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.]