

**Comment of Petitioners In Reply to Comment of Attorney Regulation Advisory Committee  
Concerning Petition R-17-0035 to Limit the Time for Posting of Probation on  
the State Bar Website**

On June 15, 2018, the Attorney Regulation Advisory Committee (“ARC”) submitted its comments on Petition R-17-0035 in which the petitioners proposed to reduce the time for posting of probation on the State Bar website. The Comment of the ARC was not posted until July 6, 2018 and so the Court extended the time for this Reply Comment to and including July 27, 2018.

Transparency is important and pertinent and relevant information about a lawyer’s disciplinary history should be generally available to potential clients. But the virtue of transparency should be weighed against the remedial focus of the revised rules governing the discipline of lawyers. When the rules were revised in 2011, one of the stated goals of the new rules was to shift the emphasis from discipline and punishment to prophylactic and remedial programs designed to prevent the recurrence of the conduct which led to the bar charge in the first instance. This goal was entirely consistent with the holding of this court in more than 50 cases involving lawyer discipline – “the purpose of lawyer discipline is not to punish the lawyer but rather to protect the public and prevent future misconduct.” E.g., *Matter of Brown*, 184 Ariz. 480, 910 P.2d 631, 634 (1996).

As the ARC acknowledges in its comment, probation coupled with the sanction of “admonition” (*the lowest form of discipline and which is not published on the website*) is often completed quickly because the specified probation frequently involves only the completion of a CLE course. Despite this reality, the current system nonetheless illogically mandates the *public posting of probation for five years*. In cases in which probation is completed within a matter of a few months, the posting of probation for five years has a punitive effect on the lawyer in question: the mere posting may dissuade a prospective client from hiring the lawyer despite the fact that the prescribed probation resolved a minor problem in the lawyer’s practice and improved either his substantive or practice management skills.

When the petitioners met with the Chief Bar Counsel of the State Bar and the State Bar Committee which considers proposed rule changes, it was agreed, subject to the approval of this Court, that a maximum posting of probation for two years would satisfy the goal of transparency without being unnecessarily punitive. However, the ARC recommends denial of this reasonable compromise and suggests “further study”. Alternatively, if this Court is unwilling to accept the proposed two-year compromise or to consign resolution of this issue to “further study”, the ARC suggested that Rule 49 be amended to *exclude from the website* admonitions coupled with certain, time-limited probationary terms. This alternative is certainly acceptable to the petitioners. In summary, petitioners urge the Court to either exclude time-limited probationary terms from the website altogether or limit posting of time-limited probationary terms to a maximum of two years.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of July, 2018.

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Mark I. Harrison for himself and the fifteen additional lawyers  
who signed the petition dated April 3, 2017 to amend Rule 49(a)(2)(C)(ii)