on Lawyer Conduct*

The Bar takes no position on this recommendation.

*Recommendation 3 – The Court Should Amend the Rules to Provide Increased Discretion to Disciplinary Counsel*

The Bar supports this recommendation.

*Recommendation 4 – Complainants Should Be Provided the Lawyer's Response to their Grievance and Should Have a Limited Appeal of Dismissals by Disciplinary Counsel*

The Bar does not support this recommendation. Allowing complainants access to the lawyers' responses will create a chilling effect on the desired candor of the accused lawyer. Additionally, adding even a limited appeal of dismissals will significantly slow the process, rather than the apparent pervasive suggestion of speeding up the processes.

*Recommendation 5 – The Court Should Phase Out Attorneys to Assist*

The Bar does not support this recommendation. Attorneys to Assist are a valuable asset for the Office of Disciplinary Counsel and offer assistance in specific areas of law where necessary. Attorneys to Assist serve a beneficial function to both the respondent and the complainant. Furthermore, eliminating Bar members from the process appears to distance the bar from the lawyers' collective professional obligation. Issues of delays should be addressed.

*Recommendation 6 – The Court Should Revise the Rule for Appointment of Attorneys to Protect Client's Interests to Ensure Efficient Use of Resources*

The Bar does not support this recommendation. While the training of Attorneys to Protect Client Interests is without question an important function, all other aspects connected to the Attorney to Protect Client Interests appear to remain with the Court. Attorneys to Protect Client Interests should be overseen by Commission Counsel. Ideally, the Commission should hire a staff attorney to serve as the dedicated Attorney to Protect Client Interests.

*Recommendation 7 – The Court Should Amend the Discovery Rules to Permit More Liberalized Discovery and Provide for Pre-Hearing Conferences*

The Bar could not reach a consensus on this recommendation.

*Recommendation 8 – Discipline on Consent Should Be Encouraged at All Stages of the Proceedings*

The Bar supports this recommendation.

*Recommendation 9 – The Court Should Adopt Specific Procedures Relating to Deferred Discipline Agreements*

The Bar does not support this recommendation. The Bar recognizes the benefits of and flexibility in the current process relating to deferred disciplinary agreements.

*Recommendation 10 - Records or Evidence of Dismissed Complaints Should be Expunged After an Appropriate Period of Time*

The Bar supports this recommendation.

*Recommendation 11 – The Court Should Amend the Rules to Provide that Disciplinary Counsel is Responsible for Handling Reinstatement/Readmission Cases*

The Bar does not support this recommendation. The Bar previously has requested expansion of the Character and Fitness Committee to expedite handling of reinstatements.

*Recommendation 12 – The Court Should Eliminate Indefinite Suspensions and Provide for Automatic Reinstatement for Suspensions of Less than Nine Months*

The Bar supports this recommendation.

*Recommendation 13 – The Court Should Consider Adopting Probation as a Sanction and a Rule Setting Forth Procedures for Its Imposition and Revocation*

The Bar does not support this recommendation. The purposes underlying probation are better addressed through the existing deferred discipline process.

*Recommendation 14 – The Court Should Adopt a Rule for Random Audit of Trust Accounts and Approve a Curriculum Proposed by Disciplinary Counsel for a Trust Account School*

The Bar does not support this recommendation. Random audits have not been shown to provide public protection. The resources would be better spent on increased investigative staff for probable cause audits and other alleged offenses. The Trust Account School curriculum is already in place in the Ethics School endorsed by the Bar and offered with the Office of Disciplinary Counsel.

*Recommendation 15 – The Court Should Adopt a Rule Providing for Written Notice to Clients of Payment in Third-Party Settlements*

The Bar does not support this recommendation. Written notice to the client of third-party payment will further exacerbate the tension that already exists regarding the client's desire for immediate access to funds she views as hers<sup>1</sup> and the attorney's corresponding obligations under the Good Funds Rule. Additionally, the Court should respect the separation of powers and not be engaged in what is a legislative function.

*Recommendation 16 – The Court Should Oversee the Formation of a Formal Annual Budget Process for Disciplinary Counsel's Office to Ensure Adequate Staffing and Funding*

The Bar takes no position on this recommendation.

*Recommendation 17 – Disciplinary Counsel and Staff Should Receive Formal Training*

The Bar supports this recommendation.