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.]