

June 9, 2005

**COMMENTS TO THE ARIZONA STATE BAR FROM  
HALT, INC. AN ORGANIZATION OF AMERICANS FOR LEGAL REFORM  
IN SUPPORT OF THE RECOMMENDATION TO PUBLISH ATTORNEY  
DISCIPLINARY INFORMATION ON THE INTERNET**

HALT – *An Organization of Americans for Legal Reform* hereby submits comments supporting the Arizona State Bar Discipline Oversight Committee’s recommendation to establish a Website providing public access to attorney disciplinary action.

Founded in 1978, HALT is a nonprofit public interest group dedicated to increasing access and accountability in the civil justice system. HALT’s Lawyer Accountability Project works to make lawyers more responsive to the needs of legal consumers and to empower legal consumers to protect themselves from negligent, unscrupulous and incompetent attorneys. Through our Report Cards, appellate litigation, media campaigns, legislative work, white paper releases and grassroots lobbying, HALT has been in the forefront of the fight to improve systems in place to weed out unethical lawyers and provide recourse to victimized legal consumers.

Most recently, HALT has provided input to officials in Pennsylvania, New Jersey, New Hampshire, the District of Columbia and Washington State as they have considered reforms for their respective systems of attorney discipline. As a result of our efforts and the dedication of disciplinary staff, we have seen an increase in non-lawyer participation on hearing panels, broader publicity of disciplinary sanctions and improved efficiency in complaint-processing.

We support the Arizona State Bar Board of Governors’ decision to publish a wide array of disciplinary actions and administrative suspensions. We believe, however, that two of the Committee’s proposals represent potential setbacks for this project. We disagree with the Committee’s proposal to withhold internet publication of diversion orders and dismissals because they provide consumers with important information about a lawyer’s fitness to practice law. In addition, HALT urges the Committee to reduce potential obstacles to this information and consider a straightforward member profile page.

As the Bar knows, the internet has become today’s primary medium for public access to information. Traditional communication methods, such as the telephone, are no longer the first choice of consumers searching for information about products or services. To make public access a reality in today’s telecommunications era, the Bar should post all disciplinary information on the internet, in addition to its more traditional methods of publication.

**I. An attorney's complete disciplinary history should be available on the Arizona State Bar's Web Site.**

The Arizona State Board's Discipline Oversight Committee has proposed that disciplinary orders and administrative suspensions should be Web-accessible. In addition, the Committee also recommended that dismissals and diversion orders should be withheld from the Bar's website, and left open the question of how long administrative suspensions should remain posted.

In an era that places a premium on principles of sunshine and transparency, we believe the Committee's proposal to publish disciplinary information on the internet is long overdue. We urge the online disclosure of all disciplinary and administrative actions. Such a full disclosure would support the public trust of the legal profession. Withholding this information encourages the historic distrust of the legal profession as supporting even the most unethical of attorneys at the public's expense.

The State Bar's mission statement recognizes the importance of the principle of transparency. Integrity is one of the core values of the State Bar, defined on the Bar's Website as "consistency, transparency, and accountability for what we say and what we do, as individuals, as professionals and as an organization." Public access to disciplinary information furthers this core value by providing equal footing between client and attorney. Members of the public regularly tell us that access to attorney disciplinary information enables a more efficient and positive attorney-client relationship.

Other state bars have seen the benefits of disclosing their members' disciplinary information. Two years ago, the California State Bar began adding disciplinary information, including diversion orders, to its online member profile database. On May 25, 2005, we spoke to Kathleen Beitiks, in the Office of Media & Information Services, who told us that the Bar experienced a large drop in phone requests for attorney disciplinary information. Today, the system is well utilized by California's legal consumers. Also, courts and judges use the online service to confirm member status. According to Ms. Beitiks, the Bar's proactive steps defused the impression of a "good old boy network" uninterested in the needs of the public they serve.

In 1976, the Oregon State Bar began providing full access to their disciplinary records. Now, all information in an attorney's record is public and available to legal consumers by calling the State Bar. Among the information that the Oregon State Bar provides to the public is the number of grievances filed against an attorney and all disciplinary actions and diversion orders. The system is extensively used by the public and handles between 250-300 phone inquiries a month. Jeff Sapiro, Regulatory Services Manager of the Oregon State Bar, told us on May 24, 2005, that the Bar's decision to provide this high level of transparency deflects suspicion of their organization.

During this period of reflection, the Arizona State Bar has the opportunity to demonstrate leadership by embracing both the full disclosure policy of the Oregon State Bar and the online access system of the California State Bar. By making an attorney's full disciplinary history available online, Arizona can fulfill its core mission of protecting consumers.

**II. Information about grievances and diversion orders should be available regardless of the public's method of contact.**

HALT opposes the Committee's recommendation to withhold information about dismissals and diversion orders on the Bar's Website. The Board's Discipline Oversight Committee is concerned that posting diversion orders would undermine the effectiveness of the Bar's diversion programs. On the contrary, the public's interest is not fully protected unless individuals are informed about all instances of misconduct. A client must feel secure when revealing her deepest confidences to her attorney. This security requires the trust and confidence that full disclosure provides. Potential clients deserve to know the level of professional fitness and competence of an attorney before entering into a legal relationship. The ethical misconduct of an attorney significantly increases the potential for future misconduct, which is why diversion programs exist.

Admittedly, full disclosure of an attorney's disciplinary record may discourage some prospective clients from hiring that attorney. But this should be the client's prerogative. That kind of choice on the part of a consumer is one of the bedrocks of American society.

Arizona Supreme Court Rule 70 requires broad public access to disciplinary files, including diversion and dismissed charges. Currently, a legal consumer in Arizona can find out the number of grievances and any diversion orders against an attorney by calling the State Bar. The current proposal, if adopted, would limit the information provided online, by not revealing orders of diversion and the number of uninvestigated grievances – information that would continue to be provided if a consumer were to call the Bar. For instance, a potential client could call the Bar and discover that a prospective attorney was under an order of diversion, yet if that same client were to access the disciplinary information by the member's online profile, she would be completely unaware of this situation.

Providing a diluted version of an attorney's record online is potentially misleading and does not serve the best interests of the legal consumer or legal profession. A less than full disclosure perpetuates the belief that the legal profession shields attorneys at the expense of the public. The online information should mirror the information that is provided over the phone. A full picture of an attorney's record should be available regardless of the method of contact.

### **III. Member information should be available indefinitely.**

We support the Committee's recommendation that disciplinary information should remain available on the internet indefinitely. We believe this is information the public has a right to know, and that an attorney's internet member profile should mirror the public records that are available to the public by calling the State Bar. Additionally, a decision to remove access to the disciplinary information after a period of time would be an arbitrary decision that does not reflect the fact that many legal issues can extend for the lifetime of an individual.

### **IV. The Bar's Website should be straightforward and easily accessible.**

The proposed design of the online member profile frustrates the goal of public access to members' disciplinary records. Rather than displaying all information concerning a member, the current design requires the clicking of a link to reveal disciplinary and administrative actions. This extra step creates unnecessary friction and this option may escape the notice of an inexperienced internet user. This information should be displayed on one page with the rest of the member profile.

The Bar's Website should be straightforward, without obstacles to information. Recent trends in Website design seek to extend accessibility to all users, including blind or vision-impaired computer users. These computer users usually employ assistive software that reads the Webpage out loud. Some Website practices can interfere with this software. Avoiding the use of frames and unconventional technologies, such as some plug-ins, are some of the recommendations accessibility advocates have for decreasing obstacles. Ms. Beitiks told us that the California State Bar regularly performs compliance testing on their Website and continues to make changes to allow the Website to be as accessible as possible. The Web is becoming an everyday tool for communication and an accessible Web design will ensure that barriers are not imposed on any legal consumers.

### **V. Conclusion**

HALT strongly supports the Committee's recommendations. We hope that the Board of Governors will give further consideration to providing full disclosure of an attorney's record and unlimited duration of the postings. The Arizona Bar should not withhold internet publication of diversion orders and grievances because they provide consumers with important information about a lawyer's fitness to practice law. In addition, a straightforward member profile page will reduce obstacles to this important

information. The foundation of a good attorney-client relationship is trust, and these proposals will support the Arizona State Bar's mission of protecting consumers.

Respectfully Submitted,

*HALT – An Organization of Americans for Legal Reform*

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