Rules for Enforcement of Lawyer Conduct (ELC)

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ELC 1.1
SCOPE OF RULES

These rules govern the procedure by which a lawyer may be subjected to disciplinary sanctions or actions for violation of the Rules of Professional Conduct adopted by the Washington Supreme Court.

[Adopted effective October 1, 2002.]

ELC 1.2
JURISDICTION

Except as provided in RPC 8.5(c), any lawyer admitted, or permitted by rule, to practice law in this state, and any lawyer specially admitted by a court of this state for a particular case, is subject to these Rules for Enforcement of Lawyer Conduct. Jurisdiction exists regardless of the lawyer's residency or authority to practice law in this state.

[Adopted effective October 1, 2002; amended effective September 1, 2010]

ELC 1.3
DEFINITIONS

Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:

(a) "Association" means the Washington State Bar Association.

(b) "Bar file" means the pleadings, motions, rulings, decisions, and other formal papers filed in a proceeding.

(c) "Board" when used alone means the Disciplinary Board.

(d) “Chair” when used alone means the Chair of the Disciplinary Board.

(e) “Clerk” when used alone means the Clerk to the Disciplinary Board.

(f) “Disciplinary action” means sanctions under rule 13.1 and admonitions under rule 13.5.

(g) “Final” means no review has been sought in a timely fashion or all appeals have been concluded.

(h) “Grievant” means the person or entity who files a grievance, except for a confidential source under rule 5.2.

(i) “Hearing officer” means the person assigned under rule 10.2(a)(1) or, when a hearing panel has been assigned, the hearing panel chair.

(j) “Mental or physical incapacity” includes, but is not limited to, insanity, mental illness, senility, or debilitating use of alcohol or drugs.

(k) "Panel" means a hearing panel under rule 10.2(a)(2).

(l) “Party” means disciplinary counsel or respondent, except in rules 2.3(h) and 2.6(e) “party” also includes a grievant.

(m) “Respondent” means a lawyer against whom a grievance is filed or a lawyer investigated by disciplinary counsel.

(n) “APR” means the Admission to Practice Rules.

(o) “CR” means the Superior Court Civil Rules.

(p) “RAP” means the Rules of Appellate Procedure.

(q) “RPC” means the Rules of Professional Conduct adopted by the Washington Supreme Court.

(r) Words of authority.

(1) “May” means “has discretion to,” “has a right to,” or “is permitted to”.

(2) “Must” means “is required to”.

(3) “Should” means recommended but not required, except:

(A) in rules 2.3(h) and 2.6, “should” has the meaning ascribed to it in the Code of Judicial Conduct; and

(B) in title 12, “should” has the meaning ascribed to it in the Rules of Appellate Procedure.

[Adopted effective October 1, 2002.]

ELC 1.4
NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action

or sanction is warranted.

[Adopted effective October 1, 2002.]

ELC 1.5
VIOLATION OF DUTIES IMPOSED BY THESE RULES

A lawyer violates RPC 8.4(l) and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

- respond to inquiries or requests about matters under investigation, rule 5.3(f);
- file an answer to a formal complaint or to an amendment to a formal complaint, rule 10.5;
- cooperate with discovery and comply with hearing orders, rules 10.11(g) and 5.5;
- attend a hearing and bring materials requested by disciplinary counsel, rule 10.13(b) and (c);
- respond to subpoenas and comply with orders enforcing subpoenas, rule 10.13(e);
- notify clients and others of inability to act, rule 14.1;
- discontinue practice, rule 14.2;
- file an affidavit of compliance, rule 14.3;
- maintain confidentiality, rule 3.2(f);
- report being disciplined or transferred to disability inactive status in another jurisdiction, rule 9.2(a);
- cooperate with an examination of books and records, rule 15.2;
- notify the Association of a trust account overdraft, rule 15.4(d);
- file a declaration or questionnaire certifying compliance with RPC 1.15A, rule 15.5;
- comply with conditions of probation, rule 13.8;
- comply with conditions of a stipulation, rule 9.1;
- pay restitution, rule 13.7; or
- pay costs, rule 5.3(f) or 13.9.

[Adopted effective October 1, 2002; September 1, 2006.]

ELC 2.1
SUPREME COURT

The Washington Supreme Court has exclusive responsibility in the state to administer the lawyer discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability. Persons carrying out the functions set forth in these rules act under the Supreme Court’s authority.

[Adopted effective October 1, 2002.]

ELC 2.2
BOARD OF GOVERNORS

(a) Function. The Board of Governors of the Association:

(1) supervises the general functioning of the Disciplinary Board, review committees, disciplinary counsel, Association staff, and adjunct investigative counsel;

(2) makes appointments, removes those appointed, and fills vacancies as provided in these rules; and

(3) performs other functions and takes other actions provided in these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Limitation of Authority. The Board of Governors has no right or responsibility to review hearing officer, hearing panel, or Disciplinary Board decisions or recommendations in specific cases.

(c) Restriction on Representing Respondents. Former members of the Board of Governors and former Presidents of the Association are subject to the restrictions on representing respondents in rule 2.13(b).

[Adopted effective October 1, 2002.]

ELC 2.3
DISCIPLINARY BOARD

(a) Function. The Board performs the functions provided under these rules, delegated by the Board of Governors or Supreme Court, or necessary and proper to carry out its duties.

(b) Membership.

(1) Composition. The Board consists of not fewer than three nonlawyer members, appointed by the Court, and not fewer than one lawyer member from each congressional district, appointed by the Board of Governors.

(2) Qualifications. Lawyer members must have been active members of the Association for at least seven years.

(3) Voting. Each member, including the Chair and the Vice Chair, whether nonlawyer or lawyer, has one vote.

(4) Quorum. A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least seven members vote.

(5) Leave of Absence While Grievance Is Pending. If a grievance is filed against a lawyer member of the Board, the following procedures apply:

(A) the member initially decides whether to remain on the Board or take a leave of absence until the matter is resolved;

(B) if the member chooses to remain on the Board, the Conflicts Review Officer must promptly provide a confidential summary of the grievance to the Board

of Governors with a copy to the member;

(C) the Board of Governors should then, or at any time thereafter it deems appropriate, determine if the member is so impaired from serving on the Disciplinary Board that the member should take, or continue to take, a leave of absence to protect the integrity of the discipline system. In making this determination, the Board of Governors should consider, among other things, the facts, circumstances, and nature of the misconduct alleged, the possible outcome, and the extent of public concern regarding the matter;

(D) the Board of Governors' deliberations are confidential. All materials of the Board of Governors in connection with such a matter are confidential unless released under rule 3.4(d) or (e).

(c) Terms of Office. The term of office for a Board member is three years. Newly created Board positions may be filled by appointments of less than three years, as designated by the Court or the Board of Governors, to permit as equal a number of positions as possible to be filled each year. Terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members continue to serve until replaced, except a member's term of office ends immediately if a disciplinary sanction is imposed.

(d) Chair. The Board of Governors annually designates one lawyer member of the Board to act as Chair and another as Vice Chair. The Vice Chair serves in the absence of or at the request of the Chair.

(e) Unexpired Terms. The Board of Governors fills unexpired terms in lawyer membership on the Board. The Supreme Court fills unexpired terms in nonlawyer membership. A member appointed to fill an unexpired term will complete the unexpired term of the member replaced, and may be reappointed to a consecutive term if the unexpired term is less than 18 months.

(f) Pro Tempore Members. If a Board member is disqualified or unable to function, the Chair may, by written order, designate a member pro tempore. A member pro tempore must have either previously served on the Board or be appointed as an alternate Board member by the Board of Governors if a lawyer or by the Supreme Court if a nonlawyer. Only a lawyer may be appointed to substitute for a lawyer member, and only a nonlawyer to substitute for a nonlawyer member.

(g) Meetings. The Board meets regularly at times and places it determines. The Chair may convene special Board meetings. In the Chair's discretion, the Board may meet and act through electronic, telephonic, written, or other means of communication.

(h) Disqualification.

(1) A Board member should disqualify him or herself from a particular matter in which the member's impartiality might reasonably be questioned, including, but not limited to, instances in which:

(A) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

(B) the member previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the member practices law serves or has previously served as a lawyer concerning the matter, or such lawyer is or has been a material witness concerning the matter;

(C) the member knows that, individually or as a fiduciary, the member or the member's spouse or

relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under section (i);

(D) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:

(i) is a party to the matter, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the matter;

(iii) is to the member's knowledge likely to be a material witness in the matter;

(E) the member served as a hearing officer or hearing panel member for a hearing on the matter, or served on a review committee that issued an admonition to the lawyer regarding the matter.

(i) Remittal of Disqualification. A member disqualified under subsection (h)(1)(C) or (h)(1)(D) may, instead of withdrawing from consideration of the matter, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the member's participation, all agree in writing or on the record that the member's relationship is immaterial or that the member's economic interest is de minimis, the member is no longer disqualified, and may participate in the matter. If a party is not immediately available, the member may proceed on the assurance of the party's counsel that the party's consent will be subsequently given.

(j) Counsel and Clerk. The Executive Director of the Association, under the direction of the Board of Governors, may appoint a suitable person or persons to act as counsel and clerk to the Board, to assist the Board and the review committees in carrying out their functions under these rules.

(k) Restriction on Representing Respondents. Former members of the Disciplinary Board are subject to the restrictions on representing respondents in rule 2.13(b).

[Adopted effective October 1, 2002.]

ELC 2.4
REVIEW COMMITTEES

(a) Function. A review committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.

(b) Membership. The Chair appoints three or more review committees of three members each from among the Board members. Each review committee consists of two lawyers and one nonlawyer. The Chair may reassign members among the several committees on an interim or permanent basis. The Chair does not serve on a review committee.

(c) Review Committee Chair. The Chair of the Disciplinary Board designates one member of each review committee to act as its chair.

(d) Terms of Office. A review committee member serves as long as the member is on the Board.

(e) Distribution of Cases. The Clerk assigns matters to the several review committees under the Chair's direction,

equalizing the committee's caseloads as possible.

(f) Meetings. A review committee meets at times and places determined by the review committee chair, under the general direction of the Chair of the Disciplinary Board. In the review committee chair's discretion, the committee may meet and act through electronic, telephonic, written, or other means of communication.

(g) Adjunct Review Committee Members. Notwithstanding other provisions of these rules, if deemed necessary to the efficient operation of the discipline system, the Board may authorize the Chair to appoint former Board members as adjunct review committee members for a period deemed necessary by the Chair, but those appointments terminate at the end of the term of the Chair making the appointment. The Chair may remove adjunct review committee members when deemed appropriate. The Chair may appoint adjunct review committee members to existing review committees or may create adjunct review committees. An adjunct member has the same authority as a regular review committee member and must comply with rule 2.3(b)(5) but is not otherwise a Board member.

[Adopted effective October 1, 2002.]

ELC 2.5
HEARING OFFICER OR PANEL

(a) Function. A hearing officer or panel to whom a case has been assigned for hearing conducts the hearing and performs other functions as provided under these rules.

(b) Qualifications. A hearing officer must be an active member of the Association, have been an active or judicial member of the Association for at least seven years, have no record of public discipline, and have experience as an adjudicator or as an advocate in contested adjudicative hearings.

(c) Hearing Officer Selection Panel. The hearing officer selection panel makes recommendations to the Board of Governors for appointment, reappointment, and removal of hearing officers. The panel is appointed by the Board of Governors and includes, but is not limited to, a Board of Governors member who serves as its chair, one or more former Chairs of the Disciplinary Board, and one or more former nonlawyer members of the Disciplinary Board.

(d) Appointment. The Board of Governors appoints hearing officers to the hearing officer list giving consideration to recommendations of the hearing officer selection panel. The list should include as many lawyers as the Board of Governors considers necessary to carry out the provisions of these rules effectively and efficiently. In making appointments, the Board of Governors should consider diversity in gender, ethnicity, geography, and practice experience. The Board of Governors also maintains a list of nonlawyers willing to serve on hearing panels under section (h).

(e) Terms of Appointment. Appointment to the hearing officer list, or the list of nonlawyers, is for an initial period of one year, followed by periods of five years. Reappointment is in the Board of Governors' discretion. A hearing officer or panel member may continue to act in any matter assigned before his or her term expires. On the recommendation of the hearing officer selection panel, the Board of Governors may remove a person from the list of hearing officers or from the list of nonlawyer panel members.

(f) Chief Hearing Officer. The Board of Governors appoints

a chief hearing officer who, in addition to hearing matters, assigns cases, monitors and evaluates the performance of hearing officers and panel members, establishes requirements for and supervises hearing officer and hearing panel member training, administers hearing officer compensation, hears prehearing motions when no hearing officer has been assigned, and performs other administrative duties necessary for an efficient and effective hearing system. If the chief hearing officer position is vacant or the chief hearing officer has recused or been disqualified from a particular matter, the Chair may, as necessary, perform the administrative duties of chief hearing officer.

(g) Case Assignment. The chief hearing officer assigns hearing officers to cases from the list of hearing officers appointed by the Board of Governors.

(h) Hearing Panel. If a hearing panel is assigned to hear a matter, the chief hearing officer appoints the panel. A panel consists of three persons, with at least one from the hearing officer list and at least one nonlawyer from the list maintained by the Board of Governors.

(i) Training. Hearing officers and hearing panel members must comply with training requirements established by the chief hearing officer.

[Adopted effective October 1, 2002.]

ELC 2.6
HEARING OFFICER CONDUCT

(a) "Hearing Officer" Includes Panel Members. In this rule, the term "hearing officer" includes hearing panel members.

(b) Integrity of Hearing Officer System. The integrity and fairness of the disciplinary system requires that hearing officers observe high standards of conduct. To the extent applicable, the Code of Judicial Conduct should guide hearing officers. The following rules have been adapted from Canon 2 and Canon 3 of the Code of Judicial Conduct as particularly applicable to hearing officers, and the words "should" and "shall" have the meanings ascribed to them in those rules.

(c) Hearing Officer's Duty To Avoid Impropriety and the Appearance of Impropriety. Hearing officers should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Hearing officers should not allow family, social, or other relationships to influence their conduct or judgment. Hearing officers should not lend the prestige of the hearing officer position to advance the private interests of the hearing officer or others; nor should hearing officers convey or permit others to convey the impression that they are in a special position to influence them. Hearing officers should not be members of any organization practicing discrimination prohibited by law.

(d) Conduct of Those on Hearing Officer List. A person on the hearing officer list should not:

(1) testify voluntarily as a character witness in a disciplinary proceeding;

(2) serve as an expert witness related to the professional conduct of lawyers in any proceeding; or

(3) serve as special disciplinary counsel, adjunct investigative counsel, or respondent's counsel.

(e) Performing Duties Impartially and Diligently. When

acting as a hearing officer, the following standards apply:

(1) Adjudicative Responsibilities.

(2)

(A) Hearing officers should be faithful to the law and maintain professional competence in it. Hearing officers should be unswayed by partisan interests, public clamor, or fear of criticism.

(B) Hearing officers should maintain order and decorum in proceedings before them.

(C) Hearing officers should be patient, dignified, and courteous to parties, witnesses, lawyers, and others with whom hearing officers deal in their official capacity, and should require similar conduct of lawyers, and of the staff, and others subject to their direction and control.

(D) Hearing officers should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Hearing officers, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

(E) Hearing officers shall perform their duties without bias or prejudice.

(F) Hearing officers should dispose promptly of assigned matters.

(G) Hearing officers shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. The hearing officer shall require similar abstention on the part of personnel subject to the hearing officer's direction and control. This section does not prohibit hearing officers from making public statements in the course of their official duties or from explaining for public information the procedures of the discipline system.

(2) Administrative Responsibilities.

(A) Hearing officers should diligently discharge their administrative responsibilities.

(B) Hearing officers should require their staff and others subject to their direction and control to observe the standards of fidelity and diligence that apply to them.

(3) Disciplinary Responsibilities.

(A) Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules should take appropriate action. Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules that raises a substantial question as to the other hearing officer's fitness for office should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(B) Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of Lawyer Conduct should take appropriate action. Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of

Lawyer Conduct that raises a substantial question as to the lawyer's fitness as a lawyer should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(4) Disqualification.

(A) Hearing officers should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(i) the hearing officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the hearing officer previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the hearing officer previously practiced law served during such association as a lawyer concerning the matter, or such lawyer has been a material witness concerning it;

(iii) the hearing officer knows that, individually or as a fiduciary, the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or is an officer, director or trustee of a party or has any other interest that could be substantially affected by the outcome of the proceeding, unless there is a remittal of disqualification;

(iv) the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director, or trustee of a party;

(b) is acting as a lawyer in the proceeding;

(c) is to the hearing officer's knowledge likely to be a material witness in the proceeding.

(B) Hearing officers should inform themselves about their personal and fiduciary economic interests, and make a reasonable effort to inform themselves about the personal economic interests of their spouse and minor children residing in their household.

(5) Remittal of Disqualification. A hearing officer disqualified by the terms of subsections (e)(4)(A)(iii) or (iv) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the hearing officer's participation, all agree in writing or on the record that the hearing officer's relationship is immaterial or that the hearing officer's economic interest is de minimis, the hearing officer is no longer disqualified and may participate in the proceeding. When a party is not immediately available, the hearing officer may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

[Adopted effective October 1, 2002.]

ELC 2.7
CONFLICTS REVIEW OFFICER

(a) Function. Conflicts Review Officers review grievances filed against disciplinary counsel and other lawyers employed by the Association, hearing officers, conflicts review officers and conflicts review officers pro tempore,

and members of the Disciplinary Board, the Board of Governors, and the Supreme Court. Conflicts Review Officers also review grievances filed against persons who have been assigned cases as adjunct investigative counsel or special disciplinary counsel, or appointed in disability matters pursuant to ELC 8.2(c)(2), at the time the grievance is filed.

(1) Limitation of Authority. A Conflicts Review Officer's duties are limited to performing the initial review of grievances covered by this Rule. A Conflicts Review Officer may obtain the respondent lawyer's response to the grievance, if he/she feels it necessary to do so, in his/her sole discretion. A Conflicts Review Officer may dismiss the grievance, defer the investigation, or assign the grievance to special disciplinary counsel for investigation.

(2) Independence. Conflicts Review Officers act independently of disciplinary counsel and the Association.

(b) Appointment and Qualifications.

(1) The Supreme Court, on the recommendation of the Board of Governors, shall appoint three active members of the Association as Conflicts Review Officers. Each Conflicts Review Officer is appointed for a three-year term on a staggered basis, and may be recommended for reappointment at the discretion of the Board of Governors. Applications shall be solicited from those eligible to serve and submitted to the Board of Governors in such manner as the Association deems most appropriate under the policies and procedures then in effect for recruitment and appointment of volunteers in the discipline system.

(2) When no Conflicts Review Officer is available to handle a matter due to conflict of interest or other good cause, the Supreme Court, on the recommendation of the Board of Governors, shall appoint a Conflicts Review Officer pro tempore for the matter.

(3) To be eligible for appointment as Conflicts Review Officer or Conflicts Review Officer pro tempore, a lawyer must have prior experience as a Disciplinary Board member, disciplinary counsel, or special disciplinary counsel. Conflicts Review Officers and Conflicts Review Officers pro tempore may have no other active role in the discipline system during the term of appointment.

(4) The Association shall assign matters to the Conflicts Review Officers in such a manner as to balance their caseloads insofar as it is practicable to do so.

(c) Access to Disciplinary Information. Conflicts Review Officers and Conflicts Review Officers pro tempore have access to any otherwise confidential disciplinary information necessary to perform the duties required by these rules. Conflicts Review Officers and Conflicts Review Officers pro tempore shall return original files to the Association promptly upon completion of the duties required by these rules and shall not retain copies.

(d) Compensation and Expenses. The Association reimburses Conflicts Review Officers and Conflicts Review Officers pro tempore for all necessary and reasonable expenses, and may provide compensation at a level established by the Board of Governors.

[Adopted, effective October 1, 2002; amended, effective January 12, 2010]

ELC 2.8
DISCIPLINARY COUNSEL; SPECIAL DISCIPLINARY COUNSEL

(a) Function. Disciplinary counsel acts as counsel on the Association’s behalf on all matters under these rules, and performs other duties as required by these rules, the Executive Director, or the Board of Governors.

(b) Appointment. The Executive Director of the Association, under the direction of the Board of Governors, employs a suitable member or members of the Association as disciplinary counsel. Special disciplinary counsel may be appointed whenever necessary to conduct an individual investigation or proceeding.

[Adopted effective October 1, 2002.]

ELC 2.9
ADJUNCT INVESTIGATIVE COUNSEL

(a) Function. Adjunct investigative counsel performs the functions set forth in these rules.

(b) Appointment and Term of Office. The Board of Governors, in consultation with the Chief Disciplinary Counsel, appoints adjunct investigative counsel from among the active members of the Association, who have been active or judicial Association members for at least seven years, have no record of disciplinary misconduct, and are in good standing. In appointing adjunct investigative counsel, the Board of Governors should consider diversity in gender, ethnicity, geography, and practice experience. Each adjunct investigative counsel is appointed for a five year term on a staggered basis and may be reappointed. Adjunct investigative counsel should be trained in the investigation of discipline cases.

[Adopted effective October 1, 2002.]

ELC 2.10
REMOVAL OF APPOINTEES

The power granted by these rules to any person, committee, or board to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform his or her duties, or for any other cause, and to fill the resulting vacancy.

[Adopted effective October 1, 2002.]

ELC 2.11
COMPENSATION AND EXPENSES

(a) Compensation. The Association compensates the chief hearing officer to the extent authorized by the Board of Governors. The Association may compensate hearing officers and hearing panel members to the extent authorized by the Board of Governors. Board members and adjunct investigative counsel receive no compensation for their services.

(b) Expenses. The Association pays expenses incurred by hearing officers, hearing panel members, the chief hearing officer, Board members, and adjunct investigative counsel in connection with their duties, subject to any limitation established by resolution of the Board of Governors.

(c) Special Appointments. The Association pays the fees for counsel appointed under rules 7.7, 8.2(c)(2), or 8.3(d)(3) and costs or expenses reasonably incurred by these counsel.

[Adopted effective October 1, 2002.]

ELC 2.12
COMMUNICATIONS TO THE ASSOCIATION PRIVILEGED

Communications to the Association, Board of Governors, Disciplinary Board, review committee, hearing officer or panel, disciplinary counsel, adjunct investigative counsel, Association staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness, or other person providing information.

[Adopted effective October 1, 2002; Amended effective January 2, 2008.]

ELC 2.13
RESPONDENT LAWYER

(a) Right to Representation. A lawyer may be represented by counsel during any stage of an investigation or proceeding under these rules.

(b) Restrictions on Representation of Respondent. A former Association president, a former Board of Governors member, or a former Disciplinary Board member cannot represent a respondent lawyer in any proceeding under these rules until three years after leaving office. Service as an Adjunct Review Committee Member or as a Member Pro Tempore of the Board does not invoke this rule.

(c) Restriction on Charging Fee To Respond to Grievance. A respondent lawyer may not seek to charge a grievant a fee or recover costs from a grievant for responding to a grievance unless otherwise permitted by these rules.

(d) Medical and Psychological Records. A respondent must furnish written releases or authorizations to permit disciplinary counsel access to medical, psychiatric, or psychological records as may be relevant to the investigation or proceeding, subject to a motion to the chief hearing officer, or the hearing officer if one has been appointed, to limit the scope of the requested releases or authorizations for good cause shown.

[Adopted effective October 1, 2002.]

ELC 3.1
OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION

(a) Open Meetings. Disciplinary hearings and meetings of the Board are public. Except as otherwise provided in these rules, Supreme Court proceedings are public to the same extent as other Supreme Court proceedings. Deliberations of a hearing officer or panel, board, review committee, or court, and matters made confidential by a protective order, or by other provisions of these rules, are not public.

(b) Public Disciplinary Information. The public has access to the following information subject to these rules:

(1) the record before a review committee and the order of the review committee in any matter that a review committee has ordered to hearing or ordered an admonition be issued;

(2) the record upon distribution to a review committee or to the Supreme Court in proceedings based on a conviction of a felony or serious crime, as defined in rule 7.1(a);

(3) the record upon distribution to a review committee or to the Supreme Court in proceedings under rule 7.2;

(4) a statement of concern to the extent provided under rule 3.4(f);

(5) the record and order upon approval of a stipulation for discipline imposing a sanction or admonition, and the order approving a stipulation to dismissal of a matter previously made public under these rules;

(6) the record before a hearing officer or panel;

(7) the record and order before the Board in any matter reviewed under rule 10.9 or title 11;

(8) the bar file and any exhibits and any Board or review committee order in any matter that the Board or a review committee has ordered to public hearing, or any matter in which disciplinary action has been taken, or any proceeding under rules 7.1-7.6;

(9) in any disciplinary matter referred to the Supreme Court, the file, record, briefs, and argument in the case;

(10) a lawyer's resignation in lieu of disbarment under rule 9.3; and

(11) any sanction or admonition imposed on a respondent.

(c) Regulations. Public access to file materials and proceedings permitted by this rule may be subject to reasonable regulation as to time, place, and manner of access. Certified copies of public bar file documents will be made available at the same rate as certified copies of superior court records. Uncertified copies of public bar file documents will be made available at a rate to be set by the Executive Director of the Association.

[Adopted effective October 1, 2002.]

ELC 3.2
CONFIDENTIAL DISCIPLINARY INFORMATION

(a) Scope of Confidentiality. All disciplinary materials that are not public information as defined in rule 3.1(b) are confidential, and are held by the Association under the authority of the Supreme Court, including but not limited to materials submitted to a review committee under rule 8.9 or information protected by rule 3.3(b), rule 5.4(b), rule 5.1(c)(3), a protective order under rule 3.2(e), rule 3.2(b), court order, or other applicable law (e.g., medical records, police reports, etc.).

(b) Restriction on Release of Client Information. Notwithstanding any other provision of this title, no information identified or known to the Association to constitute client information that a lawyer would be required to keep confidential under RPC 1.6 may be released under rule 3.4(c) - (i) unless the client consents, including implied consent under rule 5.1(b).

(c) Investigative Confidentiality. During the course of an investigation or proceeding, the Chief Disciplinary Counsel may direct that otherwise public information be kept

confidential if necessary to further the purposes of the investigation. At the conclusion of the proceeding, those materials become public information unless subject to a protective order.

(d) Discipline Under Prior Rules. Discipline imposed under prior rules of this state that was confidential when imposed remains confidential. A record of confidential discipline may be kept confidential during proceedings under these rules, or in connection with a stipulation under rule 9.1, through a protective order under section (e).

(e) Protective Orders. To protect a compelling interest of a grievant, witness, third party, respondent lawyer, or other participant in an investigation, on motion and for good cause shown, the Board Chair, the chair of a review committee to which a matter is assigned, or a hearing officer to whom a matter is assigned may issue a protective order prohibiting the disclosure or release of specific information, documents, or pleadings, and direct that the proceedings be conducted so as to implement the order. Filing a motion for a protective order stays the provisions of this title as to any matter sought to be kept confidential until five days after a ruling is served on the parties. The Board reviews decisions granting or denying a protective order if either the respondent lawyer or disciplinary counsel requests a review within five days of service of the decision. On review, the Board may affirm, reverse, or modify the protective order. The Board's decision is not subject to further review. A request for review by the Board stays the provisions of this title as to any matter sought to be kept confidential in that request, and the request itself is confidential until a ruling is issued.

(f) Wrongful Disclosure or Release. Disclosure or release, except as permitted by these rules, by any person involved with an investigation or proceeding, either as the Association's officer or agent (including, but not limited to, its staff, members of the Board of Governors, the Disciplinary Board, a review committee, hearing panels, hearing officers, disciplinary counsel, adjunct investigative counsel, a lawyer appointed under rule 7.7, or any other individual acting under authority of these rules) of any information about a pending or completed investigation or proceeding, except as permitted by these rules, may subject that person to an action for contempt of the Supreme Court. If the person is a lawyer, wrongful disclosure or release may also be grounds for discipline.

[Adopted effective October 1, 2002.]

ELC 3.3
APPLICATION TO STIPULATIONS, DISABILITY PROCEEDINGS, AND DIVERSION CONTRACTS

(a) Application to Stipulations. A stipulation under rule 9.1 providing for imposition of a disciplinary sanction or admonition is confidential until approved, except that a grievant may be advised concerning a stipulation and its proposed or actual content at any time. An approved stipulation is public, unless:

(1) it is approved before the filing of a formal complaint;

(2) it provides for dismissal of a grievance without a disciplinary sanction or admonition; and

(3) proceedings have not been instituted for failure to comply with the terms of the stipulation.

(b) Application to Disability Proceedings. Disability

proceedings under title 8 are confidential. However, a grievant may be advised that a lawyer against whom the grievant has complained is subject to disability proceedings. The following information is public:

(1) that a lawyer has been transferred to disability inactive status, or has been reinstated to active status; and

(2) that a disciplinary proceeding is deferred pending supplemental proceedings under title 8.

(c) Diversion Contracts. Diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, despite rule 3.1(b)(1), unless admitted into evidence in a disciplinary proceeding following termination of the diversion contract for material breach. When a matter that has previously become public under rule 3.1(b) is diverted by a diversion contract, that contract and the supporting documents are confidential but the fact that the matter was diverted from discipline is public information.

[Adopted effective October 1, 2002.]

ELC 3.4
RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

(a) Disclosure of Information. Except as provided in rule 3.2(e), the grievant, respondent lawyer, or any witness may disclose the existence of proceedings under these rules or any documents or correspondence the person received.

(b) Investigative Disclosure. The Association may disclose information as necessary to conduct the investigation or to keep a grievant advised of the status of a matter except as prohibited by rule 3.3(b), 5.4(b), or 5.1(c)(3), a protective order under rule 3.2(e), other court order, or other applicable law.

(c) Release Based upon Lawyer's Waiver. Upon a written waiver by a lawyer, the Association may release the status of otherwise confidential disciplinary proceedings and provide copies of nonpublic information to:

(1) the Washington State Bar Association Committee of Law Examiners, the Washington State Bar Association Character and Fitness Committee, the National Conference of Bar Examiners, or the comparable body in other jurisdictions to evaluate the character and fitness of an applicant for admission to the practice of law in that jurisdiction;

(2) the Washington State Bar Association Judicial Recommendation Committee, or the comparable body in other jurisdictions, to evaluate the character and fitness of a candidate for judicial office;

(3) the Governor of the State of Washington, or of any other state, or his or her delegate, to evaluate the character and fitness of a potential nominee to judicial office; and

(4) any other agency that a lawyer authorizes to investigate the lawyer's disciplinary record.

(d) Response to Inquiry or False or Misleading Statement.

(1) Subject to rule 3.2(e), the President, the Board of Governors, the Executive Director, or Chief Disciplinary Counsel, or a designee of any of them, may release otherwise confidential information:

(A) to respond to specific inquiries about matters

that are in the public domain; or

(B) if necessary to correct a false or misleading public statement.

(2) A respondent must be given notice of a decision to release information under this section unless the President, the Board of Governors, the Executive Director, or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public or compromise an ongoing investigation.

(e) Discretionary Release. The Executive Director or the Chief Disciplinary Counsel may authorize the general or limited release of any confidential information obtained during an investigation when it appears necessary to protect the interests of clients or other persons, the public, or the integrity of the disciplinary process. A respondent must be given notice of a decision to release information under this section before its release unless the Executive Director or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public, or that the delay caused by giving the respondent notice would be detrimental to the integrity of the disciplinary process.

(f) Statement of Concern.

(1) Authority. The Chief Disciplinary Counsel has discretion to file a statement of concern with the Clerk when deemed necessary to protect members of the public from a substantial threat, based on information from a pending investigation into a lawyer's apparent ongoing serious misconduct not otherwise made public by these rules.

(2) Procedure.

(A) On or before the date it is filed, a copy of the statement of concern must be served under rule 4.1 on the lawyer about whom the statement of concern has been made. The statement of concern is not public information until 14 days after service.

(B) The lawyer may at any time appeal to the Chair to have the statement of concern withdrawn.

(C) If an appeal to the Chair is filed with the Clerk under rule 4.2(a) within 14 days of service of the statement of concern, the statement of concern is not public information unless the Chair so orders and becomes public information upon issuance of the Chair's order.

(D) The Chair's decision is not subject to further review.

(E) The Chief Disciplinary Counsel may withdraw a statement of concern at any time.

(g) Release to Judicial Officers. Any state or federal judicial officer may be advised of the status of a confidential disciplinary grievance about a lawyer appearing before the judicial officer in a representational capacity and may be provided with requested confidential information if the grievance is relevant to the lawyer's conduct in a matter before that judicial officer. The judicial officer must maintain the confidentiality of the matter.

(h) Cooperation with Criminal and Disciplinary Authorities. Except as provided in rule 3.2(e), information or testimony may be released to authorities in any jurisdiction authorized to investigate alleged criminal activity or judicial or lawyer misconduct.

(i) Release to Lawyers' Fund for Client Protection. Information obtained in an investigation and about applications pending before the Lawyers' Fund for Client Protection may be released to the Fund. The Fund must treat such information as confidential unless this title or the Executive Director authorizes release.

(j) Conflicts Review Officer. Conflicts review officers have access to any otherwise confidential disciplinary

information necessary to perform their duties.

(k) Board of Governors Access. In furtherance of its supervisory function, and not in derogation of the foregoing, the Board of Governors has access to all confidential disciplinary information, but must maintain its confidentiality.

(l) Release to Practice of Law Board. Information obtained in an investigation relating to possible unauthorized practice of law may be released to the Practice of Law Board. Such information shall remain under the control of the Office of Disciplinary Counsel and the Practice of Law Board must treat it as confidential unless this title or the Executive Director authorizes release.

[Adopted effective October 1, 2002; September 1, 2005.]

ELC 3.5
NOTICE OF DISCIPLINE

(a) Notice to Supreme Court. The counsel to the Board must provide the Supreme Court with:

(1) a copy of any decision imposing a disciplinary sanction when that decision becomes final;

(2) a copy of any admonition, together with the order issuing the admonition, when the admonition is accepted or otherwise becomes final; and

(3) a copy of any resignation in lieu of disbarment.

(b) Other Notices. The counsel to the Board must also notify the following entities of the imposition of a disciplinary sanction or admonition, a resignation in lieu of disbarment, or the filing of a statement of concern under rule 3.4(f) as follows, in such form as may appear appropriate:

(1) the lawyer discipline authority or highest court in any jurisdiction where the lawyer is believed to be admitted to practice;

(2) the chief judge of each federal district court in Washington State and the chief judge of the United States Court of Appeals for the Ninth Circuit;

(3) the National Discipline Data Bank; and

(4) the Washington State Bar News.

(c) Preparation of Bar News Notice. The counsel to the Board has discretion in drafting notices for publication in the Washington State Bar News, and should include sufficient information to adequately inform the public and the members of the Association about the misconduct found, the rules violated and the disciplinary action imposed. All notices should include the respondent lawyer's name, bar number, date of admission, the time frame of the misconduct, the rules violated, and the disciplinary action. The counsel to the Board must serve a copy of the draft notice on respondent and disciplinary counsel under rule 4.1 and review any comments filed with the counsel to the Board within five days of service, but counsel to the Board's decision about the content of the notice is not subject to further review.

(d) Notices of Suspension, Disbarment, Resignation in Lieu of Disbarment, or Disability Inactive Status. The Association must publish a notice of the disbarment, suspension, resignation in lieu of disbarment, or transfer to disability inactive status of a lawyer in the Washington State Bar News and electronic or other index or site

maintained by the Association for public information. The Association must provide copies of these notices to the news media in a manner designed to notify the public in the county or region where the lawyer has maintained a practice. For a transfer to disability inactive status, no reference may be made to the specific disability.

(e) Notice to Judges. The Association must promptly notify the presiding judge of the superior court of the county in which the lawyer maintained a practice of the lawyer's disbarment, suspension, resignation in lieu of disbarment, or transfer to disability inactive status, and may similarly notify the presiding judge of any district court located in the county where the lawyer practiced, or the judge of any other court in which the lawyer may have practiced or is known to have practiced.

[Adopted effective October 1, 2002.]

ELC 3.6
MAINTENANCE OF RECORDS

(a) Permanent Records. In any matter in which a disciplinary sanction has been imposed, the bar file and transcripts of the proceeding are permanent records. Related file materials, including investigative files, may be maintained in disciplinary counsel’s discretion. Exhibits may be returned to the party supplying them, but copies should be retained where possible.

(b) Destruction of Files. In any matter in which a grievance or investigation has been dismissed without the imposition of a disciplinary sanction, whether following a hearing or otherwise, file materials relating to the matter may be destroyed three years after the dismissal first occurred, and must be destroyed at that time on the respondent lawyer’s request unless the files are being used in an ongoing investigation or unless other good cause exists for retention. However, file materials on a matter concluded with an admonition must be retained at least five years after the admonition was issued. If disciplinary counsel opposes a request by a respondent for destruction of files under this rule, the Board rules on that request.

(c) Retention of Docket. If a file on a matter has been destroyed under section (b), the Association may retain a docket record of the matter for statistical purposes only. That docket record must not include the name or other identification of the respondent.

(d) Deceased Lawyers. Records and files relating to a deceased lawyer, including permanent records, may be destroyed at any time in disciplinary counsel’s discretion.

[Adopted effective October 1, 2002.]

ELC 4.1
SERVICE OF PAPERS

(a) Service Required. Every pleading, every paper relating to discovery, every written request or motion other than one which may be heard ex parte, and every similar paper or document issued by disciplinary counsel or the respondent lawyer under these rules must be served on the opposing party. If a hearing is pending and a hearing officer has been assigned, except for discovery, the party also must

serve a copy on the hearing officer or panel chair or, if required by these rules, on each member of a hearing panel.

(b) Methods of Service.

(1) Service by Mail.

(A) Unless personal service is required or these rules specifically provide otherwise, service may be accomplished by postage prepaid mail. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.

(B) Except as provided below, service by mail must be by certified or registered mail, return receipt requested. Service may be by first class mail if:

(i) the parties so agree;

(ii) the document is a notice of dismissal by disciplinary counsel or by a review committee under rule 5.6, a notice regarding deferral under rule 5.3(c), or a request for review of any of these notices;

(iii) one or more properly made certified mailings is returned as unclaimed; or

(iv) service is on a hearing officer or panel.

(C) The address for service by mail is as follows:

(i) for the respondent, or his or her attorney of record, the address in the answer, a notice of appearance, or any subsequent document filed by the respondent or his or her attorney; or, in the absence of an answer, the respondent's address on file with the Association;

(ii) for disciplinary counsel, at the address of the Association or other address that disciplinary counsel requests.

(2) Service by Delivery. If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

(3) Personal Service. Personal service on a respondent is accomplished as follows:

(A) if the respondent is found in Washington State, by personal service in the manner required for personal service of a summons in a civil action in the superior court;

(B) if the respondent cannot be found in Washington State, service may be made either by:

(i) leaving a copy at the respondent's place of usual abode in Washington State with a person of suitable age and discretion then resident therein; or

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at his or her last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Association.

(C) if the respondent is found outside of Washington State, then by the methods of service described in (A) or (B) above.

(c) Service Where Question of Mental Competence. If a guardian or guardian ad litem has been appointed for a respondent who has been judicially declared to be of unsound

mind or incapable of conducting his or her own affairs, service under sections (a) and (b) above must also be made on the guardian or guardian ad litem.

(d) Proof of Service. If personal service is required, proof of service may be made by affidavit of service, sheriff's return of service, or a signed acknowledgment of service. In other cases, proof of service may also be made by certificate of a lawyer similar to that allowed by CR 5(b)(2)(B), which certificate must state the form of mail used. Proof of service in all cases must be filed but need not be served on the opposing party.

[Adopted effective October 1, 2002.]

ELC 4.2
FILING; ORDERS

(a) Filing Originals. Except in matters before the Supreme Court, the original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the Clerk. Filing may be made by first class mail and is deemed accomplished on the date of mailing. Filing of papers for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

(b) Filing and Service of Orders. Any written order, decision, or ruling, except an order of the Supreme Court or an informal ruling issued under rule 10.8(e), must be filed with the Clerk, and the Clerk serves it on the respondent lawyer and disciplinary counsel.

[Adopted effective October 1, 2002.]

ELC 4.3
PAPERS

All pleadings or other papers must be typewritten or printed, double spaced, on good quality 8½ by 11-inch paper. The use of letter-size copies of exhibits is encouraged if it does not impair legibility.

[Adopted effective October 1, 2002.]

ELC 4.4
COMPUTATION OF TIME

CR 6(a) and (e) govern the computation of time under these rules.

[Adopted effective October 1, 2002.]

ELC 4.5

STIPULATION TO EXTENSION OR REDUCTION OF TIME

Except for notices of appeal or matters pending before the Supreme Court, the respondent lawyer and disciplinary counsel may stipulate in any proceeding to extension or reduction of the time requirements.

[Adopted effective October 1, 2002.]

ELC 4.6
SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION

Disciplinary counsel, the chief hearing officer, or the Chair may issue a subpoena for use in lawyer discipline or disability proceedings in another jurisdiction if the issuance of the subpoena has been authorized under the law of that jurisdiction and upon a showing of good cause. The subpoena may compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. These rules apply to service, enforcement, and challenges to subpoenas issued under this rule.

[Adopted effective October 1, 2002.]

ELC 4.7
ENFORCEMENT OF SUBPOENAS

(a) Authority. To enforce subpoenas issued under these rules, the Supreme Court delegates contempt authority to the Superior Courts as necessary for the Superior Courts to act under this rule.

(b) Procedure.

(1) If a person fails to obey a subpoena, or obeys the subpoena but refuses to testify or produce documents when requested, disciplinary counsel, the respondent lawyer or the person issuing the subpoena may petition the Superior Court of the county where the hearing is being conducted, where the subpoenaed person resides or is found, or where the subpoenaed documents are located, for enforcement of the subpoena. The petition must:

(A) be accompanied by a copy of the subpoena and proof of service;

(B) state the specific manner of the lack of compliance; and

(C) request an order compelling compliance.

(2) Upon the filing of the petition, the Superior Court enters an order directing the person to appear before it at a specified time and place to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the Superior Court's show cause order must be served on the person.

(3) At the show cause hearing, if it appears to the Superior Court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were

reasonable and relevant, the Superior Court enters an order requiring the person to appear at a specified time and place and testify or produce the required documents. On failing to obey this order, the person is dealt with as for contempt of court.

[Adopted effective October 1, 2002.]

ELC 5.1
GRIEVANTS

(a) Filing of Grievance. Any person or entity may file a grievance against a lawyer admitted to practice law in this state, or against a lawyer specially admitted by a court of this state for a particular case.

(b) Consent to Disclosure. By filing a grievance, the grievant consents to disclosure of the content of the grievance to the respondent lawyer, or to any other person contacted during the investigation of the grievance, or to any person under rules 3.1 – 3.4, unless a protective order is issued under rule 3.2(e) or the grievance was filed under rule 5.2. By filing a grievance, the grievant also agrees that the respondent or any other lawyer contacted by the grievant may disclose to disciplinary counsel any information relevant to the investigation, unless a protective order is issued under rule 3.2(e).

(c) Grievant Rights. A grievant has the following rights:

(1) to be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;

(2) to have a reasonable opportunity to speak with the person assigned to the grievance, by telephone or in person, about the substance of the grievance or its status;

(3) to receive a copy of any response submitted by the respondent, except:

(A) if the response refers to a client's confidences or secrets to which the grievant is not privy;

(B) if the response contains information of a personal and private nature about the respondent; or

(C) if a review committee determines that the interests of justice would be better served by not releasing the response;

(4) to submit additional supplemental written information or documentation at any time;

(5) to attend any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e);

(6) to provide relevant testimony at any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e);

(7) to be notified of any proposed decision to refer the respondent to diversion and to be given a reasonable opportunity to submit to disciplinary counsel a written comment thereon;

(8) to be advised of the disposition of the grievance; and

(9) to request reconsideration of a dismissal of the

grievance as provided in rule 5.6(b).

(d) Grievant Duties. A grievant must do the following, or the grievance may be dismissed:

(1) give the person assigned to the grievance documents or other evidence in his or her possession, and witnesses' names and addresses;

(2) assist in securing relevant evidence; and

(3) appear and testify at any hearing resulting from the grievance.

[Adopted effective October 1, 2002.]

ELC 5.2
CONFIDENTIAL SOURCES

If a person files a grievance or provides information to disciplinary counsel or the Association about a lawyer's possible misconduct or disability, and asks to be treated as a confidential source, an investigation may be conducted in the Association's name. The confidential source has neither the rights nor the duties of a grievant. Unless otherwise ordered, the person's identity may not be disclosed, either during the investigation or in subsequent formal proceedings. If the respondent lawyer requests disclosure of the person's identity, the Chair, the chair of a review committee, or a hearing officer before whom a matter is pending examines disciplinary counsel and any requested documents or file materials in camera without the presence of the respondent or respondent's counsel and may order disciplinary counsel to reveal the identity to the respondent if doing so appears necessary for the respondent to conduct a proper defense in the proceeding.

[Adopted effective October 1, 2002.]

ELC 5.3
INVESTIGATION OF GRIEVANCE

(a) Review and Investigation. Disciplinary counsel must review and may investigate any alleged or apparent misconduct by a lawyer and any alleged or apparent incapacity of a lawyer to practice law, whether disciplinary counsel learns of the misconduct by grievance or otherwise. If there is no grievant, the Association may open a grievance in the Association's name.

(b) Adjunct Investigative Counsel. Disciplinary counsel may assign a case to adjunct investigative counsel for investigation. Disciplinary counsel assists in those investigations and monitors the performance of adjunct investigative counsel. On receiving a report of an investigation by an adjunct investigative counsel, disciplinary counsel may, as appears appropriate, request or conduct additional investigation or take any action under these rules.

(c) Deferral by Disciplinary Counsel.

(1) Disciplinary counsel may defer an investigation into alleged acts of misconduct by a lawyer:

(A) if it appears that the allegations are related to pending civil or criminal litigation;

(B) if it appears that the respondent lawyer is physically or mentally unable to respond to the investigation; or

(C) for other good cause, if it appears that the deferral will not endanger the public.

(2) Disciplinary counsel must inform the grievant and respondent of a decision to defer or a denial of a request to defer and of the procedure for requesting review. A grievant or respondent may request review of a decision on deferral. If review is requested, disciplinary counsel refers the matter to a review committee for reconsideration of the decision on deferral. To request review, the grievant or respondent must deliver or deposit in the mail a request for review to the Association no later than 45 days after the Association mails the notice regarding deferral.

(d) Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance: the unwillingness of a grievant to continue the grievance, the withdrawal of the grievance, a compromise between the grievant and the respondent, or restitution by the respondent.

(e) Duty To Furnish Prompt Response. Any lawyer must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation. Upon inquiry or request, any lawyer must:

(1) furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

(2) permit inspection and copying of the lawyer's business records, files, and accounts;

(3) furnish copies of requested records, files, and accounts;

(4) furnish written releases or authorizations if needed to obtain documents or information from third parties; and

(5) comply with discovery conducted under rule 5.5.

(f) Failure To Cooperate.

(1) Noncooperation Deposition. If a lawyer has not complied with any request made under section (e) or rule 2.13(d) for more than 30 days, disciplinary counsel may notify the lawyer that failure to comply within ten days may result in the lawyer's deposition or subject the lawyer to interim suspension under rule 7.2. Ten days after this notice, disciplinary counsel may serve the lawyer with a subpoena for a deposition. Any deposition conducted after the ten-day period and necessitated by the lawyer's continued failure to cooperate may be conducted at any place in Washington State.

(2) Costs and Expenses.

(A) Regardless of the underlying grievance's ultimate disposition, a lawyer who has been served with a subpoena under this rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, and the cost of transcribing the deposition, if ordered by disciplinary counsel. In addition, a lawyer who has been served with a subpoena for a deposition under this rule is liable for a reasonable attorney fee of $500.

(B) The procedure for assessing costs and expenses is as follows:

(i) Disciplinary counsel applies to a review committee by itemizing the cost and expenses and stating the reasons for the deposition.

(ii) The lawyer has ten days to respond to disciplinary counsel's application.

(iii) The review committee by order assesses appropriate costs and expenses.

(iv) Rule 13.9(e) governs Board review of the review committee order.

(3) Grounds for Discipline. A lawyer's failure to cooperate fully and promptly with an investigation as required by section (e) or rule 2.13(d) is also grounds for discipline.

[Adopted effective October 1, 2002.]

ELC 5.4
PRIVILEGES

(a) Privilege Against Self-Incrimination. A lawyer's duty to cooperate is subject to the lawyer's privilege against self-incrimination, where applicable.

(b) Attorney-Client Privilege. A lawyer may not assert the attorney-client privilege or other prohibitions on revealing client confidences or secrets as a basis for refusing to provide information during the course of an investigation, but information obtained during an investigation involving client confidences or secrets must be kept confidential to the extent possible under these rules unless the client otherwise consents. Nothing in these rules waives or requires waiver of any lawyer's own privilege or other protection as a client against the disclosure of confidences or secrets.

[Adopted effective October 1, 2002.]

ELC 5.5
DISCOVERY BEFORE FORMAL COMPLAINT

(a) Procedure. Before filing a formal complaint, disciplinary counsel may depose either a respondent lawyer or a witness, or issue requests for admission to the respondent. To the extent possible, CR 30 or 31 applies to depositions under this rule. CR 36 governs requests for admission.

(b) Subpoenas for Depositions. Disciplinary counsel may issue subpoenas to compel the respondent's or a witness's attendance, or the production of books, documents, or other evidence, at a deposition. Subpoenas must be served as in civil cases in the superior court and may be enforced under rule 4.7.

(c) Cooperation. Every lawyer must promptly respond to discovery requests from disciplinary counsel.

[Adopted effective October 1, 2002.]

ELC 5.6
DISPOSITION OF GRIEVANCE

(a) Dismissal by Disciplinary Counsel. Disciplinary counsel may dismiss grievances with or without investigation. On dismissal, disciplinary counsel must notify the grievant of the procedure for review in this rule.

(b) Review of Dismissal. A grievant may request review of dismissal of the grievance by delivering or depositing in the mail a request for review to the Association no later than 45 days after the Association mails the notice of dismissal. Mailing requires postage prepaid first class mail. If review is requested, disciplinary counsel may either reopen the matter for investigation or refer it to a review committee.

(c) Report in Other Cases. Disciplinary counsel must report to a review committee the results of investigations except those dismissed or diverted.

(d) Authority on Review. In reviewing grievances under this rule, a review committee may:

(1) affirm the dismissal;

(2) issue an advisory letter under rule 5.7;

(3) issue an admonition under rule 13.5;

(4) order a hearing on the alleged misconduct; or

(5) order further investigation as may appear appropriate.

[Adopted effective October 1, 2002.]

ELC 5.7
ADVISORY LETTER

An advisory letter may be issued when a hearing does not appear warranted but it appears appropriate to caution a respondent lawyer concerning his or her conduct. An advisory letter may be issued by a review committee but may not be issued when a grievance is dismissed following a hearing. An advisory letter does not constitute a finding of misconduct, is not a sanction, is not disciplinary action, and is not public information.

[Adopted effective October 1, 2002.]

ELC 6.1
REFERRAL TO DIVERSION

In a matter involving less serious misconduct as defined in rule 6.2, before filing a formal complaint, disciplinary counsel may refer a respondent lawyer to diversion. Diversion may include

- fee arbitration;
- arbitration;

- mediation;
- law office management assistance;
- lawyer assistance programs;
- psychological and behavioral counseling;
- monitoring;
- restitution;
- continuing legal education programs; or
- any other program or corrective course of action agreed to by disciplinary counsel and respondent to address respondent's misconduct.

Disciplinary counsel may negotiate and execute diversion contracts, monitor and determine compliance with the terms of diversion contracts, and determine fulfillment or any material breach of diversion contracts, subject to review under rule 6.9.

[Adopted effective October 1, 2002.]

ELC 6.2
LESS SERIOUS MISCONDUCT

Less serious misconduct is conduct not warranting a sanction restricting the respondent lawyer's license to practice law. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

(A) the misconduct involves the misappropriation of funds;

(B) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;

(C) the respondent has been sanctioned in the last three years;

(D) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned or admonished in the last five years;

(E) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

(F) the misconduct constitutes a "serious crime" as defined in rule 7.1(a); or

(G) the misconduct is part of a pattern of similar misconduct.

[Adopted effective October 1, 2002.]

ELC 6.3
FACTORS FOR DIVERSION

Disciplinary counsel considers the following factors in determining whether to refer a respondent lawyer to

diversion:

(A) whether the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions for the violations raised by the grievance or grievances is likely to be no more severe than reprimand or admonition;

(B) whether participation in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of lawyer discipline;

(C) whether aggravating or mitigating factors exist; and

(D) whether diversion was already tried.

[Adopted effective October 1, 2002.]

ELC 6.4
NOTICE TO GRIEVANT

As provided in rule 5.1(c)(7), disciplinary counsel must notify the grievant, if any, of the proposed decision to refer the respondent lawyer to diversion, and must give the grievant a reasonable opportunity to submit written comments. The grievant must be notified when the grievance is diverted and when the grievance is dismissed on completion of diversion. Such decisions to divert or dismiss are not appealable.

[Adopted effective October 1, 2002.]

ELC 6.5
DIVERSION CONTRACT

(a) Negotiation. Disciplinary counsel and the respondent lawyer negotiate a diversion contract, the terms of which are tailored to the individual circumstances.

(b) Required Terms. A diversion contract must:

(1) be signed by the respondent and disciplinary counsel;

(2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a practice monitor and/or a recovery monitor and the monitor's responsibilities. If a recovery monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the recovery monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;

(3) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel;

(4) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the grievances to be deferred; and

(5) include a specific acknowledgment that a material violation of a term of the contract renders the

respondent's participation in diversion voidable by disciplinary counsel.

(c) Amendment. The contract may be amended on agreement of the respondent and disciplinary counsel.

[Adopted effective October 1, 2002.]

ELC 6.6
AFFIDAVIT SUPPORTING DIVERSION

A diversion contract must be supported by the respondent lawyer's affidavit or declaration as approved by disciplinary counsel setting forth the respondent's misconduct related to the grievance or grievances to be deferred under this title. If the diversion contract is terminated due to a material breach, the affidavit or declaration is admissible into evidence in any ensuing disciplinary proceeding. Unless so admitted, the affidavit or declaration is confidential and must not be provided to the grievant or any other individual outside the Office of Disciplinary Counsel, but may be provided to a review committee or the Board considering the grievance.

[Adopted effective October 1, 2002.]

ELC 6.7
EFFECT OF NON-PARTICIPATION IN DIVERSION

The respondent lawyer has the right to decline disciplinary counsel's offer to participate in diversion. If the respondent chooses not to participate, the matter proceeds as though no referral to diversion had been made.

[Adopted effective October 1, 2002.]

ELC 6.8
STATUS OF GRIEVANCE

After a diversion contract is executed by the respondent lawyer and disciplinary counsel, the disciplinary grievance is deferred pending successful completion of the contract.

[Adopted effective October 1, 2002.]

ELC 6.9
TERMINATION OF DIVERSION

(a) Fulfillment of the Contract. The contract terminates when the respondent lawyer has fulfilled the terms of the contract and gives disciplinary counsel an affidavit or declaration demonstrating fulfillment. Upon receipt of this

affidavit or declaration, disciplinary counsel must acknowledge receipt and either dismiss any grievances deferred pending successful completion of the contract or notify the respondent that fulfillment of the contract is disputed. The grievant cannot appeal the dismissal. Successful completion of the contract is a bar to any further disciplinary proceedings based on the same allegations.

(b) Material Breach. A material breach of the contract is cause for termination of the diversion. After a material breach, disciplinary counsel must notify the respondent of termination from diversion and disciplinary proceedings may be instituted, resumed, or reinstated.

(c) Review by the Chair. The Chair may review disputes about fulfillment or material breach of the terms of the contract on the request of the respondent or disciplinary counsel. The request must be filed with the Board within 15 days of notice to the respondent of the determination for which review is sought. Determinations by the Chair under this section are not subject to further review and are not reviewable in any proceeding.

[Adopted effective October 1, 2002.]

ELC 7.1
INTERIM SUSPENSION FOR CONVICTION OF A CRIME

(a) Definitions.

(1) "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(2) "Serious crime" includes any:

(A) felony;

(B) crime a necessary element of which, as determined by its statutory or common law definition, includes any of the following:

- interference with the administration of justice;
- false swearing;
- misrepresentation;
- fraud;
- deceit;
- bribery;
- extortion;
- misappropriation; or
- theft; or

(C) attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".

(b) Court Clerk To Advise Association of Conviction. When a lawyer is convicted of a crime, the clerk of the court must advise the Association of the conviction, and on request provide the Association with certified copies of any order or other document showing the conviction.

(c) Procedure upon Conviction.

(1) If a lawyer is convicted of a felony, disciplinary counsel must file a formal complaint regarding the conviction. Disciplinary counsel must also petition the Supreme Court for an order suspending the respondent lawyer during the pendency of disciplinary proceedings. The petition for suspension may be filed

before the formal complaint.

(2) If a lawyer is convicted of a crime that is not a felony, disciplinary counsel may refer the matter to a review committee to determine whether the crime is a serious crime. If so, disciplinary counsel proceeds in the same manner as for a felony.

(3) If a lawyer is convicted of a crime that is neither a felony nor a serious crime, the review committee considers a report of the conviction in the same manner as any other report of possible misconduct by a lawyer.

(d) Petition. A petition to the Supreme Court for suspension under this rule must include a copy of any available document establishing the fact of conviction. If the crime is not a felony, the petition must also include a copy of the review committee order finding that the crime is a serious crime. Disciplinary counsel may also include additional facts, statements, arguments, affidavits, and documents in the petition. A copy of the petition must be personally served on the respondent, and proof of service filed with the Court.

(e) Immediate Interim Suspension. Upon the filing of a petition for suspension under this rule, the Court determines whether the crime constitutes a serious crime as defined in section (a).

(1) If the crime is a felony, the Court must enter an order immediately suspending the respondent from the practice of law.

(2) If the crime is not a felony, the Court conducts a show cause proceeding under rule 7.2(b) to determine if the crime is a serious crime. If the Court determines the crime is a serious crime, the Court must enter an order immediately suspending the respondent from the practice of law. If the Court determines that the crime is not a serious crime, upon being so advised, the Association processes the matter as it would any other grievance.

(3) If suspended, the respondent must comply with title 14.

(4) Suspension under this rule occurs:

(A) whether the conviction was under a law of this state, any other state, or the United States;

(B) whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and

(C) regardless of the pendency of an appeal.

(f) Duration of Suspension. A suspension under this rule must terminate when the disciplinary proceeding is fully completed, after appeal or otherwise.

(g) Termination of Suspension.

(1) Petition and Response. A respondent may at any time petition the Board to recommend termination of an interim suspension. Disciplinary counsel may file a response to the petition. The Chair may direct disciplinary counsel to investigate as appears appropriate.

(2) Board Recommendation. If either party requests, the Board must hear oral argument on the petition at a time and place and under terms as the Chair directs. The Board may recommend termination of a suspension only if the Board makes an affirmative finding of good cause to do so. There is no right of appeal from a Board decision declining to recommend termination of a suspension.

(3) Court Action. The Court determines the procedure for its consideration of a recommendation to terminate

a suspension.

(h) Notice of Dismissal to Supreme Court. If disciplinary counsel has filed a petition for suspension under this rule, and the disciplinary proceedings based on the criminal conviction are dismissed, the Supreme Court must be provided a copy of the decision granting dismissal whether or not the respondent is suspended at the time of dismissal.

[Adopted effective October 1, 2002.]

ELC 7.2
INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

(a) Types of Interim Suspension.

(1) Review Committee Finding of Risk to Public. Disciplinary counsel may petition the Supreme Court for an order suspending the respondent lawyer during the pendency of any proceeding under these rules if:

(A) it appears that a respondent's continued practice of law poses a substantial threat of serious harm to the public; and

(B) a review committee recommends an interim suspension.

(2) Board Recommendation for Disbarment. When the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. The respondent must be suspended absent an affirmative showing that the respondent's continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest. If the Board's decision is not appealed and becomes final, the petition need not be filed, or if filed may be withdrawn.

(3) Failure To Cooperate with Investigation. When any lawyer fails without good cause to comply with a request under rule 5.3(f) for information or documents, or with a subpoena issued under rule 5.3(f), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the lawyer pending compliance with the request or subpoena. If the lawyer complies with the request or subpoena, the lawyer may petition the Court to terminate the suspension on terms the Court deems appropriate.

(b) Procedure.

(1) Petition. A petition to the Court under this rule must set forth the acts of the lawyer constituting grounds for suspension, and if filed under subsection (a)(2) must include a copy of the Board's decision. The petition may be supported by documents or affidavits. The Association must serve the petition by mail on the day of filing. In addition, a copy of the petition must be personally served on the lawyer no later than the date of service of the show cause order.

(2) Show Cause Order. Upon filing of the petition, the Chief Justice orders the lawyer to appear before the Court on a date set by the Chief Justice, and to show cause why the petition for suspension should not be granted. Disciplinary counsel must have a copy of the order to show cause personally served on the lawyer at least ten days before the scheduled show cause hearing. Subsection (b)(5) notification requirements must be included in the show cause order.

(3) Answer to Petition. The lawyer may answer the petition. An answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the show cause hearing.

(4) Filing of Answer. A copy of any answer must be filed with both the Court and disciplinary counsel by the date specified in the show cause order, which will be at least five days before the scheduled show cause hearing.

(5) Notification. The lawyer must inform the court no less than 7 days prior to the show cause hearing whether the lawyer will appear for the show cause hearing, or the hearing will be stricken and the Court will decide the matter without oral argument.

(6) Application of Other Rules. If the Court enters an order suspending the lawyer, the rules relating to suspended lawyers, including title 14, apply.

[Adopted effective October 1, 2002; amended effective January 3,2006.]

ELC 7.3
AUTOMATIC SUSPENSION WHEN RESPONDENT ASSERTING INCAPACITY

When a respondent lawyer asserts incapacity to conduct a proper defense to disciplinary proceedings, upon receipt of appropriate documentation of the assertion, the respondent must be suspended on an interim basis by the Supreme Court pending the conclusion of the disability proceedings. However, if the hearing officer in the supplemental proceeding files a decision that the respondent is not incapacitated, on petition of either party, the Court may terminate the interim suspension.

[Adopted effective October 1, 2002.]

ELC 7.4
STIPULATION TO INTERIM SUSPENSION

At any time a respondent lawyer and disciplinary counsel may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a serious crime, a substantial threat of serious harm to the public, or incapacity to practice law. A stipulation must state the factual basis for the stipulation and be submitted directly to the Supreme Court for expedited consideration. Stipulations under this rule are public upon filing with the Court, but the Court may order that supporting materials are confidential. Either party may petition the Court to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Court may terminate the suspension.

[Adopted effective October 1, 2002.]

ELC 7.5
INTERIM SUSPENSIONS EXPEDITED

(a) Expedited Review. Petitions seeking interim suspension under this title receive an expedited hearing, ordinarily no later than 14 days from issuance of an order to show cause.

(b) Procedure During Court Recess. When a petition seeking interim suspension under this title is filed during a recess of the Supreme Court, the Chief Justice, the Acting Chief Justice, or the senior Justice under SAR 10, subject to review by the full Court on motion for reconsideration, may rule on the motion for interim suspension.

[Adopted effective October 1, 2002.]

ELC 7.6
EFFECTIVE DATE OF INTERIM SUSPENSIONS

Interim suspensions become effective on the date of the Supreme Court’s order unless the order provides otherwise.

[Adopted effective October 1, 2002.]

ELC 7.7
APPOINTMENT OF CUSTODIAN TO PROTECT CLIENTS' INTERESTS

(a) Custodians Allowed. The Chair, on motion by disciplinary counsel or any other interested person, may appoint one or more lawyers or Association counsel as a custodian to act as counsel for the limited purpose of protecting clients’ interests whenever a lawyer has been transferred to disability inactive status, suspended, or disbarred, and fails to carry out the obligations of title 14 or fails to protect the clients' interests, or whenever a lawyer disappears or dies, unless a partner, personal representative, or other responsible person appears to be properly protecting the clients’ interests. The Chair may enter orders to carry out the provisions and purposes of this rule.

(b) Duties. The custodian takes possession of the necessary files and records and takes action as seems indicated to protect the clients' interests or required by the Chair’s orders or these rules. Such action may include but is not limited to assuming control of trust accounts or other financial affairs. Any bank or other person honoring the authority of the custodian is exonerated from any resulting liability. In determining ownership of funds in the trust account, including by subrogation or indemnification, the custodian should act as a reasonably prudent lawyer maintaining a client trust account. The custodian may rely on a certification of ownership issued by a person who conducts audits for the Association under rule 15.1. If the client trust account does not contain sufficient funds to meet known client balances, the custodian may disburse funds on a pro rata basis.

(c) Discharge. On motion by disciplinary counsel or any interested person, the Chair may discharge the custodian from further duties. The Chair may also order destruction of files and records as appropriate.

(d) Costs. Payment of any costs incurred by the Association under this rule may be a condition of reinstatement of a disbarred lawyer or a lawyer transferred to disability inactive status, or may be ordered as restitution in a

disciplinary proceeding for failure to comply with rule 14.1.

[Adopted effective October 1, 2002.]

ELC 8.1
ACTION ON ADJUDICATION OF INCOMPETENCY

(a) Grounds. The Association must automatically transfer a lawyer from active to disability inactive membership status upon receipt of a certified copy of the judgment, order, or other appropriate document demonstrating that the lawyer:

(1) was found to be incapable of assisting in his or her own defense in a criminal action;

(2) was acquitted of a crime based on insanity;

(3) had a guardian (but not a limited guardian) appointed for his or her person or estate on a finding of incompetency; or

(4) was found to be mentally incapable of conducting the practice of law in any other jurisdiction.

(b) Notice to Lawyer. The Association must forthwith notify the disabled lawyer and his or her guardian, if one has been appointed, of the transfer to disability inactive status. The Association must also notify the Supreme Court of the transfer and provide a copy of the judgment, order, or other appropriate document on which the transfer was based.

[Adopted effective October 1, 2002.]

ELC 8.2
DETERMINATION OF INCAPACITY TO PRACTICE LAW

(a) Review Committee May Order Hearing. Disciplinary counsel reports to a review committee on investigations into an active, suspended, or inactive respondent lawyer's mental or physical capacity to practice law. The committee orders a hearing if it appears there is reasonable cause to believe that the respondent does not have the mental or physical capacity to practice law. In other cases, the committee may direct further investigation as appears appropriate or dismiss the matter.

(b) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(c) Procedure.

(1) Applicable Rules. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) Appointment of Counsel. If counsel for the respondent does not appear within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent.

(3) Health Records. After a review committee orders a hearing under this rule, disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the inquiry,

subject to a motion to the hearing officer, or if no hearing officer has been appointed, to the chief hearing officer, to limit the scope of the requested releases or authorizations for good cause.

(4) Examination. Upon motion, the hearing officer, or if no hearing officer has been appointed, the chief hearing officer, may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in determining the respondent's capacity to practice law. Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(5) Hearing Officer Recommendation. If the hearing officer or panel finds that the respondent does not have the mental or physical capacity to practice law, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status.

(6) Appeal Procedure. The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(7) Transfer Following Board Review. If, after review of the decision of the hearing officer or panel, the Board finds that the respondent does not have the mental or physical capacity to practice law, it must enter an order immediately transferring the respondent to disability inactive status. The transfer is effective upon service of the order under rule 4.1.

(d) Interim Suspension.

(1) When a review committee orders a hearing on the capacity of a respondent to practice law, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a) unless the respondent is already suspended on an interim basis.

(2) Even if the Court previously denied a petition for interim suspension under subsection (d)(1), disciplinary counsel may petition the Court for the interim suspension of a respondent under rule 7.2(a)(3) if the respondent fails:

(A) to appear for an independent examination under this rule;

(B) to waive health care provider-patient privilege as required by this rule; or

(C) to appear at a hearing under this rule.

(e) Termination of Interim Suspension. If the hearing officer or panel files a decision recommending that a respondent placed on interim suspension under this rule not be transferred to disability inactive status, upon either party's petition, the Court may terminate the interim suspension.

[Adopted effective October 1, 2002.]

ELC 8.3
DISABILITY PROCEEDINGS DURING THE COURSE OF DISCIPLINARY PROCEEDINGS

(a) Supplemental Proceedings on Capacity To Defend. A hearing officer or hearing panel, or chief hearing officer if no hearing officer has been appointed, must order a supplemental proceeding on the respondent lawyer's capacity to defend the disciplinary proceedings if the respondent asserts, or there is reasonable cause to believe, that the respondent is incapable of properly defending the disciplinary proceeding because of mental or physical incapacity.

(b) Purpose of Supplemental Proceedings. In a supplemental proceeding, the hearing officer or panel determines if the respondent:

(1) is incapable of defending himself or herself in the disciplinary proceedings because of mental or physical incapacity;

(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or

(3) is currently unable to practice law because of mental or physical incapacity.

(c) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(d) Procedure for Supplemental Proceedings.

(1) Applicable Rules. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) Deferral of Disciplinary Proceedings. The disciplinary proceedings are deferred pending the outcome of the supplemental proceeding.

(3) Appointment of Counsel. If counsel for the respondent does not appear within 20 days of notice to the respondent of the issues to be considered in a supplemental proceeding under this rule, or within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent in the supplemental proceedings.

(4) Health Records. Disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the determination under section (b), subject to a motion to the hearing officer to limit the scope of the requested releases or authorizations for good cause. If the respondent asserted incapacity, there is a rebuttable presumption that good cause does not exist.

(5) Examination. Upon motion, the hearing officer may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in the determinations to be made under section (b). Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(6) Failure To Appear or Cooperate. If the respondent fails to appear for an independent examination, fails to waive health care provider-patient privilege as required in these rules, or fails to appear at the hearing, the following procedures apply:

(A) If the Association has the burden of proof, the hearing officer must hold a hearing and, if presented with sufficient evidence to determine incapacity, order the respondent transferred to disability inactive status. If there is

insufficient evidence to determine incapacity, the hearing officer must enter an order terminating the supplemental proceedings and reinstating the disciplinary proceedings. A respondent who does not appear at the hearing may move to vacate the order of transfer under rule 10.6(c).

(B) If the respondent has the burden of proof, the hearing officer must enter an order terminating the supplemental proceedings and resuming the disciplinary proceedings.

(7) Hearing Officer Decision.

(A) Capacity To Defend and Practice Law. If the hearing officer or panel finds that the respondent is capable of defending himself or herself and has the mental and physical capacity to practice law, the disciplinary proceedings resume.

(B) Capacity To Defend with Counsel. If the hearing officer or panel finds that the respondent is not capable of defending himself or herself in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint a member of the Association as counsel for the respondent in the disciplinary proceeding.

(C) Finding of Incapacity. If the hearing officer or panel finds that the respondent either does not have the mental or physical capacity to practice law, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status. The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(8) Transfer Following Board Review.

(A) The Board must enter an order immediately transferring the respondent to disability inactive status if after review of a hearing officer's or panel's recommendation of transfer to disability inactive status, the Board finds that the respondent:

(i) does not have the mental or physical capacity to practice law; or

(ii) is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity.

(B) The transfer is effective upon service of the order on the respondent under rule 4.1.

(e) Interim Suspension. When supplemental proceedings have been ordered, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a)(1) or seek automatic suspension under rule 7.3 unless the respondent is already suspended on an interim basis.

[Adopted effective October 1, 2002.]

ELC 8.4
APPEAL OF TRANSFER TO DISABILITY INACTIVE STATUS

The respondent lawyer may appeal an order of transfer to disability inactive status under rule 12.3. The Board's order remains in effect, regardless of the pendency of an appeal, unless and until reversed by the Supreme Court.

[Adopted effective October 1, 2002.]

ELC 8.5
STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS

(a) Requirements. At any time a respondent lawyer and disciplinary counsel may stipulate to the transfer of the respondent to disability inactive status under this title. The respondent and disciplinary counsel must sign the stipulation.

(b) Form. The stipulation must:

(1) state with particularity the nature of the respondent's incapacity to practice law and the nature of any pending disciplinary proceedings that will be deferred as a result of the respondent's transfer to disability inactive status;

(2) state that it is not binding on the Association as a statement of all existing facts relating to the professional conduct of the respondent and that any additional existing facts may be proved in a subsequent disciplinary proceeding; and

(3) fix the amount of costs and expenses to be paid by the respondent.

(c) Approval. The stipulation must be presented to the Board. The Board reviews the stipulation based solely on the record agreed to by the respondent and disciplinary counsel. The Board may either approve the stipulation or reject it. Upon approval, the transfer to disability inactive status is not subject to further review.

(d) Stipulation Not Approved. If the stipulation is rejected by the Board, the stipulation has no force or effect and neither it nor the fact of its execution is admissible in any pending or subsequent disciplinary proceeding or in any civil or criminal action.

[Adopted effective October 1, 2002.]

ELC 8.6
COSTS IN DISABILITY PROCEEDINGS

When reviewing a matter under this title, the Board may authorize disciplinary counsel to seek assessment of the costs and expenses against the respondent lawyer. If the Board authorizes, disciplinary counsel may file a statement of costs within 20 days of service of the Board's order. Rule 13.9 governs assessment of these costs and expenses. The respondent is not required to pay the costs and expenses until 90 days after reinstatement to active status.

[Adopted effective October 1, 2002.]

ELC 8.7
BURDEN AND STANDARD OF PROOF

In proceedings under rules 8.2 or 8.3, the party asserting or alleging the incapacity has the burden of establishing it by a preponderance of the evidence. If the issue of incapacity is raised by a hearing officer or panel, the Association has the burden of proof.

[Adopted effective October 1, 2002.]

ELC 8.8
REINSTATEMENT TO ACTIVE STATUS

(a) Right of Petition and Burden. A respondent lawyer transferred to disability inactive status may resume active status only by Board or Supreme Court order. Any respondent transferred to disability inactive status may petition the Board for transfer to active status. The respondent has the burden of showing that the disability has been removed.

(b) Petition. The petition for reinstatement must:

(1) state facts demonstrating that the disability has been removed;

(2) include the name and address of each psychiatrist, psychologist, physician, or other person and each hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status; and

(3) be filed with the Clerk and served on disciplinary counsel.

(c) Waiver of Privilege. The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status waives any privilege as to treatment of any medical, psychological, or psychiatric condition during the period of disability. The respondent must furnish, if requested by the Board or disciplinary counsel, written consent to each treatment provider to divulge information and records relating to the disability.

(d) Initial Review by Chair. The Chair reviews the petition and any response by disciplinary counsel and directs appropriate action to determine whether the disability has been removed, including investigation by disciplinary counsel or any other person or an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition.

(e) Board Review.

(1) The respondent must have a reasonable opportunity to review any reports of investigations or examinations ordered by the Chair and submit additional materials before the matter is submitted to the Board.

(2) On submission, the Board reviews the petition and any reports as expeditiously as possible and takes one or more of the following actions:

(A) grants the petition;

(B) directs additional action as the Board deems necessary to determine whether the disability has been removed;

(C) orders that a hearing be held before a hearing officer or panel under the procedural rules for disciplinary proceedings;

(D) directs the respondent to establish proof of competence and learning in the law, which may include certification by the bar examiners of successful completion of an examination for admission to practice;

(E) denies the petition;

(F) directs the respondent to pay the costs of the reinstatement proceedings; or

(G) approves or rejects a stipulation to reinstatement between the respondent and the Association.

(3) The petition may be denied without the respondent having an opportunity for a hearing before a hearing officer or panel only if the Board determines that a hearing is not necessary because:

(A) the respondent fails to state a prima facie case for reinstatement in the petition; or

(B) the petition does not indicate a material change of circumstance since a previous denial of a petition for reinstatement.

(f) Petition Granted. If the petition for reinstatement is granted, the Association immediately restores the respondent to the respondent's prior status and notifies the Supreme Court of the transfer. If a disciplinary proceeding has been deferred because of the disability transfer, the proceeding resumes upon reinstatement.

(g) Review by Supreme Court. If the petition for reinstatement is not granted, the respondent may appeal the Board's decision to the Supreme Court, by filing a notice of appeal with the Clerk within 15 days of service of the Board's decision on the respondent. Title 12 applies to review under this section.

[Adopted effective October 1, 2002.]

ELC 8.9
PETITION FOR LIMITED GUARDIANSHIP

(a) Guardian Powers and Qualifications. A guardian may be appointed under this rule to take any action deemed advisable related to the respondent lawyer's license to practice law and any disciplinary or disability investigation or proceeding.

(b) Referral to Review Committee. A hearing officer or panel, the Association, the respondent, or respondent's counsel may request that a review committee authorize the filing of a petition for a limited guardianship of a respondent as described in section (a). The person requesting the petition must give notice to the parties at the time of the request. The Association and the respondent may submit declarations or affidavits relevant to the Review Committee's decision.

(c) Review Committee Determination. The review committee may authorize the Association to petition for the appointment of a limited guardian as described in section (a) when the review committee reasonably believes that grounds for such an appointment exist under RCW 11.88.010(2). The review committee may require the respondent to submit to any necessary examinations or evaluations and may retain independent counsel to assist in the investigation and the filing of any petition.

(d) Action for Limited Guardianship.

(1) Upon authorization of a review committee, the Association may file a petition in any Superior Court seeking a limited guardian to act regarding the respondent's license or any disciplinary or disability investigation or proceeding.

(2) Notwithstanding any other provisions regarding the qualifications of a guardian ad litem, any guardian ad litem appointed under this rule must be a lawyer qualified to maintain and protect the confidences and secrets of the respondent's clients.

(3) Upon application to the Superior Court, the respondent may have the matter moved to the county where the respondent is domiciled or maintains an office or another county as authorized by law.

(4) The guardianship proceedings must be sealed to the extent necessary to protect confidences and secrets of the respondent's clients or on any other basis found by the Superior Court.

(5) The costs of any guardianship are paid out of the guardianship estate, except if the guardianship estate is indigent, the Association pays the costs.

[Adopted effective October 1, 2002.]

ELC 9.1
STIPULATIONS

(a) Requirements. Any disciplinary matter or proceeding may be resolved by a stipulation at any time. The stipulation must be signed by the respondent lawyer and approved by disciplinary counsel. The stipulation may impose terms and conditions of probation and contain any other appropriate provisions.

(b) Form. A stipulation must:

(1) provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Board or hearing officer to form an opinion as to the propriety of the proposed resolution, and, if approved, to make the stipulation useful in any subsequent disciplinary proceeding against the respondent;

(2) set forth the respondent’s prior disciplinary record or its absence;

(3) state that the stipulation is not binding on the Association as a statement of facts about the respondent’s conduct, and that additional facts may be proved in a subsequent disciplinary proceeding; and

(4) fix the amount of costs and expenses to be paid by the respondent.

(c) Approval.

(1) By Hearing Officer. A hearing officer or panel may approve a stipulation disposing of a matter pending before the officer or panel, unless the stipulation requires the respondent’s suspension or disbarment. This approval constitutes a final decision and is not subject to further review.

(2) By Board. All other stipulations must be presented to the Board. The Board reviews a stipulation based solely on the record agreed to by the respondent lawyer and disciplinary counsel. The parties may jointly ask the Chair to permit them to address the Board regarding a stipulation. Such presentations are at the Chair’s discretion. The Board may approve, conditionally approve, or reject a stipulation. Regardless of the provisions of rule 3.3(a), the Board may direct that information or

documents considered in reviewing a stipulation be kept confidential.

(d) Conditional Approval. The Board may condition its approval of a stipulation on the agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the Board deems necessary to accomplish the purposes of lawyer discipline. If the Board conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the Chair, both parties serve on the Clerk written consent to the conditional terms in the Board's order.

(e) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, the parties may serve on the Clerk a joint motion for reconsideration and may ask to address the Board on the motion.

(f) Stipulation Rejected. The Board's order rejecting a stipulation must state the reasons for the rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any disciplinary, civil, or criminal proceeding.

(g) Failure To Comply. A respondent's failure to comply with the terms of an approved stipulation may be grounds for discipline.

[Adopted effective October 1, 2002.]

ELC 9.2
RECIPROCAL DISCIPLINE AND DISABILITY INACTIVE STATUS; DUTY TO SELF-REPORT

(a) Duty To Self-Report Discipline or Transfer to Disability Inactive Status. Within 30 days of being disciplined or transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the discipline or transfer.

(b) Obtaining Order. Upon notification from any source that a lawyer admitted to practice in this state was disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel must obtain a certified copy of the order and file it with the Supreme Court.

(c) Supreme Court Action. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in this state has been disciplined or transferred to disability inactive status in another jurisdiction, the Supreme Court orders the respondent lawyer to show cause within 30 days of service why it should not impose the identical discipline or disability inactive status. The Association must personally serve this order, and a copy of the order from the other jurisdiction, on the respondent under rule 4.1(b)(3).

(d) Deferral. If the other jurisdiction has stayed the discipline or transfer, any reciprocal discipline or transfer in this state is deferred until the stay expires.

(e) Discipline or Transfer To Be Imposed.

(1) Thirty days after service of the order under section (c), the Supreme Court imposes the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or the Court finds, that it clearly appears on the face of the record on which the discipline or disability transfer

is based, that:

(A) the procedure so lacked notice or opportunity to be heard that it denied due process;

(B) the proof of misconduct or disability was so infirm that the Court is clearly convinced that it cannot, consistent with its duty, accept the finding of misconduct or disability;

(C) the imposition of the same discipline would result in grave injustice;

(D) the established misconduct warrants substantially different discipline in this state;

(E) the reason for the original transfer to disability inactive status no longer exists; or

(F) appropriate discipline has already been imposed in this jurisdiction for the misconduct.

(2) If the Court determines that any of the factors in subsection (1) exist, it enters an appropriate order. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that imposing the same discipline is not appropriate.

(f) Conclusive Effect. Except as this rule otherwise provides, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct or should be transferred to disability inactive status conclusively establishes the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

[Adopted effective October 1, 2002.]

ELC 9.3
RESIGNATION IN LIEU OF DISBARMENT

(a) Grounds. A respondent lawyer who desires not to contest or defend against allegations of misconduct may, at any time before the answer in any disciplinary proceeding is due, resign his or her membership in the Association in lieu of further disciplinary proceedings.

(b) Process. The respondent first notifies disciplinary counsel that the respondent intends to submit a resignation and asks disciplinary counsel to prepare a statement of alleged misconduct and to provide a declaration of costs. After receiving the statement and the declaration of costs, if any, the respondent may resign by submitting to disciplinary counsel a signed resignation, sworn to or affirmed under oath and notarized, that:

(1) includes disciplinary counsel's statement of the alleged misconduct and either an admission of that misconduct or a statement that while not admitting the misconduct the respondent agrees that the Association could prove by a clear preponderance of the evidence that the respondent committed violations sufficient to result in respondent's disbarment;

(2) affirmatively acknowledges that the resignation is permanent including the statement:

"I understand that my resignation is permanent and that any future application by me for reinstatement as a member of the Washington State Bar Association is currently barred. If the Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by

one who has been disbarred for ethical misconduct, and that, if I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this resignation was based.”;

(3) assures that the respondent will:

(A) notify all other jurisdictions in which the respondent is or has been admitted to practice law of the resignation in lieu of disbarment;

(B) seek to resign permanently from the practice of law in any other jurisdiction in which the respondent is admitted; and

(C) provide disciplinary counsel with copies of any of these notifications and any responses;

(4) assures that the respondent will:

(A) notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license that is predicated on the respondent’s admission to practice law of the resignation in lieu of disbarment;

(B) seek to resign permanently from any such license; and

(C) provide disciplinary counsel with copies of any of these notifications and any responses;

(5) states that when applying for any employment or license the respondent agrees to disclose the resignation in lieu of disbarment in response to any question regarding disciplinary action or the status of the respondent’s license to practice law;

(6) states that the respondent agrees to pay any restitution or additional costs and expenses ordered by the review committee, and attaches payment for costs as described in section (f) below, or states that the respondent will execute a confession of judgment or deed of trust as described in section (f); and

(7) states that when the resignation becomes effective, the respondent will be subject to all restrictions that apply to a disbarred lawyer.

(c) Public Filing. Upon receipt of a resignation meeting the requirements set forth above, and any executed confession of judgment or deed of trust required under section (f), disciplinary counsel promptly causes it to be filed with the Clerk as a public and permanent record of the Association.

(d) Effect. A resignation under this rule is effective upon its filing with the Clerk. All disciplinary proceedings against the respondent terminate except disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances to create a record of the respondent’s actions. The Association immediately notifies the Supreme Court of a resignation under this rule and the respondent’s name is forthwith stricken from the roll of lawyers. Upon filing of the resignation, the resigned respondent must comply with the same duties as a disbarred lawyer under title 14 and comply with all restrictions that apply to a disbarred lawyer. Notice is given of the resignation in lieu of disbarment under rule 3.5.

(e) Resignation is Permanent. Resignation under this rule is permanent. A respondent who has resigned under this rule will never be eligible to apply and will not be considered for admission or reinstatement to the practice of law nor will the respondent be eligible for admission for any limited practice of law.

(f) Costs and Expenses.

(A) If a respondent resigns under this rule, the expenses under rule 13.9(c) are $1,000 for any proceedings for which an answer was not due when the respondent notified disciplinary counsel of the respondent's intent to resign under section (b). With the resignation, the respondent must pay this $1,000 expense, plus all actual costs for which disciplinary counsel provides documentation, up to an additional $1,000. If the respondent demonstrates inability to pay these costs and expenses, instead of paying this amount, the respondent must execute, in disciplinary counsel's discretion, a confession of judgment or a deed of trust for that amount. Disciplinary counsel may file a claim under section (g) for costs not covered by the payment, confession of judgment, or deed of trust.

(B) If at the time respondent serves the notice of intent to resign, an additional proceeding is pending against the respondent for which an answer has been filed or is due, disciplinary counsel may also file a claim under section (g) for costs and expenses for that proceeding.

(g) Review of Costs, Expenses, and Restitution. Any claims for restitution or for costs and expenses not resolved by agreement between disciplinary counsel and the respondent may be submitted at any time, including after the resignation, to a review committee in writing for the determination of appropriate restitution or costs and expenses. The Lawyers' Fund for Client Protection may request review including a determination by the review committee of whether any funds were obtained by the respondent by dishonesty of, or failure to account for money or property entrusted to, the respondent in connection with the respondent's practice of law or while acting as a fiduciary in a matter related to the respondent's practice of law. The review committee's order is not subject to further review and is the final assessment of restitution or costs and expenses for the purposes of rule 13.9 and may be enforced as any other order for restitution or costs and expenses. The record before the review committee and the review committee's order is public information under rule 3.1(b).

[Adopted effective October 1, 2002.]

ELC 10.1
GENERAL PROCEDURE

(a) Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated, apply directly. A party may not move for summary judgment, but either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding. Motions for judgment on the pleadings and motions to dismiss based upon the pleadings are available only to the extent permitted in rule 10.10.

(b) Meaning of Terms in Civil Rules. In applying the civil rules to proceedings under these rules, terms have the following meanings:

(1) "Court" or "judge" means the hearing officer or hearing panel or its chair, as appropriate; and

(2) "Parties" means the respondent lawyer and disciplinary counsel.

(c) Hearing Officer Authority. In addition to the powers specifically provided in these rules, the hearing officer may make any ruling that appears necessary and appropriate to insure a fair and orderly proceeding.

[Adopted effective October 1, 2002.]

ELC 10.2
HEARING OFFICER OR PANEL

(a) Assignment.

(1) Hearing Officer. The chief hearing officer ordinarily assigns a single hearing officer, from those eligible under rule 2.5, to hear a matter ordered to hearing.

(2) Hearing Panel. On either party's motion, or when otherwise deemed advisable, the chief hearing officer may assign a hearing panel. In determining whether to assign a hearing panel, the chief hearing officer considers whether public interest in the proceeding makes a panel advisable and whether a nonlawyer on a hearing panel could contribute to the fairness, or the perception of fairness, in the process and the outcome. When a panel is assigned, the chief hearing officer designates one lawyer member as panel chair. The chief hearing officer's ruling on assigning a hearing panel is not subject to interim review. The chief hearing officer makes an assignment to fill any hearing officer or panel member vacancy.

(b) Disqualification and Removal.

(1) Removal Without Cause. Either party may have an assigned hearing officer or hearing panel member removed, without establishing cause for the removal, by filing a written request with the chief hearing officer within ten days of service on the moving party of that officer or panel member's assignment. A party may only once request removal without cause in any proceeding.

(2) Disqualification for Cause. Either party may seek to disqualify any assigned hearing officer or hearing panel member for good cause. A motion under this subsection must be filed promptly after the party knows, or in the exercise of due diligence should have known, of the basis for the disqualification.

(3) Removal. The chief hearing officer decides all requests for removal and disqualification motions, except the Chair decides a request to remove or disqualify the chief hearing officer. The decision of the chief hearing officer or Chair on a request for removal or a motion to disqualify is not subject to interim review. Upon removal or disqualification of an assigned hearing officer or hearing panel member, the chief hearing officer assigns a replacement.

[Adopted effective October 1, 2002.]

ELC 10.3
COMMENCEMENT OF PROCEEDINGS

(a) Formal Complaint.

(1) Filing. After a matter is ordered to hearing, disciplinary counsel files a formal complaint with the Clerk.

(2) Service. After the formal complaint is filed, it must be personally served on the respondent lawyer, with a notice to answer.

(3) Content. The formal complaint must state the respondent's acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct. Disciplinary counsel must sign the formal complaint, but it need not be verified.

(4) Prior Discipline. Prior disciplinary action against the respondent may be described in a separate count of the formal complaint if the respondent is charged with conduct demonstrating unfitness to practice law.

(b) Filing Commences Proceedings. A disciplinary proceeding commences when the formal complaint is filed.

(c) Joinder. The body ordering a hearing on alleged misconduct or the hearing officer or panel may in its discretion consolidate for hearing two or more charges against the same respondent, or may join charges against two or more respondents in one formal complaint.

[Adopted effective October 1, 2002.]

ELC 10.4
NOTICE TO ANSWER

(a) Content. The notice to answer must be substantially in the following form:

BEFORE THE DISCIPLINARY BOARD OF THE

WASHINGTON STATE BAR ASSOCIATION

In re	)	NOTICE TO ANSWER
	)	NOTICE OF HEARING OFFICER [OR PANEL]
_____,	)	NOTICE OF DEFAULT PROCEDURE
Lawyer.	)	

To: The above named lawyer:

A formal complaint has been filed against you, a copy of which is served on you with this notice. You are notified that you must file your answer to the complaint within 20 days of the date of service on you, by filing the original of your answer with the Clerk to the Disciplinary Board of the Washington State Bar Association, [insert address] and by serving one copy [on the hearing officer] [on each member of the hearing panel] if one has been assigned and one copy on disciplinary counsel at the address[es] given below. Failure to file an answer may result in the imposition of a disciplinary sanction against you and the entry of an order of default under rule 10.6 of the Rules for Enforcement of Lawyer Conduct.

Notice of default procedure: Your default may be entered for failure to file a written answer to this formal complaint within 20 days of service as required by rule 10.6 of the Rules for Enforcement of Lawyer Conduct. The entry of an order of default may result in the charges of misconduct in the formal complaint being admitted and discipline being imposed or recommended based on the admitted charges of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of

default is vacated on motion timely made under rule 10.6(c) of the Rules for Enforcement of Lawyer Conduct. The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by rule 10.6(b)(2).

The [hearing officer] [hearing panel] assigned to this proceeding is: [insert name, address, and telephone number of hearing officer, or name, address, and telephone number of each hearing panel member with an indication of the chair of the panel].

Dated this _____ day of _____, 20___.

WASHINGTON STATE BAR ASSOCIATION

By

_____

Disciplinary Counsel, Bar No.

Address:

_____

Telephone:

_____

(b) Notice When Hearing Officer or Panel Not Assigned. If no hearing officer or panel has been assigned when a formal complaint is served, disciplinary counsel serves the formal complaint and a notice to answer as in section (a), but without reference to the hearing officer or panel.

[Adopted effective October 1, 2002.]

ELC 10.5
ANSWER

(a) Time to Answer. Within 20 days of service of the formal complaint and notice to answer, the respondent lawyer must file and serve an answer. Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6. The filing of a motion to dismiss for failure to state a claim stays the time for filing an answer during the pendency of the motion.

(b) Content. The answer must contain:

(1) a specific denial or admission of each fact or claim asserted in the formal complaint in accordance with CR 8(b);

(2) a statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition; and

(3) an address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.

(c) Filing and Service. The answer must be filed and served under rules 4.1 and 4.2. If a hearing panel has been assigned to hear a matter, the respondent must serve each member with a copy of the answer.

[Adopted effective October 1, 2002.]

ELC 10.6
DEFAULT PROCEEDINGS

(a) Entry of Default.

(1) Timing. If a respondent lawyer, after being served with a notice to answer as provided in rule 10.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, disciplinary counsel may serve the respondent with a written motion for an order of default.

(2) Motion. Disciplinary counsel must serve the respondent with a written motion for an order of default and a copy of this rule at least five days before entry of the order of default. The motion for an order of default must include the following:

(A) the dates of filing and service of the notice to answer, formal complaint, and any amendments to the complaint; and

(B) disciplinary counsel's statement that the respondent has not timely filed an answer as required by rule 10.5 and that disciplinary counsel seeks an order of default under this rule.

(3) Entry of Order of Default. If the respondent fails to file a written answer with the Clerk within five days of service of the motion for entry of an order of default, the hearing officer, or if no hearing officer or panel has been assigned, the chief hearing officer, on proof of proper service of the motion, enters an order finding the respondent in default.

(4) Effect of Order of Default. Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the respondent may not participate further in the proceedings unless the order of default is vacated under this rule.

(b) Proceedings After Entry of an Order of Default.

(1) Service. The Clerk serves the order of default and a copy of this rule under rule 4.2(b).

(2) No Further Notices. After entry of an order of default, no further notices must be served on the respondent except for copies of the decisions of the hearing officer or hearing panel and the Board.

(3) Disciplinary Proceeding. Within 60 days of the filing of the order of default, the hearing officer must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer or panel, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. Disciplinary counsel may present additional evidence including, but not limited to, requests for admission under rule 10.11(b), and depositions, affidavits, and declarations regardless of the witness's availability.

(c) Setting Aside Default.

(1) Motion To Vacate Order of Default. A respondent may move to vacate the order of default and any decision of the hearing officer or panel or Board arising from the default on the following grounds:

(A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;

(B) erroneous proceedings against a respondent who was, at the time of the default, incapable of conducting a defense;

(C) newly discovered evidence that by due diligence could not have been previously discovered;

(D) fraud, misrepresentation, or other misconduct of an adverse party;

(E) the order of default is void;

(F) unavoidable casualty or misfortune preventing the respondent from defending; or

(G) any other reason justifying relief from the operation of the default.

(2) Time. The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the respondent's motion is based on allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

(3) Burden of Proof. The respondent bears the burden of proving the grounds for setting aside the default. If the respondent proves that the default was entered as a result of a disability which made the respondent incapable of conducting a defense, the default must be set aside.

(4) Service and Contents of Motion. The motion must be filed and served under rules 4.1 and 4.2 and be accompanied by a copy of respondent's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the respondent's asserted defenses and any facts that respondent asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

(A) the date on which the respondent first learned of the entry of the order of default;

(B) the grounds for setting aside the order of default; and

(C) an offer of proof of the facts that the respondent expects to establish if the order of default is vacated.

(5) Response to Motion. Within ten days of filing and service of the motion to vacate, disciplinary counsel may file and serve a written response.

(6) Decision. The hearing officer or panel decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chief hearing officer assigns a hearing officer or panel to decide the motion. Pending a ruling on the motion, the hearing officer or panel may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer or panel has discretion to order appropriate conditions.

(7) Appeal of Denial of Motion. A respondent may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer or panel's decision. The respondent must file the notice of appeal within ten days of service on the respondent of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed 30 days. In granting

a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

(8) Decision To Vacate Is Not Subject to Interim Review. An order setting aside an order of default is not subject to interim review.

(d) Order of Default Not Authorized in Certain Proceedings. The default procedure in this rule does not apply to a proceeding to inquire into a lawyer's capacity to practice law under title 8 except as provided in that title.

[Adopted effective October 1, 2002.]

ELC 10.7
AMENDMENT OF FORMAL COMPLAINT

(a) Right To Amend. Disciplinary counsel may, without review committee authorization, amend a formal complaint at any time to add facts or charges that relate to matters in the formal complaint or to the respondent lawyer’s conduct regarding the pending proceedings.

(b) Amendment with Authorization. Disciplinary counsel must seek review committee authorization for amendments other than those under section (a). The review committee may authorize the amendment or may require that the additional facts or charges be the subject of a separate formal complaint. The Chair, with the consent of the respondent, and after consultation with the hearing officer on the previously filed matter, may consolidate the hearing on the separate formal complaint with the hearing on the other pending formal complaint against the respondent.

(c) Service and Answer. Disciplinary counsel serves an amendment to a formal complaint on the respondent as provided in rule 4.1 but need not serve a Notice to Answer with the amendment. Rule 10.5 governs the answer to an amendment except that any part of a previous answer may be incorporated by reference.

[Adopted effective October 1, 2002.]

ELC
10.8 MOTIONS

(a) Filing and Service. Motions to the hearing officer, except motions which may be made ex parte or motions at hearing, must be in writing and filed and served as required by rules 4.1 and 4.2.

(b) Response. The opposing party has five days from service of a motion to respond, unless the time is shortened by the hearing officer for good cause. A request to shorten time for response to a motion may be made ex parte.

(c) Consideration of Motion. Upon expiration of the time for response, the hearing officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by conference telephone call.

(d) Ruling. A ruling on a written motion must be in writing and filed with the Clerk.

(e) Minor Matters. Alternatively, motions on minor matters

may be made by letter to the hearing officer, with a copy to the opposing party and to the Clerk. The provisions of sections (b) and (c) apply to these motions. A ruling on such motion may also be by letter to each party with a copy to the Clerk.

(f) Chief Hearing Officer Authority. Before the assignment of a hearing officer or panel, the chief hearing officer may rule on any prehearing motion.

[Adopted effective October 1, 2002.]

ELC 10.9
INTERIM REVIEW

Unless these rules provide otherwise, the Board may review any interim ruling on request for review by either party, if the Chair determines that review is necessary and appropriate and will serve the ends of justice.

[Adopted effective October 1, 2002.]

ELC 10.10
PREHEARING DISPOSITIVE MOTIONS

(a) Respondent Motion. A respondent lawyer may move for dismissal of all or any portion of one or more counts of a formal complaint for failure to state a claim upon which relief can be granted.

(b) Disciplinary Counsel Motion. Disciplinary counsel may move for an order finding misconduct based on the pleadings. In ruling on this motion, the hearing officer or panel may find that all or some of the misconduct as alleged in the formal complaint is established, but will determine the sanction after a hearing.

(c) Time for Motion. A motion under this rule must be filed within 30 days of the filing of the answer to a formal complaint or amended formal complaint. A respondent may, within the time provided for filing an answer, instead file a motion under this rule. If the motion does not result in the dismissal of the entire formal complaint, the respondent must file and serve an answer to the remaining allegations within ten days of service of the ruling on the motion.

(d) Procedure. Rule 10.8 and CR 12 apply to motions under this rule. No factual materials outside the answer and complaint may be presented. If the motion results in dismissal of part but not all of a formal complaint, the Board must hear an interlocutory appeal of the order by either party. The appeal must be filed within 15 days of service of the order.

[Adopted effective October 1, 2002.]

ELC 10.11
DISCOVERY AND PREHEARING PROCEDURES

(a) General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.

(b) Requests for Admission. After a formal complaint is filed, the parties may request admissions under CR 36. Under appropriate circumstances, the hearing officer may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(c) Other Discovery. After a formal complaint is filed, the parties have the right to other discovery under the Superior Court Civil Rules, including under CR 27-31 and 33 -35, only on motion and under terms and limitations the hearing officer deems just or on the parties' stipulation.

(d) Limitations on Discovery. The hearing officer may exercise discretion in imposing terms or limitations on the exercise of discovery to assure an expeditious, economical, and fair proceeding, considering all relevant factors including necessity and unavailability by other means, the nature and complexity of the case, seriousness of charges, the formal and informal discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise.

(e) Deposition Procedure.

(1) Subpoenas for depositions may be issued under CR 45. Subpoenas may be enforced under rule 4.7.

(2) For a deposition outside Washington State, a commission need not issue, but a copy of the order of the chief hearing officer or hearing officer, certified by the officer, is sufficient to authorize the deposition.

(f) CR 16 Orders. The hearing officer may enter orders under CR 16.

(g) Duty to Cooperate. A respondent lawyer who has been served with a formal complaint must respond to discovery requests and comply with all lawful orders made by the hearing officer. The hearing officer or panel may draw adverse inferences as appear warranted by the failure of either the Association or the respondent to respond to discovery.

[Adopted effective October 1, 2002.]

ELC 10.12
SCHEDULING HEARING

(a) Where Held. All disciplinary hearings must be held in Washington State, unless the respondent lawyer is not a resident of the state, or cannot be found in the state.

(b) Scheduling of Hearing. If possible, the parties should arrange a date, time, and place for the hearing by agreement among themselves and the hearing officer or panel members. Alternatively, at any time after the respondent has filed an answer to the formal complaint, or after the time to file the answer has expired, either party may move for an order setting a date, time, and place for the hearing. Rule 10.8 applies to this motion. The motion must state:

- the requested date or dates for the hearing;
- other dates that are available to the requesting party;
- the expected duration of the hearing;
- discovery and anything else that must be completed before the hearing; and
- the requested time and place for the hearing.

A response to the motion must contain the same information.

(c) Scheduling Order. The hearing officer must enter an order setting the date and place of the hearing. This order may include any prehearing deadlines the hearing officer deems required by the complexity of the case, and may be in the following form with the following timelines:

IT IS ORDERED that the hearing is set and the parties must comply with prehearing deadlines as follows:

1. Witnesses. A list of intended witnesses, including addresses and phone numbers, must be filed and served by [Hearing Date (H)-8 weeks].

2. Discovery. Discovery cut-off is [H-6 weeks].

3. Motions. Prehearing motions, other than motions to bifurcate, must be served by [H-4 weeks]. An exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing officer unless the motion concerns the exhibit's admissibility. The hearing officer will advise counsel whether oral argument is necessary, and, if so, the date and time, and whether it will be heard by telephone. (Rule 10.15 provides the deadline for a motion to bifurcate.)

4. Exhibits. A list of proposed exhibits must be filed and served by [H-3 weeks].

5. Service of Exhibits/Summary. Copies of proposed exhibits and a summary of the expected testimony of each witness must be served on the opposing counsel by [H-2 weeks].

6. Objections. Objections to proposed exhibits, including grounds, must be exchanged by [H-1 week].

7. Briefs. Any hearing brief must be served and filed by [H-1 week]. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the hearing officer before the hearing.

8. Hearing. The hearing is set for [H] and each day thereafter until recessed by the hearing officer, at [location].

(d) Motion for Hearing Within 120 Days. A respondent's motion under section (b) for a hearing within 120 days must be granted, unless disciplinary counsel shows good cause for setting the hearing at a later date.

(e) Notice. Service of a copy of an order or ruling of the hearing officer setting a date, time, and place for the hearing constitutes notice of the hearing. The respondent must be given at least ten days notice of the hearing absent consent.

(f) Continuance. Either party may move for a continuance of the hearing date. The hearing officer has discretion to grant the motion for good cause shown.

[Adopted effective October 1, 2002.]

ELC 10.13
DISCIPLINARY HEARING

(a) Representation. The Association is represented at the hearing by disciplinary counsel. The respondent lawyer may be represented by counsel.

(b) Respondent Must Attend. A respondent given notice of a hearing must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. If, after proper notice, the respondent fails to attend the hearing, the hearing officer or panel:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and

(2) must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:

(A) the facts stated are within the witness's personal knowledge;

(B) the facts are set forth with particularity; and

(C) it shows affirmatively that the witness could testify competently to the stated facts.

(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

(d) Witnesses. Except as provided in subsection (b)(2) and rule 10.6, witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by CR 32. Testimony must be recorded by a court reporter or, if allowed by the hearing officer, by tape recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(e) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this rule and with all lawful orders made by the hearing officer under this rule. Subpoenas may be enforced under rule 4.7. The hearing officer or panel may additionally draw adverse inferences as appear warranted by the respondent's failure to respond.

(f) Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the hearing officer or panel files a decision.

[Adopted effective October 1, 2002.]

ELC 10.14
EVIDENCE AND BURDEN OF PROOF

(a) Proceedings Not Civil or Criminal. Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis hearings to determine if a lawyer's conduct should have an impact on his or her license to practice law.

(b) Burden of Proof. Disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a formal complaint charges a respondent lawyer with an act of

misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.

(d) Rules of Evidence. Consistent with section (a) of this rule, the following rules of evidence apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if in the hearing officer's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(2) if not inconsistent with subsection (1), the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings;

(3) documents may be admitted in the form of copies or excerpts, or by incorporation by reference;

(4) Official Notice.

(A) official notice may be taken of:

(i) any judicially cognizable facts;

(ii) technical or scientific facts within the hearing officer's or panel's specialized knowledge; and

(iii) codes or standards adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association.

(B) the parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material noticed and the sources thereof, including any staff memoranda and data, and they shall have an opportunity to contest the facts and material noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(e) APA as Guidance. The evidence standards in this rule are based on the evidence provisions of the Washington Administrative Procedures Act, which, when not inconsistent with these standards, should be looked to for guidance. "Shall" has the meaning in this rule ascribed to it in the APA.

[Adopted effective October 1, 2002.]

ELC 10.15
BIFURCATED HEARINGS

(a) When Allowed. Upon written motion filed no later than 60 days before the scheduled hearing, either party may request that the disciplinary proceeding be bifurcated. The hearing officer or panel must weigh the reasons for bifurcation against any increased cost and delay, inconvenience to participants, duplication of evidence, and any other factors, and may grant the motion only if it appears necessary to insure a fair and orderly hearing because the respondent has a record of prior disciplinary sanction or because either party would suffer significant prejudice or harm.

(b) Procedure.

(1) Violation Hearing.

(A) A bifurcated proceeding begins with an initial hearing to make factual determinations and legal conclusions as to the violations charged, including the mental state necessary for the violations. During this stage of the proceedings, evidence of a prior disciplinary record is not admissible to prove the respondent's character or to impeach the respondent's credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) At the conclusion of that hearing, the hearing officer or panel files findings and conclusions.

(i) If no violation is found, the proceedings are concluded, the findings and conclusions are the decision of the hearing officer or panel, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under rule 10.16(c), or after ruling on that motion, the findings and conclusions as to those violations are not subject to reconsideration by the hearing officer.

(2) Sanction Hearing. If any violation is found, a second hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings and conclusions as to the violations. At the conclusion of the sanction hearing, the hearing officer or panel files findings and conclusions as to a sanction recommendation, that, together with the previously filed findings and conclusions, is the decision of the hearing officer or panel.

(3) Timing. If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing officer must set a date and place for the sanction hearing. Absent extraordinary circumstances, the sanction hearing should be held no later than 45 days after the anticipated last day of the violation hearing.

[Adopted effective October 1, 2002.]

ELC 10.16
DECISION OF HEARING OFFICER OR PANEL

(a) Decision. Within 20 days after the proceedings are concluded, unless extended by agreement, the hearing officer should file with the Clerk a decision in the form of findings of fact, conclusions of law, and recommendation.

(b) Preparation of Findings. The hearing officer or hearing panel write their own findings of fact, conclusions of law, and recommendations. At the request of the hearing officer, or without a request, either party may submit proposed findings, conclusions, and recommendation.

(c) Amendment.

(1) Timing of Motion. Either party may move to

modify, amend, or correct the decision as follows:

(A) In a proceeding not bifurcated, within ten days of service of the decision on the respondent lawyer;

(B) In a bifurcated proceeding, within five days of service of:

(i) the violation findings of fact and conclusions of law; or

(ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings or conclusions.

(C) If a hearing panel member dissents from a decision of the majority, the five or ten day period does not begin until the written dissent is filed or the time to file a dissent has expired, whichever is sooner.

(2) Procedure. Rule 10.8 governs this motion, except that all members of a hearing panel must be served with the motion and any response and participate in a decision on the motion. A panel's deliberation may be conducted through telephone conference call. The hearing officer or panel should rule on the motion within 15 days after the filing of a timely response or after the period to file a response under rule 10.8(b) has expired. The ruling may deny the motion or may amend, modify, or correct the decision.

(3) Effect of Failure To Move. Failure to move for modification, correction, or amendment does not affect any appeal to the Board or review by the Supreme Court.

(d) Dissent of Panel Member. Any member of a hearing panel who dissents from the decision of the majority of the panel should file a dissent, which may consist of alternative findings, conclusions, or recommendation. A dissent should be filed within ten days of the filing of the majority's decision and becomes part of the record of the proceedings.

(e) Panel Members Unable To Agree. If no two panel members are able to agree on a decision, each panel member files findings, conclusions, and a recommendation, and the Board reviews the matter whether or not an appeal is filed.

(f) When Final. If a hearing officer or panel recommends reprimand or an admonition, or recommends dismissal of the charges, the recommendation becomes the final decision if neither party files an appeal and if the Chair does not refer the matter to the Board for consideration within the time permitted by rule 11.2(b)(3). If the Chair refers the matter to the Board for consideration of a sua sponte review, the decision is final upon entry of an order dismissing sua sponte review under rule 11.3 or upon other Board decision under rule 11.12(g).

[Adopted effective October 1, 2002.]

ELC 11.1
SCOPE OF TITLE

This title provides the procedure for Board review following a hearing officer or panel's findings of fact, conclusions of law, and recommendation. It does not apply to Board review of interim rulings under rule 10.9.

[Adopted effective October 1, 2002.]

ELC 11.2
DECISIONS SUBJECT TO BOARD REVIEW

(a) Decision. For purposes of this title, "Decision" means the hearing officer or panel's findings of fact, conclusions of law, and recommendation, provided that if either party properly files a motion to amend under rule 10.16(c), the "Decision" includes the ruling on the motion, and becomes subject to Board review only upon the ruling on the motion.

(b) Review of Decisions. The Board reviews the following Decisions:

(1) those recommending suspension or disbarment;

(2) those in which no two members of a hearing panel are able to agree on a Decision; and

(3) all others if within 15 days of service of the Decision on the respondent:

(A) either party files a notice of appeal; or

(B) the Chair files a notice of referral for sua sponte consideration of the Decision.

[Adopted effective October 1, 2002.]

ELC 11.3
SUA SPONTE REVIEW

(a) Procedure. Sua sponte review commences when the Chair files a notice of referral under rule 11.2(b)(3)(B). Upon this filing, the Chair causes a copy to be served on the parties and schedules the matter for consideration by the Board. On consideration, the Board either issues an order for sua sponte review setting forth the issues to be reviewed or dismisses the sua sponte review. If the Board issues an order for sua sponte review, the procedures of rule 11.9(e) apply unless otherwise modified by the order, except either party may raise any issue for Board review.

(b) Standards. The Board uses sua sponte review only in extraordinary circumstances to prevent substantial injustice or to correct a clear error. Sua sponte review uses the same standards of review as other cases.

[Adopted effective October 1, 2002.]

ELC 11.4
TRANSCRIPT OF HEARING

(a) Ordering Transcript. A hearing transcript or partial transcript may be ordered at any time by the hearing officer or panel, respondent lawyer, disciplinary counsel, or the Board. Disciplinary counsel must order the entire transcript if the hearing officer or panel recommends suspension or disbarment or if no two panel members can agree on a Decision. If a notice of appeal is filed under rule 11.2(b)(3)(A), disciplinary counsel must order the entire transcript unless the parties agree that no

transcript or only a partial transcript is necessary for review. For sua sponte review, the Chair determines the procedure for ordering the transcript if not already ordered.

(b) Filing and Service. The original of the transcript is filed with the Clerk. Disciplinary counsel must cause a copy of the transcript to be served on the respondent except if the respondent ordered the transcript.

(c) Proposed Corrections. Within ten days of service of a copy of the transcript on the respondent, or within ten days of filing the transcript if the respondent ordered the transcript, each party may file any proposed corrections to the transcript. Each party has five days after service of the opposing party's proposed corrections to file objections to those proposed corrections.

(d) Settlement of Transcript. If either party files objections to any proposed correction under section (c), the hearing officer, upon review of the proposed corrections and objections, enters an order settling the transcript. Otherwise, the transcript is deemed settled and any proposed corrections deemed incorporated in the transcript.

[Adopted effective October 1, 2002.]

ELC 11.5
RECORD ON REVIEW

(a) Generally. The record on review consists of:

(1) any hearing transcript or partial transcript; and

(2) bar file documents and exhibits designated by the parties.

(b) References to the Record. Briefs filed under rules 11.8 and 11.9 must specifically refer to the record if available, using the designations TR for transcript of hearing, EX for exhibits, and BF for bar file documents.

(c) Avoid Duplication. Material appearing in one part of the record on review should not be duplicated in another part of the record on review.

(d) No Additional Evidence. Evidence not presented to the hearing officer or panel must not be presented to the Board.

[Adopted effective October 1, 2002.]

ELC 11.6
DESIGNATION OF BAR FILE DOCUMENTS AND EXHIBITS

The parties designate bar file documents and exhibits for Board consideration under the procedure of RAP 9.6 with the following adaptations and modifications:

(a) Bar File Documents. The bar file documents are considered the clerk's papers.

(b) Disciplinary Board and Clerk. The Disciplinary Board is considered the appellate court and the Clerk to the Disciplinary Board is considered the trial court clerk.

(c) Time for Designation.

(1) Review of Suspension or Disbarment Recommendation. When review is under rule 11.2(b)(1), the respondent lawyer must file and serve the respondent's designation of bar file documents and exhibits within 30 days of service of the Decision.

(2) Review Not Involving Suspension or Disbarment Recommendation. When review is under rule 11.2(b)(3)(A), the party seeking review must file and serve that party's designation of bar file documents and exhibits within 15 days of filing the notice of appeal. When review is under rule 11.2(b)(2) or 11.2(b)(3)(B), the respondent is considered the party seeking review for designating bar file documents and exhibits.

(d) Hearing Officer Recommendation. The bar file documents must include the hearing officer or panel's recommendation.

[Adopted effective October 1, 2002.]

ELC 11.7
PREPARATION OF BAR FILE DOCUMENTS AND EXHIBITS

(a) Preparation. The Clerk prepares the bar file documents and exhibits in the format required by RAP 9.7(a) & (b), and distributes them to the Board. The Clerk provides the parties with a copy of the index of the bar file documents and the cover sheet listing the exhibits.

(b) Costs. Costs for preparing bar file documents and exhibits may be assessed as costs under rule 13.9(b)(9).

[Adopted effective October 1, 2002.]

ELC 11.8
BRIEFS FOR REVIEWS INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION

(a) Caption of Briefs. Parties should caption their briefs as follows:

[Name of Party] Brief [in Support of/in Opposition to] Hearing [Officer's] [Panel's] Decision

[Name of Party] Reply Brief

(b) Briefs in Support or Opposition. In a matter before the Board under rule 11.2(b)(1), each party may file a brief in support of or in opposition to the Decision, or any part of it.

(c) Time for Filing Briefs. Briefs, if any, must be filed as follows:

(1) The respondent lawyer must file a brief within 20 days of service on the respondent of the later of:

(A) a copy of the hearing transcript; or

(B) the Decision.

(2) Disciplinary counsel must file a brief within 15 days of service on disciplinary counsel of the respondent's brief, or, if no brief is filed by the respondent, within 15 days of the expiration of the

period for the respondent to file a brief.

(3) The respondent may file a reply to disciplinary counsel's brief within ten days of service of that brief on the respondent.

[Adopted effective October 1, 2002.]

ELC 11.9
BRIEFS FOR REVIEWS NOT INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION

(a) Caption of Briefs. The parties should caption briefs as follows:

[Name of Party] Brief in Opposition to Hearing [Officer's] [Panel's] Decision
[Name of Party] Response
[Name of Party] Reply

(b) Brief in Opposition.

(1) The party seeking review must file a brief in opposition to the Decision within 20 days of the later of:

(A) service on the respondent lawyer of a copy of the transcript, unless the parties have agreed that no transcript is necessary; or

(B) filing of the notice of appeal.

(2) Failure to file a brief within the required period constitutes an abandonment of the appeal.

(c) Response. The opposing party has 15 days from service of the statement of the party seeking review to file a brief responding to the issues raised on appeal.

(d) Reply. The party seeking review may file a reply to the response within ten days of service of the response.

(e) Procedure when Both Parties Seek Review or When No Two Panel Members Can Agree. When both parties file notices of appeal under rule 11.2(b)(3)(A) or when no two panel members are able to agree on a Decision, the respondent is considered the party seeking review and disciplinary counsel is considered the opposing party. In that case, disciplinary counsel's response may raise any issue for Board review, and the respondent has an additional five days to file the reply permitted by section (d).

[Adopted effective October 1, 2002.]

ELC 11.10
SUPPLEMENTING RECORD ON REVIEW

The record on review may be supplemented under the procedures of RAP 9.6 except that leave to supplement is freely granted. The Board may direct that the record be supplemented with any portion of the record before the hearing officer, including any bar file documents and exhibits.

[Adopted effective October 1, 2002.]

ELC 11.11
REQUEST FOR ADDITIONAL PROCEEDINGS

In any brief permitted in rules 11.8 and 11.9, either party may request that an additional hearing be held before the hearing officer or panel to take additional evidence based on newly discovered evidence. A request for an additional hearing must be supported by affidavit describing in detail the additional evidence sought to be admitted and any reasons why it was not presented at the previous hearing. The Board may grant or deny the request in its discretion.

[Adopted effective October 1, 2002.]

ELC 11.12
DECISION OF BOARD

(a) Basis for Review. Board review is based on the hearing officer or panel's Decision, any hearing panel member's dissent, the parties' briefs filed under rule 11.8 or 11.9, and the record on review.

(b) Standards of Review. The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer or panel cannot be considered by the Board.

(c) Oral Argument. The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to file his or her last brief, including a response or reply, under rule 11.8 or 11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the time, place, and terms for oral argument.

(d) Action by Board. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer or panel. The Board may also direct that the hearing officer or panel hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) Order or Opinion. The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer or panel, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. A copy of the complete decision is served by the Clerk on the parties.

(f) Procedure to Amend, Modify, or Reverse if No Appeal.

(1) If the Board intends to amend, modify, or reverse the hearing officer or panel's recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.

(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.

(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.

(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request for reconsideration, the Board issues an order or opinion after reconsideration under section (e).

(g) Decision Final Unless Appealed. The Board's decision is final if neither party files a notice of appeal nor a petition for review within the time permitted by title 12 or upon the Supreme Court's denial of a petition for discretionary review.

[Adopted effective October 1, 2002.]

ELC 11.13
CHAIR MAY MODIFY REQUIREMENTS

Upon written motion filed with the Clerk by either party, for good cause shown, the Chair may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review. However, the time period for filing a notice of appeal in rule 11.2(b)(3)(A) may not be extended or altered.

[Adopted effective October 1, 2002.]

ELC 12.1
APPLICABILITY OF RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure serve as guidance for review under this title except as to matters specifically dealt with in these rules.

[Adopted effective October 1, 2002.]

ELC 12.2
METHODS OF SEEKING REVIEW

(a) Two Methods for Seeking Review of Board Decisions. The methods for seeking Supreme Court review of Board decisions entered under rule 11.12(e) are: review as a matter of right, called "appeal", and review with Court permission, called "discretionary review". Both "appeal" and "discretionary review" are called "review".

(b) Power of Court Not Affected. This rule does not affect the Court's power to review any Board decision recommending

suspension or disbarment and to exercise its inherent and exclusive jurisdiction over the lawyer discipline and disability system. The Court notifies the respondent lawyer and disciplinary counsel of the Court's intent to exercise sua sponte review within 90 days of the Court receiving notice of the decision under rule 3.5(a), rule 7.1(h), or otherwise.

[Adopted effective October 1, 2002.]

ELC 12.3
APPEAL

(a) Respondent's Right to Appeal. The respondent lawyer has the right to appeal a Board decision recommending suspension or disbarment. There is no other right of appeal.

(b) Notice of Appeal. To appeal, the respondent must file a notice of appeal with the Clerk within 15 days of service of the Board's decision on the respondent.

[Adopted effective October 1, 2002.]

ELC 12.4
DISCRETIONARY REVIEW

(a) Decisions Subject to Discretionary Review. Board decisions under rule 11.12(e) not recommending suspension or disbarment are subject to Supreme Court review only through discretionary review. The Court accepts discretionary review only if:

(1) the Board's decision is in conflict with a Supreme Court decision;

(2) a significant question of law is involved;

(3) there is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or

(4) the petition involves an issue of substantial public interest that the Court should determine.

(b) Petition for Review. Either party may seek discretionary review by filing a petition for review with the Court within 25 days of service of the Board's decision.

(c) Content of Petition; Answer; Service; Decision. A petition for review should be substantially in the form prescribed by RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in that rule to the Court of Appeals are considered references to the Board. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4(d) - (h) govern answers and replies to petitions for review and related matters including service and decision by the Court.

(d) Acceptance of Review. The Court accepts discretionary review of a Board decision by granting a petition for review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

[Adopted effective October 1, 2002.]

ELC 12.5
RECORD TO SUPREME COURT

(a) Transmittal. The Clerk should transmit the record to the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the transcript of oral argument before the Board, if any.

(b) Content. The record transmitted to the Court consists of:

(1) the notice of appeal, if any;

(2) the Board's decision;

(3) the record before the Board;

(4) the transcript of any oral argument before the Board; and

(5) any other portions of the record before the hearing officer, including any bar file documents or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within ten days of entry of an order assessing costs under rule 13.9(e), the Clerk should transmit it to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under rule 13.9(d).

(e) Additions to Record. Either party may at any time move the Court for an order directing the transmittal of additional portions of the record to the Court.

[Adopted effective October 1, 2002.]

ELC 12.6
BRIEFS

(a) Brief Required. The party seeking review must file a brief stating his or her objections to the Board's decision.

(b) Time for Filing. The brief of the party seeking review should be filed with the Supreme Court within 30 days of service under rule 12.5(c) of the list of portions of the record transmitted to the Court.

(c) Answering Brief. The answering brief of the other party should be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. A reply brief of a party seeking review should be filed with the Court within the sooner of 20 days after service of the answering brief or 14 days before oral argument. A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.

(e) Briefs When Both Parties Seek Review. When both the

respondent lawyer and disciplinary counsel seek review of a Board decision, the respondent is deemed the party seeking review for the purposes of this rule. In that case, disciplinary counsel may file a brief in reply to any response the respondent has made to the issues presented by disciplinary counsel, to be filed with the Court the sooner of 20 days after service of the respondent's reply brief or 14 days before oral argument.

(f) Form of Briefs. Briefs filed under this rule must conform as nearly as possible to the requirements of RAP 10.3 and 10.4. Bar file documents should be abbreviated BF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Clerk. The Supreme Court clerk reproduces and distributes briefs as provided in RAP 10.5.

[Adopted effective October 1, 2002.]

ELC 12.7
ARGUMENT

(a) Rules Applicable. Oral argument before the Supreme Court is conducted under title 11 of the Rules of Appellate Procedure, unless the Court directs otherwise.

(b) Priority. Disciplinary proceedings have priority and are set upon compliance with the above rules.

[Adopted effective October 1, 2002.]

ELC 12.8
EFFECTIVE DATE OF OPINION

(a) Effective when Filed. An opinion in a disciplinary proceeding takes effect when filed unless the Court specifically provides otherwise.

(b) Motion for Reconsideration. A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment unless the Court enters a stay.

[Adopted effective October 1, 2002.]

ELC 12.9
VIOLATION OF RULES

Sanctions for violation of these rules may be imposed on a party under RAP 18.9. Upon dismissal under that rule of a review sought by a respondent lawyer and expiration of the period to file objections under RAP 17.7, or upon dismissal of review by the Court if timely objections are filed, the Board's decision is final.

[Adopted effective October 1, 2002.]

ELC 13.1
SANCTIONS AND REMEDIES

Upon a finding that a lawyer has committed an act of misconduct, one or more of the following may be imposed:

(a) Sanctions.

(1) Disbarment;

(2) Suspension under rule 13.3; or

(3) Reprimand.

(b) Admonition. An admonition under rule 13.5.

(c) Remedies.

(1) Restitution;

(2) Probation;

(3) Limitation on practice;

(4) Requirement that the lawyer attend continuing legal education courses;

(5) Assessment of costs; or

(6) Other requirements consistent with the purposes of lawyer discipline.

[Adopted effective October 1, 2002.]

ELC 13.2
EFFECTIVE DATE OF SUSPENSIONS AND DISBARMENTS

Suspensions and disbarments are effective on the date set by the Supreme Court's order, which will ordinarily be seven days after the date of the order. If no date is set, the suspension or disbarment is effective on the date of the Court's order.

[Adopted effective October 1, 2002.]

ELC 13.3
SUSPENSION

(a) Term of Suspension. A suspension must be for a fixed period of time not exceeding three years.

(b) Reinstatement.

(1) After the period of suspension, the Association administratively returns the suspended respondent lawyer to the respondent's status before the suspension without further order by the Court upon:

(A) the respondent's compliance with all current

licensing requirements; and

(B) disciplinary counsel's certification that the respondent has complied with any specific conditions ordered, and has paid any costs or restitution ordered or is current with any costs or restitution payment plan.

(2) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the Chair may modify the terms of the payment plan if warranted. The Chair determines the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

[Adopted effective October 1, 2002.]

ELC 13.4
REPRIMAND

(a) Administration. The Association administers a reprimand to a respondent lawyer by written statement signed by its President.

(b) Notice and Review of Contents. The Association must serve the respondent with a copy of the proposed reprimand. Within five days of service of the proposed reprimand, the respondent may file a request for review of the content of the proposed reprimand. This request stays the administration of the reprimand. When timely requested, the Disciplinary Board reviews the proposed reprimand in light of the decision or stipulation imposing the reprimand and may take any appropriate action. The Board's action is final and not subject to further review. If no request is received, the content of the reprimand is final, and the reprimand is administered.

[Adopted Amended effective September 1, 2005]

ELC 13.5
ADMONITION

(a) By a Review Committee.

(1) A review committee may issue an admonition when investigation of a grievance shows misconduct.

(2) A respondent lawyer may protest either the review committee's or the Board's prehearing issuance of an admonition by filing a notice to that effect with the Clerk within 30 days of service of the admonition. Upon receipt of a timely protest, the admonition is rescinded, and the grievance is deemed ordered to hearing.

(b) Following a Hearing. A hearing officer or panel may recommend that a respondent receive an admonition following a hearing.

(c) By Stipulation. The parties may stipulate to an

admonition under rule 9.1.

(d) Effect. An admonition is admissible in subsequent disciplinary or disability proceedings involving the respondent. Rule 3.6(b) governs destruction of file materials relating to an investigation or hearing concluded with an admonition, including the admonition.

(e) Action on Board Review. Upon review under title 11, the Board may dismiss, issue an admonition, or impose sanctions or other remedies under rule 13.1.

(f) Signing of Admonition. The review committee chair signs an admonition issued by a review committee. The Disciplinary Board Chair or the Chair's designee signs all other admonitions.

[Adopted effective October 1, 2002.]

ELC 13.6
DISCIPLINE FOR CUMULATIVE ADMONITIONS

(a) Grounds. A lawyer may be subject to sanction or other remedy under rule 13.1 if the lawyer receives three admonitions within a five year period.

(b) Procedure. Upon being presented with evidence that a respondent lawyer has received three admonitions within a five year period, a review committee may authorize the filing of a formal complaint based solely on the provisions of this rule. A proceeding under this rule is conducted in the same manner as any disciplinary proceeding. The issues in the proceeding are whether the respondent has received three admonitions within a five year period and, if so, what sanction or other remedy should be recommended.

[Adopted effective October 1, 2002.]

ELC 13.7
RESTITUTION

(a) Restitution May Be Required. A respondent lawyer who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be ordered to make restitution to persons financially injured by the respondent's conduct.

(b) Payment of Restitution.

(1) A respondent ordered to make restitution must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if:

(A) the respondent demonstrates in writing present inability to pay restitution and

(B) disciplinary counsel consults with the persons owed restitution.

(3) A respondent may ask the Chair to review an adverse determination by disciplinary counsel of the

reasonableness of a proposed periodic payment plan for restitution. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

(c) Failure To Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

[Adopted effective October 1, 2002.]

ELC 13.8
PROBATION

(a) Conditions of Probation. A respondent lawyer who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be placed on probation for a fixed period of two years or less.

(1) Conditions of probation may include, but are not limited to requiring:

(A) alcohol or drug treatment;

(B) medical care;

(C) psychological or psychiatric care;

(D) professional office practice or management counseling; or

(E) periodic audits or reports.

(2) Upon disciplinary counsel's request, the Chair may appoint a suitable person to supervise the probation. Cooperation with a person so appointed is a condition of the probation.

(b) Failure To Comply. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.

[Adopted effective October 1, 2002.]

ELC 13.9
COSTS AND EXPENSES

(a) Assessment. The Association's costs and expenses may be assessed as provided in this rule against any respondent lawyer who is ordered sanctioned or admonished.

(b) Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Association in the complete performance of its duties under these rules, whether incurred before or after the filing of a formal complaint. Costs include, by way of illustration and not limitation:

(1) court reporter charges for attending and transcribing depositions or hearings;

(2) process server charges;

(3) necessary travel expenses of hearing officers, hearing panel members, disciplinary counsel, adjunct investigative counsel, or witnesses;

(4) expert witness charges;

(5) costs of conducting an examination of books and records or an audit under title 15;

(6) costs incurred in supervising probation imposed under rule 13.8;

(7) telephone toll charges;

(8) fees, costs, and expenses of a lawyer appointed under rule 8.2 or rule 8.3;

(9) costs of copying materials for submission to a review committee, a hearing officer or panel, or the Board; and

(10) compensation provided to hearing officers or panel members under rule 2.11.

(c) Expenses Defined. "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

(1) for an admonition that is accepted under rule 13.5(a), $750;

(2) for a matter that becomes final without review by the Board, $1,500;

(3) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of $2,000;

(4) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of $2,500; and

(5) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of $3,000.

(d) Statement of Costs and Expenses, Exceptions, and Reply.

(1) Timing. Disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:

(A) an admonition is accepted;

(B) the decision of a hearing officer or panel or the Board imposing an admonition or a sanction becomes final;

(C) a notice of appeal from a Board decision is filed and served; or

(D) the Supreme Court accepts or denies discretionary review of a Board decision.

(2) Content. A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. Disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement’s accuracy.

(3) Service. The Clerk serves a copy of the statement on the respondent.

(4) Exceptions. The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.

(5) Reply. Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

(e) Assessment. The Chair enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

(f) Review of Chair's Decision.

(1) Matters Reviewed by Court. In matters reviewed by the Supreme Court under title 12, the Chair's decision is subject to review only by the Court.

(2) All Other Matters. In all other matters, the following procedures apply:

(A) Request for Review by Board. Within 20 days of service on the respondent of the order assessing costs and expenses, either party may file a request for Board review of the order.

(B) Board Action. Upon the timely filing of a request, the Board reviews the order assessing costs and expenses, based on the Association's statement of costs and expenses and any exceptions or reply, the decision of the hearing officer or panel or of the Board, and any written statement submitted by either party within the time directed by the Chair. The Board may approve or modify the order assessing costs and expenses. The Board's decision is final when filed and not subject to further review.

(g) Assessment in Matters Reviewed by the Court. When a matter is reviewed by the Court as provided in title 12, any order assessing costs and expenses entered by the Chair under section (e) and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion by the Court imposing a sanction or admonition, costs and expenses may be assessed in favor of the Association under the procedures of RAP Title 14, except that "costs" as used in that title means any costs and expenses allowable under this rule.

(h) Assessment Discretionary. Assessment of any or all costs and expenses may be denied if it appears in the interests of justice to do so.

(i) Payment of Costs and Expenses.

(1) A respondent ordered to pay costs and expenses must do so within 30 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) The respondent must pay interest on any amount not paid within 30 days of the date the assessment is final at the maximum rate permitted under RCW 19.52.020.

(3) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(B) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board

should review the matter, the Chair directs the procedure for Board review, and the Board's decision is not subject to further review.

(j) Failure To Comply. A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

(k) Costs in Other Cases. Rule 9.1 governs costs and expenses in cases resolved by stipulation. Rule 8.6 governs assessment of costs and expenses in disability proceedings.

(l) Money Judgment for Costs and Expenses. After the assessment of costs and expenses is final, upon application by the Association, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and expenses if the respondent has failed to pay the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

[Adopted effective October 1, 2002.]

ELC 14.1
NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY

(a) Providing Client Property. A lawyer who has been suspended from the practice of law, disbarred, or transferred to disability inactive status must provide each client or the client's substituted counsel upon request with the client's assets, files, and other documents in the lawyer's possession, regardless of any possible claim of lien under RCW 60.40.

(b) Notice if Suspended for 60 Days or Less. A lawyer who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client involved in litigation or administrative proceedings, and counsel for each adverse party (or the adverse party directly if not represented by counsel), of the suspension, the reason therefor, and of the lawyer's consequent inability to act as a lawyer after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another lawyer. If the client does not substitute counsel within ten days of this notice, the lawyer must advise the court or agency of the lawyer's inability to act; and

(2) notify all other clients of the suspension, the reason therefor, and consequent inability to act during the suspension. The notice must advise the client to seek legal advice elsewhere if needed during the suspension.

(c) Notice if Otherwise Suspended or Disbarred. A lawyer who has been disbarred or suspended for more than 60 days, for nonpayment of dues, or under title 7 or APR 11 must within ten days of the effective date of the disbarment or

suspension:

(1) notify every client of the lawyer's inability to act as the client's lawyer and the reason therefor, and advise the client to seek legal advice elsewhere;

(2) advise every client involved in litigation or administrative proceedings to seek the prompt substitution of another lawyer. If the client does not substitute counsel within ten days of being notified of the lawyer's inability to act, the lawyer must advise the court or agency of the lawyer's inability to act; and

(3) notify counsel for each adverse party in pending litigation or administrative proceedings, or the adverse party directly if not represented by counsel, of the lawyer's inability to act further on the client's behalf.

(d) Notice if Transferred to Disability Inactive Status. A lawyer transferred to disability inactive status, or his or her guardian if one has been appointed, must give all notices required by section (c), except that the notices need not refer to disability.

(e) Address of Client. All notices to lawyers, adverse parties, courts, or agencies as required by sections (b), (c), or (d) must contain the client's name and last known address, unless doing so would disclose a confidence or secret of the client. If the name and address are omitted, the client must be advised that so long as his or her address remains undisclosed and no new lawyer is substituted, the client may be served by leaving papers with the clerk of the court under CR 5(b)(1) in pending superior court actions, and that comparable provisions may allow similar service in other court proceedings or administrative actions.

[Adopted effective October 1, 2002.]

ELC 14.2
LAWYER TO DISCONTINUE PRACTICE

A disbarred or suspended lawyer, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, suspension, or transfer to disability inactive status, and also must take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on him or her as a lawyer authorized to practice law. This rule does not preclude a disbarred or suspended lawyer, or a lawyer transferred to disability inactive status, from disbursing assets held by the lawyer to clients or other persons or from providing information on the facts and the lawyer's theory of a case and its status to a succeeding lawyer, provided that the suspended or disbarred lawyer not be involved in any discussion regarding matters occurring after the date of the suspension or disbarment. The lawyer must provide this information on request and without charge.

[Adopted effective October 1, 2002.]

ELC 14.3
AFFIDAVIT OF COMPLIANCE

Within 25 days of the effective date of a lawyer's disbarment, suspension, or transfer to disability inactive status, the lawyer must serve on disciplinary counsel an affidavit stating that the lawyer has fully complied with the provisions of this title. The affidavit must also provide a mailing address where communications to the lawyer may thereafter be directed. The lawyer must attach to the affidavit copies of the form letters of notification sent to the lawyer's clients and opposing counsel or parties and copies of letters to any court, together with a list of names and addresses of all clients and opposing counsel or parties to whom notices were sent. The affidavit is a confidential document except the lawyer's mailing address is treated as a change of mailing address under APR 13(b).

[Adopted effective October 1, 2002.]

ELC 14.4
LAWYER TO KEEP RECORDS OF COMPLIANCE

A lawyer who has been disbarred, suspended, or transferred to disability inactive status must maintain written records of the various steps taken by him or her under this title, so that proof of compliance will be available in any subsequent proceeding.

[Adopted effective October 1, 2002.]

ELC 15.1
AUDIT AND INVESTIGATION OF BOOKS AND RECORDS

The Board and its Chair have the following authority to examine, investigate, and audit the books and records of any lawyer to ascertain and obtain reports on whether the lawyer has been and is complying with RPC 1.15A:

(a) Random Examination. The Board may authorize examinations of the books and records of any lawyer or law firm selected at random. Only the lawyer or law firm's books and records may be examined in an examination under this section.

(b) Particular Examination. Upon receipt of information that a particular lawyer or law firm may not be in compliance with RPC 1.15A, the Chair may authorize an examination limited to the lawyer or law firm's books and records. Information may be presented to the Chair without notice to the lawyer or law firm. Disclosure of this information is subject to rules 3.1 - 3.4.

(c) Audit. After an examination under section (a) or (b), if the Chair determines that further examination is warranted, the Chair may order an appropriate audit of the lawyer's or firm's books and records, including verification of the information in those records from available sources.

[Adopted effective October 1, 2002; September 1, 2006.]

ELC 15.2
COOPERATION OF LAWYER

Any lawyer or firm who is subject to examination, investigation, or audit under rule 15.1 must cooperate with the person conducting the examination, investigation, or audit, subject only to the proper exercise of any privilege against self-incrimination, by:

(a) producing forthwith all evidence, books, records, and papers requested for the examination, investigation, or audit;

(b) furnishing forthwith any explanations required for the examination, investigation, or audit;

(c) producing written authorization, directed to any bank or depository, for the person to examine, investigate, or audit trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the lawyer in the bank or depository.

[Adopted effective October 1, 2002.]

ELC 15.3
DISCLOSURE

The examination and audit report are only available to the Board, disciplinary counsel, and the lawyer or firm examined, investigated, or audited, and to the Board of Governors on its request, unless a disciplinary proceeding is commenced in which case the disclosure provisions of title 3 apply.

[Adopted effective October 1, 2002.]

ELC 15.4.
TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) Overdraft Notification Agreement Required. To be authorized as a depository for lawyer trust accounts referred to in RPC 1.15A(i) or LPO trust accounts referred to in LPO RPC 1.12A(i), a financial institution, bank, credit union, savings bank, or savings and loan association must file with the Legal Foundation of Washington an agreement, in a form provided by the Washington State Bar Association, to report to the Washington State Bar Association if any properly payable instrument is presented against a lawyer, LPO or closing firm trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institution and cannot be canceled except on 30 days' notice in writing to the Legal Foundation of Washington. The Legal Foundation of Washington must provide copies of signed agreements and notices of cancellation to the Washington State Bar Association

(b) Overdraft Reports.

(1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:

(A) the identity of the financial institution;

(B) the identity of the (1) the lawyer or law firm, or (2) the limited practice officer or closing firm;

(C) the account number; and

(D) either:

(i) the amount of overdraft and date created; or

(ii) the amount of the returned instrument(s) and the date returned.

(2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

(c) Costs. Nothing in these rules precludes a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule, but those charges may not be a transaction cost charged against funds payable to the Legal Foundation of Washington under RPC 1.15A(i)(1) and ELC 15.7(e).

(d) Notification by Lawyer. Every lawyer who receives notification that any instrument presented against his or her trust account was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Office of Disciplinary Counsel of the Association of the information required by section (b). The lawyer must include a full explanation of the cause of the overdraft.

ELC 15.5
DECLARATION OR QUESTIONNAIRE

(a) Questionnaire. The Association annually sends each active lawyer a written declaration or questionnaire designed to determine whether the lawyer is complying with RPC 1.15A. Each active lawyer must complete, execute, and deliver to the Association this declaration or questionnaire by the date specified in the declaration or questionnaire.

(b) Noncompliance. Failure to file the declaration or questionnaire by the date specified in section (a) is grounds for discipline. This failure also subjects the lawyer who has failed to comply with this rule to a full audit of his or her books and records as provided in rule 15.1(c), upon request of disciplinary counsel to a review committee. A copy of any request made under this section must be served on the lawyer. The request must be granted on a showing that the lawyer has failed to comply with section (a) of this rule. If the lawyer should later comply, disciplinary counsel has discretion to determine whether an audit should be conducted, and if so the scope of that audit. A lawyer audited under this section is liable for all actual costs of conducting such audit, and also a charge of $100 per day spent by the auditor in conducting the audit and preparing an audit report. Costs and charges are assessed in the same manner as costs under rule 5.3(f).

[Adopted effective October 1, 2002; September 1, 2006.]

ELC 15.6
REGULATIONS

The Disciplinary Board may adopt regulations regarding the powers in this title subject to the approval of the Board of Governors and the Supreme Court.

[Adopted effective October 1, 2002.]

ELC 15.7.
TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

(a) Legal Foundation of Washington. The Legal Foundation of Washington

(Legal Foundation) was established by Order of the Supreme Court of Washington to administer distribution of Interest on Lawyer's Trust Account (IOLTA) funds to civil legal aid programs.

(1) Administrative Responsibilities. The Legal Foundation is responsible for assessing the products and services offered by financial institutions operating in the state of Washington and determining whether such institutions meet the requirements of this rule, ELC 15.4, and ELPOC 15.4. The Legal Foundation must maintain a list of financial institutions authorized to establish client trust accounts and publish the list on a website maintained by the Legal Foundation for public information. The Legal Foundation must provide a copy of the list to any person upon request.

(2) Annual Report. The Legal Foundation must prepare an annual report to the Supreme Court of Washington that summarizes the Foundation's income, grants and operating expenses, implementation of its corporate purposes, and any problems arising in the administration of the IOLTA program.

(b) Definitions. The following definitions apply to this rule:

(1) United States Government Securities. United States Government Securities are defined as direct obligations of the United States Government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States Government-Sponsored Enterprises.

(2) Daily Financial Institution Repurchase Agreement. A daily financial institution repurchase agreement must be fully collateralized by United States Government Securities and may be established only with an authorized financial institution that is deemed to be "well capitalized" under applicable regulations of the Federal Deposit Insurance Corporation and the National Credit Union Association.

(3) Money Market Funds. A money market fund is an investment company registered under the Investment Company Act of 1940, as amended, that is regulated as a money market funder under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act, and at the time of the investment, has total assets of at least five hundred million dollars ($500,000,000). A money market fund must be comprised solely of United States Government Securities or investments fully collateralized by United States Government Securities.

(c) Authorized Financial Institutions. Any bank, savings bank, credit union, savings and loan association, or other financial institution that meets the following criteria is eligible to become an authorized financial institution under this rule:

(1) is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration;

(2) is authorized by law to do business in Washington;

(3) complies with all requirements set forth in section (d) of this rule and in ELC 15.4; and

(4) if offering IOLTA accounts, complies with all requirements set forth in section (e) of this rule.

The Legal Foundation determines whether a financial institution is an authorized financial institution under this section. Upon a determination of compliance with all requirements of this rule and ELC 15.4, the Legal Foundation must list a financial institution as an authorized financial institution under section (a)(1). At any time, the Legal Foundation may request that a listed financial institution establish or certify compliance with the requirements of this rule or ELC 15.4. The Legal Foundation may remove a financial institution from the list of authorized financial institutions upon a determination that the financial institution is not in compliance.

(d) Requirements of All Trust Accounts. All trust accounts established pursuant to RPC 1.15A(i) or LPORPC 1.12A(h) must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments.

(e) IOLTA Accounts. To qualify for Legal Foundation approval as an authorized financial institution offering IOLTA accounts, in addition to meeting all other requirements set forth in this Rule, a financial institution must comply with the requirements set forth in this section.

(1) Interest Comparability. For accounts established pursuant to RPC 1.15A, authorized financial institutions must pay the highest interest rate generally available from the institutions to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available to its non-IOLTA customers, authorized financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. An authorized financial institution may satisfy these comparability requirements by selecting one of the following options:

(i) Establish the IOLTA account as the comparable interest-paying product; or

(ii) Pay the comparable interest rate on the IOLTA checking account in lieu of actually establishing the comparable interest-paying product; or

(iii) Pay a rate on IOLTA equal to 75% of the Federal Funds Targeted Rate as of the first business day of the month or IOLTA remitting period, or .75%, whichever is higher, and which rate is deemed to be already net of allowable reasonable service charges or fees.

(2) Remit Interest to Legal Foundation of Washington. Authorized financial institutions must remit the interest accruing on all IOLTA accounts, net of reasonable account fees, to the Legal Foundation monthly, on a report form prescribed by the Legal Foundation. At a minimum, the report must show details about the account, including but not limited to the name of the lawyer, law firm, LPO, or Closing Firm for whom the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the balance used to compute the interest. Interest must be calculated on the average monthly balance in the account, or as otherwise computed in accordance with applicable state and federal regulations and the institution's standard accounting practice for non-IOLTA customers. The financial institution must notify each lawyer, law firm, LPO, or Closing Firm of the amount of interest remitted to the Legal Foundation on a monthly basis on the account statement or other written report.

(3) Reasonable account fees. Reasonable account fees may only include per deposit charges, per check charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administration fee. No service charges or fees other than the allowable, reasonable fees may be assessed against the interest or dividends on an IOLTA account. Any service charges or fees other than allowable reasonable fees must be the sole responsibility of, and may be charged to, the lawyer, law firm, LPO, or Closing Firm maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account must not be deducted from interest or dividends earned on any other account or from the principal.

(4) Comparable Accounts. Subject to the requirements set forth in sections (d) and (e), an IOLTA account may be established as:

(i) A business checking account with an automated investment feature, such as a daily bank repurchase agreement or a money market fund; or

(ii) A checking account paying preferred interest rates, such as a money market or indexed rates; or

(iii) A government interest-bearing checking account such as an account used for municipal deposits; or

(iv) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, business checking account with interest; or

(v) Any other suitable interest-bearing product offered by the authorized financial institution to its non-IOLTA customers.

(5) Nothing in this rule precludes an authorized financial institution from paying an interest rate higher than described above or electing to waive any service charges or fees on IOLTA accounts.

ELC 16.1
EFFECT ON PENDING PROCEEDINGS

These rules and any subsequent amendments will apply in their entirety, on the effective date as ordered by the Supreme Court, to any pending matter or investigation that has not yet been ordered to hearing. They will apply to other pending matters except as would not be feasible or would work an injustice. The hearing officer or panel chair assigned to hear a matter, or the Chair in a matter pending before the Board, may rule on the appropriate procedure with a view to insuring a fair and orderly proceeding.

[Adopted effective October 1, 2002.]