

1 Hon. Ann A. Scott Timmer, Chair
2 Attorney Regulation Advisory
3 Committee
4 1501 W. Washington St.
5 Phoenix, AZ 85007

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

8 In the Matter of:

9 PETITION TO AMEND RULE
10 49(a)(2)(C)(ii) OF THE ARIZONA
11 RULES OF THE SUPREME COURT
12 OF ARIZONA

Supreme Court No. R-17-0035

Comment of Attorney Regulation
Advisory Committee

13 The Arizona Supreme Court’s Attorney Regulation Advisory Committee
14 (“ARC”) does not support the proposed rule change as set forth in Rule Petition R-
15 17-0035. The committee offers several suggestions for the Court’s consideration
16 concerning the revision of the rule requiring the posting of public discipline on the
17 State Bar of Arizona’s website.

18 The history of the posting of public discipline on the State Bar of Arizona’s
19 website is set forth in the State Bar’s comment concerning this rules petition and will
20 not be repeated here. To recap, any state bar member’s history of public discipline
21 is available in full if an inquiry is made to the State Bar by mail, e-mail, telephone,
22 or visiting the State Bar. The identical information is not posted on the State Bar’s
23 website. Admonitions are not posted on the State Bar website unless they include
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1 terms of probation, and orders of probation, restitution and costs are only posted for
2 five years from the effective date of the sanction or until completion, whichever is
3 later.
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5 The crux of Rule Petition R-17-0035 is the argument that many orders of
6 probation involve low level rule violations and terms that are completed in short
7 periods of time. For example, an attorney may be admonished and required to
8 complete a single continuing legal education program. As Rule 49(a)(2)(C)(ii) is
9 presently written, this type of order of probation must be posted for five years from
10 the effective date of the sanction even though the term of probation was completed
11 in short order following that effective date.
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13 The Attorney Regulation Advisory Committee is sympathetic to this stated
14 concern. The State Bar of Arizona's comment addresses it by suggesting five years
15 be reduced to two years such that an admonition, for example, which includes terms
16 of probation that are quickly completed would be posted on the State Bar's website
17 for two years instead of five.
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19 During the Attorney Regulation Advisory Committee's extensive discussion
20 of this proposed rule change petition, a motion was made to support a change in the
21 rule to only require the posting of orders of probation, restitution and costs until the
22 terms were completed. The State Bar would advise the Presiding Disciplinary Judge
23 of that fact and the posting would then be removed from the State Bar's website.
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1 That motion was only supported by five members of the committee and was not
2 approved.

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4 In further discussion of this petition, several committee members expressed
5 concern that the public can obtain more information about an attorney's public
6 discipline by mail, e-mail, phone or visiting the State Bar than by way of the State
7 Bar's website. For example, admonitions are available by calling the State Bar, but
8 not on the State Bar website, and orders of probation older than five years are also
9 available by calling the State Bar, but are dropped from the State Bar's website after
10 that period of time. Putting oneself in the position of a consumer seeking the services
11 of an attorney, most of us would want to know an attorney's complete history of
12 public discipline in deciding whether to hire that attorney. Requiring a member of
13 the public to call, write, e-mail, or visit the State Bar to obtain that information is
14 unduly restrictive when some, but not all, of that information is already available
15 electronically by visiting the State Bar's website.
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19 As the pending petition only seeks to reduce the period of time orders of
20 probation, restitution and costs are posted on the State Bar's website, the Attorney
21 Regulation Advisory Committee does not believe it is appropriate to urge the Court
22 to transform the petition into a more comprehensive revision of the rule. The
23 committee recommends the Court deny the petition, but also strongly recommends
24 a committee or group be designated to further study the issue and report back before
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1 the end of the next cycle of rule petitions concerning more comprehensive changes
2 to the existing rules on the availability of public discipline records to the general
3 public. The committee or group would obviously be free to submit a rule petition as
4 it may deem appropriate.
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6 While the committee recommends that the Court deny this rule petition and
7 order further study of the issue, in the event the Court is not inclined to deny the
8 petition, the committee supports the State Bar of Arizona's recommendation to
9 modify the five-year requirement to two years.
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11 Should the Court not be in favor of either a study or the State Bar's proposal,
12 the Court could consider excluding admonitions with terms of probation, restitution,
13 and/or costs that can be and are completed within three months from the effective
14 date of the sanction from the five-year posting requirement. The foregoing would
15 be accomplished by the Court's approval of the following rule change: “ (ii)
16 Probation (~~including~~ excluding admonition with ~~probation~~ probationary,
17 restitutionary and/or cost terms that can be and are completed within three months
18 of the effective date of the sanction) restitution and costs shall be posted for five (5)
19 years from the effective date of the sanction or until completion, whichever is later;
20 the posting shall indicate whether or not the terms of the order have been satisfied.”¹
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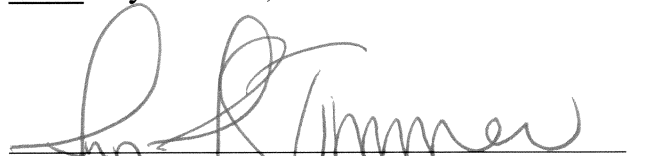
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¹ It can reasonably be assumed that an affected attorney would complete the program within the required three months. If the attorney did not, by force of the recommended rule change the admonition would not qualify for exclusion from listing on the State Bar website for five years. This is strong motivation to successfully complete the terms of

1 **CONCLUSION**

2 After lengthy discussion and vote, the committee requests the Court deny the
3 petition and order further study be conducted. If the Court decides not to initiate
4 further study, the committee requests the Court adopt the State Bar of Arizona's
5 comment, or in the alternative, exclude admonitions with certain, limited duration
6 terms from the website.
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9 RESPECTFULLY SUBMITTED this 15th day of June, 2018.

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13 Hon. Ann A. Scott Timmer, Chair
14 Attorney Regulation Advisory Committee
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_____ probation, restitution, and/or costs within the required three months. The Court could decide to make the time to complete the terms as short as 30 days or perhaps as long as six months.