

1 Mark I. Harrison, No. 001226  
2 OSBORN MALEDON  
2929 North Central Avenue, 21<sup>st</sup> Floor  
3 Phoenix, AZ 85012-2793  
4 Phone: (602) 640-9324  
5 Fax: (602) 640-9050  
6 Email: [mharrison@omlaw.com](mailto:mharrison@omlaw.com)

7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of: ) Supreme Court No. R-17  
10 )  
11 PETITION TO AMEND RULE ) **PETITION**  
12 49(a)(2)(C)(ii) OF THE ARIZONA )  
13 RULES OF THE SUPREME COURT )  
14 OF ARIZONA )  
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15 Pursuant to Rule 28, Ariz. R. Sup. Ct., the undersigned lawyers<sup>1</sup> petition the  
16 Court to amend Rule 49(a)(2)(C)(ii). The proposed amendment is necessary to  
17 eliminate the unintended punitive effect of publishing or “posting” on the State Bar  
18 website the sanction of “probation” imposed on a respondent separately, pursuant  
19 to Rule 60, or in conjunction with another sanction. Rule 49(a)(2)(C)(ii) now  
20 provides:  
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25 <sup>1</sup> All of the undersigned counsel regularly represent respondents in discipline cases and collectively have represented hundreds of respondents over many years. In addition, several of the undersigned counsel have served on the former Disciplinary Commission or as Bar counsel or ethics counsel before entering private practice.

1 Notices of sanctions or orders shall be posted on the state bar's website as  
2 follows: \* \* \*

3 (ii) Probation (including admonition with probation),  
4 restitution and costs shall be posted for five (5) years from the  
5 effective date of the sanction or until completion, *whichever is*  
6 *later*; the posting shall indicate whether or not the terms of the  
order have been satisfied. (emphasis added)

### 7 DISCUSSION

8 "Probation" is not defined as "discipline" in Rule 46, Rules of the Supreme  
9 Court but is nonetheless specified as a "disciplinary sanction" pursuant to Rule  
10 60(a)(5), Rules of the Supreme Court. Rule 60(a)(5)(B) further provides that

11 Probation may be imposed only in those cases in which there is  
12 little likelihood that the respondent will harm the public during  
13 the period of probation, and the conditions of probation can be  
14 adequately supervised.

15 In practice, probation is often coupled with other sanctions, including the  
16 sanction of "admonition", which is *not* required to be published or posted on the  
17 state bar website pursuant to Rule 49(C). When probation is coupled with an  
18 admonition, the private, non-public nature of the admonition – and the incentive to  
19 accept it as a form of discipline – is effectively negated by the provision which  
20 requires posting on the State Bar website of both the probation and admonition.  
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22 In the experience of undersigned counsel, Bar Counsel typically offer  
23 respondents an admonition to resolve a bar charge only when the charge involves  
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1 relatively minor misconduct which bar counsel believe is not likely to be repeated  
2 or which can be resolved with specified probationary terms, consistent with  
3 Standard 2.6 of the *ABA Standards for Imposing Lawyer Sanctions (1992)*.  
4 Respondents are motivated to enter into a Consent Agreement to resolve a bar  
5 charge with an admonition primarily because the admonition will not be published  
6 in the *Arizona Attorney* or posted on the State Bar website. As currently written,  
7 Rule 49(a)(2)(C)(ii) destroys that incentive because when coupled with probation  
8 (*which may be as short as a month*), the admonition is posted on the bar website --  
9 not just until completion of the terms of probation, but for five (5) years,  
10 “whichever is later.” The Rule should be modified as proposed by undersigned  
11 counsel in Exhibit “A”, attached to this Petition so that the public posting of the  
12 discipline continues only until the actual terms of probation have been completed.  
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16       Undersigned counsel obviously do not oppose the imposition of  
17 probationary terms in appropriate cases. As noted in Rule 60, probation is  
18 designed to provide prophylactic and remedial mechanisms to enable the lawyer in  
19 question to address and resolve the problem which resulted in the bar charge  
20 against him or her. However, undersigned counsel strongly oppose the posting of  
21 probation on the State Bar website beyond the time when the terms of probation  
22 have been satisfied.  
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1           In the collective experience of undersigned counsel, the posting of probation  
2 on the bar website beyond the completion of the terms of the specified probation  
3 by the respondent is not justified. In fact, posting probation beyond the completion  
4 of the terms of probation may actually increase prosecution costs because  
5 respondents are less likely to agree to an admonition with probation if it will be  
6 posted for five years. This is because the publication of the admonition with  
7 probation for five years usually far exceeds the time required to satisfy the terms of  
8 the probation – thus penalizing an attorney for five years for a minor violation that  
9 caused little or no injury and when recidivism is unlikely. Respondents who face  
10 the prospect of having their names posted on the State Bar website for five years –  
11 often for years after completing the terms of the specified probation, are unwilling  
12 to enter into Consent Agreements that would otherwise well serve the respondents  
13 and the public. Respondents facing the prospect of posted probation for five years  
14 may elect to reject the admonition with probation and as a result, both the  
15 respondent and the Bar will spend unjustified time and money to prosecute a case  
16 that under the *ABA Standards* should have been subject to an admonition with brief  
17 probation.  
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22           Finally, respondents subject to the public posting of probation for five years  
23 have reported to undersigned counsel that they have lost clients as a result of the  
24 public posting and that their practices have suffered economically. In some cases,  
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1 respondents whose probation has been posted beyond the completion of the terms  
2 of probation have reported that their prospects for employment have been  
3 materially and adversely affected. It is unfair and unjust for a lawyer to suffer such  
4 adverse economic consequences for a violation that warranted only an admonition.  
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6 In summary, there is no good reason for posting probation on the State Bar  
7 website beyond the time when the specified terms of the probation have been  
8 successfully completed by a respondent. Accordingly, undersigned counsel urge  
9 the Court to amend Rule 49(a)(2)(C)(ii) as proposed in Exhibit "A" attached to this  
10 petition.  
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### 12 CONCLUSION

13 The undersigned petitioners respectfully request amendment of Rule  
14 49(a)(2)(C)(ii), Ariz. R. Sup. Ct., for the reasons stated herein and as proposed in  
15 Exhibit "A" submitted with this petition.  
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18 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of April, 2017.

19 By /s/Mark I. Harrison  
20 **Mark I. Harrison, Esq. (# 001226)**  
21 OSBORN MALEDON\*

22 By /s/Ralph Adams(w/permission)  
23 **Ralph Adams, Esq. (#015599)**  
24 ADAMS & CLARK, PC\*

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25 \* Institutional designations are for identification purposes only.

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By /s/ Peter Akmajian (w/permission)  
**Peter Akmajian, Esq. (#009593)**  
UDALL LAW FIRM, LLP\*

By /s/ James Belanger (w/permission)  
**James Belanger, Esq. (#011393)**  
J. BELANGER LAW P.L.L.C.\*

By /s/ Karen Clark (w/permission)  
**Karen Clark, Esq. (#012665)**  
ADAMS & CLARK, PC \*

By /s/ Stephen Dichter (w/permission)  
**Stephen Dichter, Esq. (#04043)**  
CHRISTIAN, DICHTER & SLUGA, P.C. \*

By /s/ David D. Dodge (w/permission)  
**David D. Dodge, Esq. (#006675)**  
DAVID D. DODGE, PLC\*

By /s/ J. Arthur Eaves (w/permission)  
**J. Arthur Eaves Esq. (#019748)**  
SANDERS & PARKS, P.C. \*

By /s/ Nancy A. Greenlee (w/permission)  
**Nancy A. Greenlee, Esq. (#010892)**  
ATTORNEY AND COUNSELOR AT LAW\*

By /s/ Stephen G. Montoya (w/permission)  
**Stephen G. Montoya, Esq. (#011791)**  
MONTAYA, LUCERO & PASTOR, PA\*

By /s/ Denise Quinterri (w/permission)  
**Denise Quinterri, Esq. (#020637)**  
AZ ETHICS LAW\*

By /s/ J. Scott Rhodes (w/permission)  
**J. Scott Rhodes, Esq. (#016721)**  
JENNINGS STROUSS\*

By /s/ Mark Rubin (w/permission)  
**Mark Rubin, Esq., (#007092)**  
LAW OFFICE OF MARK RUBIN, P.L.C. \*

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By /s/ Lynda C. Shely (w/permission)  
**Lynda C. Shely, Esq.(#015549)**  
THE SHELY FIRM PC \*

By /s/ Robert B Van Wyck (w/permission)  
**Robert B Van Wyck, Esq.(# 007800)**  
THE VAN WYCK LAW FIRM\*

By /s/ Donald Wilson, Jr. (w/permission)  
**Donald Wilson Jr., Esq. (#005205)**  
BROENING OBERG WOODS & WILSON\*

Electronic copy filed via the Arizona Supreme  
Court, Court Rules Forum this 3<sup>rd</sup> day of  
April, 2017.

/s/Rosalin Sanhadja