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

9 In the Matter of:

Supreme Court No. R-17-0035

10 **PETITION TO AMEND RULE**
11 **49(A)(2)(C)(ii) OF THE ARIZONA**
12 **RULES OF THE SUPREME**
13 **COURT**

COMMENT OF THE
14 **STATE BAR OF ARIZONA**

15 A petition was filed by lawyer Mark Harrison on behalf of a group of lawyers
16 who regularly represent respondents in lawyer discipline cases. The petition
17 requests that a provision of Rule 49 of the Arizona Rules of the Supreme Court be
18 amended to significantly shorten the amount of time that an order of probation in a
19 discipline case is posted on the State Bar of Arizona's website. Specifically, the
20 petition requests that the current requirement that an order of probation be posted on
21 the website for five years from the effective date of the order or until completion of
22 the term of probation (whichever is later) be modified to allow posting only while
23 the probation is in effect, despite the permanent public nature of the sanction.

24 The proposed amendment also includes procedural requirements for when bar
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1 counsel should notify the presiding disciplinary judge of the completion of
2 probation. The proposed amendment purports that this required notice would trigger
3 the end of the posting on the website. The current process for terminating probation
4 is already set forth in Rule 60, and does not logically belong in Rule 49.

6 In weighing the merits of the petition, the State Bar must consider its mission
7 to protect the public and what specific measures best serve that mission. The State
8 Bar does not believe that probation should be removed from the website immediately
9 upon completion as the transparency of lawyer discipline is too greatly diminished.
10 The Board believes that in order to maintain a reasonable level of transparency, the
11 probation should remain on the State Bar's website for a period of two-years from
12 the effective date of the order or until completion, whichever is later.

15 I. Background

16 Since 1996, all disciplinary sanctions entered against lawyers in Arizona are
17 public.¹ These sanctions, listed in Rule 60, include probation. See, Rule 60(a)(5),
18 Ariz. R. Sup. Ct. A lawyer's discipline history is publicly available indefinitely.

22 ¹ Prior to 1996, Informal Reprimands were private. After that time, Informal
23 Reprimands (now called Admonitions) became public. Petitioners mistakenly
24 describe Admonitions as "private" and "non-public" when they are, in fact, public
25 sanctions. Arizona does not have any non-public or private sanctions. However,
Orders of Diversion are confidential; Orders of Diversion are not sanctions, but are
an alternative to a sanction.

1 See, Rule 70. Any member of the public can contact the State Bar's records
2 department and request information about a lawyer's discipline history. Unless the
3 information is otherwise protected under Rule 70, the State Bar will provide the
4 discipline history, as well as any pertinent file documents allowed under the rules.
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6 In addition to all sanctions being publicly available to anyone who inquires,
7 certain discipline sanctions are also publicized. Rule 49 controls how information
8 regarding discipline sanctions is publicized. Formal discipline sanctions including
9 reprimands, suspensions, and disbarments are printed in the *Arizona Attorney*, as
10 well as being sent to newspapers of general circulation where the lawyer practices.
11 Disciplinary sanctions are also posted on the State Bar's website.
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14 Prior to 2005, the State Bar did not post disciplinary sanctions on its public
15 website. Instead, members of the public who wished to know a lawyer's history had
16 to telephone or visit the State Bar and ask for the information. In 2005, the State
17 Bar's Board of Governors voted to post public discipline information in the "Find a
18 Lawyer" feature of the State Bar's website. This decision enabled members of the
19 public to easily access discipline information that was already publicly available and
20 increased the transparency with which the Bar dealt with this information. Since
21 that time, formal sanctions have been posted indefinitely. An admonition (an
22 informal sanction), when not accompanied by probation, is not posted on the
23 website, a single anomaly in the policy. In compliance with the Board's policy,
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1 however, all orders of probation, including those accompanying admonitions, have
2 been posted for a period of five years from the effective date of the sanction or until
3 completion, whichever is later.²
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5 In 2011, the Court modified Rule 49 to codify the Board's 2005 website
6 policy. As of that time, the rule required the State Bar to post publicly available
7 discipline on its website as described above including posting probation for five
8 years from the effective date of the sanction or until completion, whichever is later,
9 and the posting shall indicate whether or not the terms of the probation order have
10 been satisfied.
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12 II. Discussion

13 The mission of the State Bar is "to serve and protect the public with respect
14 to the provision of legal services and access to justice." Ariz. R. Sup. Ct. R. 32(a)(2).
15 Part of the protection of the public is providing current, accurate, and **easily**
16 **accessible** information concerning a lawyer's discipline history. By providing
17 comprehensive information about a lawyer's discipline history, the public is better
18 able to make an informed decision when hiring a particular lawyer, and is equipped
19 to discuss with that lawyer any potential concerns.
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25 ² The vast majority of probations are posted for five years from the effective date as
the terms of probation rarely exceed two years.

1 The amendment proposed by the petition makes it more difficult for a member
2 of the public to access publicly available information, specifically, whether a lawyer
3 has recently been on probation. If the petition were adopted, the day after
4 completion of probation, the probation sanction would be removed from the State
5 Bar's website despite the recency of the probation and despite the fact that the public
6 would still be informed of the probation if that person used old-fashioned and more
7 cumbersome means of obtaining information (telephone or visit) instead of using the
8 web. The public relies on the internet as a regular and efficient method of obtaining
9 information.
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12 The purposes of the disciplinary system are to protect the public, protect the
13 integrity of the legal system, deter future misconduct and to educate other lawyers,
14 thereby deterring misconduct among all members of the bar. While sanctions
15 imposed on a lawyer may have a punitive effect, the purpose for imposing the
16 sanction is not for punishment. In balancing the State Bar's mission to protect the
17 public and the goals of the disciplinary system, the State Bar believes that a reduced
18 amount of time for the posting would still satisfy the need for transparency in the
19 production of discipline information while meeting the goals of the discipline
20 system. Consumers will still have access to pertinent disciplinary information for a
21 period of at least two years. The State Bar urges the Court to modify Rule
22 49(a)(2)(C)(ii) by removing the five-year time period and replacing it with two
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1 years. If the Court determines that probation should be posted only while in effect,
2 the language proposed by the petition should not be adopted. Currently, Rule
3 49(a)(2)(C)(ii) provides, in part: “Probation . . . shall be posted for five (5) years
4 from the effective date of the sanction or until completion, whichever is later . . .”
5 To accomplish the petitioners’ stated goal, the only amendment needed to limit the
6 posting time is to allow posting of probation “until completion.”
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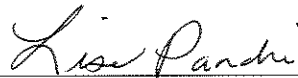
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9 Instead, petitioners propose to add procedural language into Rule 49 which is
10 currently found in a slightly different version in Rule 60. Petitioners urge the Court
11 to add into Rule 49 that the probation shall only be listed until the State Bar files a
12 notice with the presiding disciplinary judge. They propose that the State Bar “shall
13 notify the Presiding Disciplinary Judge within ten (10) days following respondent’s
14 completion of the terms of probation specified in the Order.” A procedural notice
15 provision is misplaced in this section of Rule 49, which deals solely with what must
16 be posted on the website. Furthermore, Rule 60 already addresses specific
17 requirements of probation including how the State Bar is to notify the presiding
18 disciplinary judge of the completion of probation terms. (See, Rule 60(a)(5)(C): “At
19 the end of the probation term, bar counsel shall prepare and forward a notice to the
20 presiding disciplinary judge regarding the respondent’s completion or non-
21 completion of the imposed terms.”) Petitioner’s proposed language does not belong
22 in Rule 49, and is worded just differently enough to create inconsistency within the
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1 Rules regarding when the notice of termination of probation should be filed.

2 **CONCLUSION**

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4 For the reasons stated in this Comment, the State Bar respectfully requests
5 the Petition be denied - and in the alternative, Rule 49 be amended to provide that
6 probation should remain on the State Bar's website for a period of two-years from
7 the effective date of the order or until completion, whichever is later.

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9 RESPECTFULLY SUBMITTED this 21st day of May, 2018.

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13 _____
14 Lisa M. Panahi
15 General Counsel

16 Electronic copy filed with the
17 Clerk of the Supreme Court of Arizona
18 this 21st day of May, 2018.

19 by: 
20 _____