

1 Hon. Lawrence F. Winthrop
Chair, Attorney Discipline Probable Cause Committee
2 1501 W. Washington St., Ste 104
Phoenix, AZ 85007
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4 **IN THE SUPREME COURT**
STATE OF ARIZONA

5 In the Matter of:) Supreme Court No. R-19-0040
6)
6 Petition to Amend Rule 56 of the) **Comment by the Attorney**
Arizona Rules of Supreme Court) **Discipline Probable Cause**
7) **Committee in Support of Rule**
8) **Change**
8)

9 Pursuant to Rule 28(e), Rules of the Arizona Supreme Court, and the Court’s
10 order of September 4, 2019 approving expedited consideration and directing that any
11 public comments be filed on or before October 21, 2019, the Attorney Discipline
12 Probable Cause Committee submits the following comment in support of Rule
13 Change Petition No. R-19-0040.

14 **The Attorney Discipline Probable Cause Committee**

15 The Attorney Discipline Probable Cause Committee (“ADPCC” or
16 “Committee”) is a standing committee of the Arizona Supreme Court, created
17 pursuant to Arizona Supreme Court Rule 50 and Administrative Order No. 2010-
18 123. The Committee, consisting of six lawyers and three public members, reviews
19 investigative reports and recommendations from State Bar counsel, considers written
20 responses or objections from the respondent lawyer, discusses the facts and ethical

1 rules implicated, and make a determination whether probable cause exists that
2 ethical misconduct has occurred. The Committee has the authority to dismiss some
3 or all of the charges. For relatively minor ethical violations that did not result in
4 significant harm to the client, the Committee has the authority to determine whether
5 the respondent is eligible for diversion, which is a non-disciplinary option. In that
6 event, diversion terms, appropriate to correct the behavior and educate the lawyer,
7 are imposed. For other charges where probable cause is found, the Committee may
8 publicly discipline the respondent by issuing an admonition and imposing
9 probationary terms as appropriate. Other matters which the Committee believes
10 warrant reprimand, suspension or disbarment are referred to Presiding Disciplinary
11 Court Judge for formal evidentiary proceedings. While the State Bar makes
12 recommendations concerning these charges, the Committee makes the decision on
13 the resolution of those charges, varying from the recommendations of the State Bar
14 as it deems appropriate. In 2018, ADPCC rejected or modified the State Bar's
15 recommendation in 21 cases, increasing the severity of the recommended sanction
16 or disposition in 6 cases, and decreasing the recommended sanction or disposition
17 in 15 cases.

18 The Committee has monthly agendas that range from 20-50 matters.
19 Approximately 50-60 percent of those agenda items are charges that ultimately result
20 in a diversion order. A smaller percentage of those matters are cases where the State

1 Bar and respondent reach an agreement during the investigative phase that diversion
2 is the appropriate resolution of the charges, subject to the approval of ADPCC.

3 **The Operational Review Report**

4 The Arizona attorney discipline system was significantly revamped in 2010,
5 resulting in a much more transparent, efficient and fair system. As directed by the
6 Arizona Supreme Court, an operational review of the lawyer regulation process was
7 conducted in 2019 to determine the continuing efficacy of those changes and, as
8 appropriate, to make recommendations for further improvements. *See*
9 Administrative Order No. 2019-24. This Rule Petition arises out of
10 recommendations from that operational review.

11 **The Rule Petition**

12 As currently written, Rule 55(b) allows the State Bar during the intake process
13 to enter a diversion agreement with a respondent lawyer. However, once the
14 complaint proceeds out of intake and into an investigative stage, the State Bar cannot
15 finalize any diversion agreement absent authorization from and an order by ADPCC.
16 This petition proposes allowing State Bar counsel to enter and finalize a diversion
17 agreement with the respondent lawyer during either the intake or investigative phase
18 of the proceedings. The operational review noted, and the State Bar agrees, that
19 implementing such change would be consistent with the intent behind the 2010
20 changes to the disciplinary process, and would significantly reduce delay in

1 implementing corrective actions in those cases where both the State Bar and the
2 respondent lawyer agree diversion is the most appropriate resolution of the charges.
3 Further, such rule change would likely also serve to reduce the associated anxiety
4 and uncertainty for respondent lawyers, clients and other complainants pending the
5 resolution.

6 **ADPCC Position**

7 At its regularly scheduled meeting on October 9, 2019, the ADPCC discussed
8 the proposed rule change, and agreed that, if adopted, this rule revision would further
9 improve the efficiency and over-all fairness of the disciplinary system. Accordingly,
10 by a unanimous vote, the Committee directed the submission of this comment and
11 urges the Arizona Supreme Court to favorably consider and approve the proposed
12 revision to Rule 56 as submitted by the State Bar of Arizona.

13 RESPECTFULLY SUBMITTED this _____ day of October, 2019.

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Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
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