

March 1, 2023 Memorandum to Advisory Committee on Rules Re:
Supreme Court Rule 37(20)

The subcommittee met on January 12, 2023. Present at the meeting were Derek Lick, Esq., Sean Gill, Esq., Sara S. Greene, Esq., and Lorrie Platt, Esq.

Attached hereto are the subcommittee's proposed amendments to Rule 37(20). Broadly, the proposed amendments would:

- (1) Increase public access to the public file by making it available not only for inspection, but also for copying at the expense of the member of the public. This increases transparency and access, and mirrors the access that a member of the public would have to court records;
- (2) Expressly exclude from the public file "confidential information" relating to an attorney's client(s) where the grievance against the respondent attorney is initiated by a non-client (for example, the disciplinary matter is initiated by an opposing party or a judicial referral).

The Committee also considered the fact that reprimands and public censures may, in rare instances, ultimately be annulled at the request of a Respondent attorney. That notwithstanding, until the matter is annulled, the subcommittee agreed that such a file is public. It is true that a member of the public might come to the ADO, make a copy of an Order reprimanding an attorney, and 5 years later, that attorney may succeed in having the reprimand annulled. Once annulled, of course, such records would not be available, but just as is true in criminal matters in Superior Court, until such time as an annulment is in effect, the matter is public and can be accessed by the public.

A rule to the contrary would require that the ADO keep *all* public censure and reprimand cases non-public on the chance that Respondents might one day seek to annul them.

Overall, the subcommittee believes the proposed rule changes balance the ADO's duty to perform a public function transparently with the legitimate confidentiality concerns of clients who were *not* the initiating party of a grievance.