WSBA
OFFICE OF DISCIPLINARY COUNSEL

Douglas J. Ende
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April 30, 2013

Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Re: Comment on Proposed Amendments to the Rules for Enforcement of Lawyer Conduct

Dear Justices of the Washington Supreme Court:

I oppose that portion of the proposed amendments to the Rules for Enforcement of Lawyer Conduct (ELC) that would abolish the admonition. The proposed amendments published for comment depart from both the sound recommendation of the ELC Drafting Task Force and the view of the Office of Disciplinary Counsel that the admonition be retained as a disciplinary option. Abolition of the admonition is ill advised for a number of reasons. As Chief Disciplinary Counsel of the Washington State Bar Association, I recommend that the Court depart from the proposed amendments in this respect and retain the admonition in essentially its present form.

The ELC Drafting Task Force. Pending before the Court is a proposed set of comprehensive amendments to the ELC. These proposed amendments grew out of a comprehensive review of our disciplinary rules in the wake of the 2006 *Report on the Washington Lawyer Regulation System* by the ABA Standing Committee on Professional Discipline (ABA Report). The WSBA Board of Governors Discipline Committee conducted an extensive review of the ABA Report's various recommendations.[1] At a series of meetings in 2008 and 2009 the Board of Governors took up the report of its Discipline Committee as to the recommendations made by the ABA Report.[2]

After evaluating and adopting the Discipline Committee's report, the Board of Governors

[1] *See Report of the WSBA Board of Governors Discipline Committee* (Sept. 19, 2008).

[2] It should be noted that between 2006 and 2009 when these matters were being evaluated, neither the ABA Report, nor the Board of Governors Discipline Committee, nor the full Board of Governors recommended that admonitions be abolished.

determined that "it is appropriate to analyze the impact and effectiveness of the rules [the ELC] in light of the purposes of lawyer discipline, and determine whether any modifications and improvements are warranted." To accomplish this, the Board created the ELC Drafting Task Force.[3] The Task Force was composed of individuals chosen for their knowledge and experience regarding lawyer discipline in Washington. The Task Force included a balanced cross section of discipline-system stakeholders, including the Office of Disciplinary Counsel, lawyers with experience as respondent's counsel, disciplinary hearing officers, the Chief Hearing Officer, members and staff of the Disciplinary Board, the Chair of the Disciplinary Board, the Supreme Court Clerk, Adjunct Investigative Counsel, and lawyer members.[4]

Beginning in November 2009, the ELC Drafting Task Force met on 16 occasions, with numerous subcommittee meetings occurring in between meetings of the full Task Force. Given the depth and breadth of disciplinary experience represented on the ELC Drafting Task Force, the rules were given a thorough examination. This generated much lively debate but most often resulted in the development of broadly supported consensus recommendations. In the case of admonitions, the Task Force debated whether to retain the current classification of admonitions as a public disciplinary *action* but not as a disciplinary *sanction*, or whether to classify the admonition as a sanction. The Task Force ultimately recommended keeping the distinction as it is.[5] The Task Force also debated whether to keep admonitions as a public, but not permanent, disciplinary action. The Task Force recommended keeping admonitions public, but suggested that they be made permanent. The Task Force recognized that the advent of search engines and the internet had altered the notion of public-but-impermanent discipline. Removal of an admonition notice from the WSBA website has become an uncertain and troublesome means of doing away with a record of public discipline. The Task Force ultimately concluded that it no longer makes sense to have a public but non-permanent disciplinary action. At no point in the debate at the ELC Drafting Task Force was there any discussion of the idea of abolishing admonitions or a proposal to do so.

In July 2011, the ELC Drafting Task Force submitted its comprehensive set of recommended rule amendments to the Board of Governors. The Task Force report recommended retaining the current provisions providing for admonitions as public disciplinary actions, but suggested that admonitions become a permanent part of a lawyer's disciplinary record. The question of abolishing admonitions was first raised by members of the Board of Governors at the July 2011 Board meeting. The Board's discussions of the issue are summarized in its meeting minutes, available on the WSBA website.[6] Some Board members expressed concern about the harshness of a permanent disciplinary action for less serious misconduct. Some Board members expressed

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[3] *See Charter – ELC Drafting Task Force* (July 2008) at 1.

[4] The ELC Drafting Task Force was staffed by Disciplinary Counsel Scott Busby as Reporter and Nan Sullins as AOC/Supreme Court Liaison.

[5] *See* ELC 13.1.

[6] *See* Minutes of the Board of Governors meetings of July 23, 2011, September 23, 2011, December 9, 2011, April 27, 2012, and July 13, 2013, *available at* http://www.wsba.org/About-WSBA/Governance/Board-of-Governors/Meeting-Minutes.

concern that there was little distinction between a permanent and public admonition and a permanent and public reprimand (except for the distinction that a reprimand is considered a sanction whereas an admonition is not). Some Board members expressed concern that by making admonitions permanent, use of the admonition as a restorative and rehabilitative mechanism would be impaired. The Board of Governors referred the "admonition question" back to the ELC Drafting Task Force. At its November 2011 meeting, the Task Force voted 7 to 1 to keep the admonition, and by the same 7 to 1 margin voted to keep admonitions public. The ELC Drafting Task Force re-emphasized to the Board of Governors its position that the admonition be retained. After further discussion and debate, at its December 2011 meeting, the Board of Governors voted to abolish the admonition. The Board asked the ELC Drafting Task to prepare the necessary rule changes to replace admonitions with "warning letters," a disposition that would sometimes be public and sometimes be confidential.[7] The Task Force revised the draft rule amendments as directed.

The Board of Governors and the ELC Drafting Task Force are in agreement on virtually all the other proposed amendments to the ELC. As for the future of admonitions, the two groups differ. In my view, the collective wisdom of the experienced disciplinary stakeholders who voted repeatedly to keep the admonition should be afforded substantial weight. Because I believe that the abolition of admonitions would impair the effectiveness and transparency of our disciplinary system, I sought and was granted permission by the Board of Governors to share my views as WSBA Chief Disciplinary Counsel with the Court.

The ABA Standards. The admonition in its current form was added to Washington's rules in 1986.[8] The movement to add admonitions to Washington's rules grew out of a recommendation to implement something less than a reprimand as an option for dealing with incompetent behavior.[9] Our admonition was modeled after the admonition used in the ABA's model system, then the ABA's *Standards of Lawyer Discipline and Disability Proceedings*,[10] a precursor to the ABA *Standards for Imposing Lawyer Sanctions* (ABA *Standards*). The various sets of model rules promulgated by the ABA have long used a four-part model for imposition of disciplinary sanctions, consisting of disbarment, suspension, reprimand, and admonition.

For more than 25 years this Court has used the ABA *Standards* when evaluating disciplinary

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[7] The proposed amendments published for comment would make the warning letter public if the warning letter is imposed after a proceeding has become public.

[8] *See* former Rules for Lawyer Discipline (RLD) 5.5A, adopted effective February 28, 1986. Previously a "letter of admonition" in substantially the same form as the current advisory letter was included in the former *Rules for Discipline of Attorneys*, Rule 2.4(f)(3) (1973), and the former *Discipline Rules for Attorneys*, Rule 2.4(f)(3) (1975).

[9] *See Final Report of the WSBA Task Force on Continuing Professional Qualifications*, Recommendation No. 8 (October 1984).

[10] *See New Rules for Lawyer Discipline Rule 5.5A – GR 9(d) Cover Sheet* (1985) at 2; American Bar Association Joint Committee on Professional Discipline, *Standards for Lawyer Discipline and Disability Proceedings* (approved draft 1979).

sanctions.[11] The framework for the ABA *Standards* analysis presupposes admonitions as one the four discipline options. To abolish the admonition will remove an essential element of that analytical framework and will impede the use of admonition precedents for proportionality reviews, as well as reduce the benefit of any comparative analysis of admonition cases from other jurisdictions, the great majority of which also use the ABA *Standards*.

When, at the Board's request, the Task Force excised admonitions from the ELC recommendations, the drafters realized that such a change would create a number of gaps in disciplinary procedure and analysis. In some instances, this necessitated other alteration to the ELC to maintain a rational consistency. For example, proposed new rule ELC 13.11 provides that in applying the ABA *Standards*, admonition-level misconduct will be considered reprimand-level misconduct. That is an awkward attempt to patch the problem created by the admonition gap. The need to have a rule providing that a particular form of discipline "will be considered" to be something else brings the inadvisability of abolishing admonitions into sharp focus.

The Availability of Diversion Has Altered the Landscape. When the Board discussed whether to abolish admonitions, some expressed hypothetical concern about the "good lawyer" who makes one mistake and ends up with a public admonition on his or her permanent record. It was pointed out that because disciplinary information is posted on the WSBA website, the existence of an admonition is more accessible than it was in 1997 when admonitions became public information. While this is true, it must be remembered that the ELC Title 6 diversion rules have redirected much of the conduct formerly classified as admonition-level into a non-public outcome. Since 2001, lawyers who make isolated, less serious mistakes and agree to take corrective action may be diverted rather than disciplined. If the lawyer successfully completes diversion, the grievance is dismissed without it ever becoming public. Since 2001, as more matters have been diverted, fewer admonitions have been issued. For example, in 2002, just after the diversion program was started, there were 29 admonitions and 4 diversions. In 2012, there were 8 admonitions and 34 diversions. Not every lawyer who has committed less serious misconduct is a candidate for diversion, but lawyers who are motivated to undertake diversionary remedies are likely diversion candidates. Furthermore, even when diversion is not offered to a particular lawyer, that lawyer has the opportunity to persuade a Review Committee of the Disciplinary Board to issue a non-public advisory letter rather than an admonition. It is simply not the case that a good lawyer who makes one mistake inevitably receives permanent public discipline.

A Public and Permanent Admonition is Not Indistinguishable From a Reprimand. Some who favor abolishing admonitions believe that once an admonition is both public and permanent, it is indistinguishable from a reprimand, likewise a public and permanent part of a lawyer's

[11] Beginning in 1986, the Court cited the ABA *Standards* as a "very helpful analytical framework" for disciplinary recommendations. *In re Disciplinary Proceeding Against Rentel*, 107 Wn.2d 276, 282, 729 P.2d 615 (1986). Nearly every disciplinary case since has used the ABA *Standards* as the framework for its sanction analysis. *See, e.g., In re Disciplinary Proceeding Against Conteh*, 175 Wn.2d 134, 150, 284 P.3d 724 (2012) (noting that "[a]ppropriate disciplinary sanctions are determined by reference to the American Bar Association's *Standards for Imposing Lawyer Sanctions*").

record. But both the ABA *Standards* and the long history of sanction decisions in Washington establish significant differences between the two. Under the ABA *Standards*, an admonition is usually only available for isolated instances of negligent misconduct with little or no injury. When the negligent misconduct is not an isolated instance and when there has been injury, the presumptive sanction under the ABA *Standards* is a reprimand. As such, while the general public may not intuitively grasp the distinction between the two types of discipline, adjudicators and participants in the discipline system recognize that a reprimand reflects more serious misconduct than does an admonition. Furthermore, the fact that a reprimand is considered a sanction, whereas an admonition is not considered a sanction, gives continued relevance to the distinction between the two. Finally, the ELC have always maintained the procedural distinction that an admonition may be ordered by a review committee of the Disciplinary Board, while a disciplinary sanction such as a reprimand can only be ordered after hearing or stipulation.

The Need for Transparency. Admonitions, in their current form have been a part of Washington's disciplinary rules for 27 years.[12] Prior to 1997, admonitions were non-public. In 1997, acting as part of an effort to promote greater public confidence in the integrity of the lawyer discipline/disability system and the self-regulation of the legal profession, the Board of Governors recommended, and the Supreme Court adopted, a rule change making admonitions public.[13] In the intervening years, the public expectation of transparency has only increased, and rightly so. Readily accessible disciplinary information is the best assurance of the integrity of the system. Any retreat from the established level of transparency would be regrettable.

Making disciplinary information publicly available has long been critical to fulfilling the profession's duty to protect legal consumers. Public disciplinary information does this in two ways: (1) legal consumers can check the disciplinary record of a lawyer; and (2) other lawyers are deterred from misconduct by reading about the misconduct and the disciplinary action imposed.

Admonitions are most often imposed for instances of neglect, failure to communicate, and minor levels of incompetence. In proposing that the admonition be abolished and replaced by a largely non-public warning letter, the Court is being asked to turn the clock back to the pre-1997 era by reinventing the cloak of secrecy about how (and whether) the discipline system deals with lawyers who have engaged in less serious misconduct.

It is easy to empathize with the desire of the organized bar to avoid creating a record of public discipline for low-level misconduct. From a systemic standpoint, however, relenting to this perspective ignores the purpose of lawyer discipline, which is to protect the public. Ideally, these interests can be kept in balance. But when they conflict, as they do here, the regulatory duty to protect the public must be paramount. Abolishing the admonition will increase the secrecy of Washington's lawyer discipline system. I fear this may reduce the level of protection provided to the public and may weaken public acceptance and support for self-regulation of the

[12] *See* former RLD 5.5A.

[13] *See GR 9 Cover Sheet* to the September 1, 1997, amendments to RLD 5.5A, at 5.

legal profession.

The Current Proposal Published for Comment. The proposed amendments to the ELC that have been published for comment would make the following changes designed to abolish the admonition:

- ELC 13.5, the basic admonition rule, is deleted in full, and all cross-references to it are deleted, such as ELC 13.1(b), ELC 13.6, ELC 5.6(d)(3), as well as numerous other incidental references.
- ELC 5.7, the rule authorizing a Review Committee to issue an advisory letter, is amended to change the name from advisory letters to warning letters and to allow hearing officers and the Disciplinary Board, as well as Review Committees, to issue them. Like an advisory letter, the new warning letter is not public if issued by a Review Committee. But after a matter has entered public proceedings, a warning letter issued by a hearing officer or the Disciplinary Board would be public.
- In an attempt to deal with the obvious problem noted above that abolishing the admonition affects the sanction analysis under the ABA *Standards for Imposing Lawyer Sanctions*, the amendments published for comment propose two new rules:
    - ELC 13.11 will provide that in applying the ABA *Standards for Imposing Lawyer Sanctions*, an admonition under those Standards shall be considered a reprimand.
    - ELC 13.10 will provide that if a lawyer receives a public admonition in another jurisdiction, the reciprocal "identical discipline" to be imposed in this State under ELC 9.3(e)(1) would be a reprimand.

The net effect of these changes would be a likely increase in the number of disciplinary matters in which a reprimand is imposed.

An Alternative. I have provided an alternative set of proposed rule amendments that would retain admonitions. The key features of this proposal are as follows:

- Retain the admonition in the form recommended by the ELC Drafting Task Force, restoring such changes to ELC 13.5, ELC 13.1, and ELC 5.6(d)(3) as the Task Force originally recommended, including the numerous incidental references to admonitions.
- Eliminate the proposed ELC 13.10 and ELC 13.11, as these are only necessary if the admonition is abolished.
- Retain advisory letters in their current form, as originally recommended by the ELC Drafting Task Force.

Conclusion. "The profession has a responsibility to assure that its regulations are conceived in the public interest and not in the furtherance of parochial or self-interested concerns of the bar."[14] It is rare for a Chief Disciplinary Counsel to file comments with the Supreme Court in opposition to a proposed rule amendment submitted by the Board of Governors. I do not do so lightly. The harm to the discipline system's ability to use the ABA *Standards* for sanction analyses of less serious misconduct will be substantial. Of greater concern is the specter of harm to the public's view of the integrity of our disciplinary system if secrecy is restored to a form of discipline that was made public in 1997. As the ultimate authority over the legal profession, this Court should not compromise the public interest by abolishing the admonition.

If the Court has any questions, or if there is any additional information I can provide, I will be happy to do so.

Appendix of Alternative Rule Amendments. Attached to this comment is an Appendix setting forth the changes that I recommend the Court adopt in lieu of the proposed amendments effecting the abolition of admonitions. These alternative changes consist of the original proposals of the ELC Drafting Task Force.

Sincerely,

Douglas J. Ende
Chief Disciplinary Counsel

[14] Preamble to the Rules of Professional Conduct, at [12].

APPENDIX OF CHIEF DISCIPLINARY COUNSEL'S ALTERNATIVE PROPOSED AMENDMENTS TO THE RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

In order to retain admonitions as a form of disciplinary action, with respect to the following rules it is proposed that the following amendments be adopted in lieu of the proposed amendments published for comment:

ELC 1.3
ELC 2.3
ELC 3.1
ELC 3.3
ELC 3.5
ELC 3.6
ELC 5.6
ELC 5.7
ELC 10.16
ELC 13.1 [No Change]
ELC 13.5
ELC 13.6 [No Change]
ELC 13.8
ELC 13.9

These proposed amendments consist of the ELC amendments originally drafted and recommended by the ELC Drafting Task Force.

In addition, it is proposed that the new ELC 13.10 and the new ELC 13.11 published for comment not be adopted.

RULE 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) "Association counsel" means counsel for the Association other than disciplinary counsel.

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

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

(~~d~~e) "Chair" when used alone means the Chair of the Disciplinary Board.

(ef) "Clerk" when used alone means the Clerk to the Disciplinary Board.

(~~f~~g) "Disciplinary action" means sanctions under rule 13.1 and admonitions under rule 13.5.

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

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

(ij) "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~~k) "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(ed) "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.

RULE 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~~four nonlawyer members, appointed by the Court, and not fewer than ~~one~~ten lawyers~~ member from each congressional district~~, appointed by the Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel.

(2) *Qualifications.* A ~~L~~lawyer Board members must ~~have been active members of the Association for at least seven years~~be an Active member of the Association, have been an Active or Judicial member of the Association for at least five years, and have no record of public discipline.

(3) *Voting.* Each member, including the Chair and the Vice Chair, whether nonlawyer or lawyer, has one vote. Recused members may not attend or participate in the Board's deliberations on a matter. Board staff may attend Board deliberations, to serve as a resource.

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

(B) ~~if~~If the member chooses to remain on the Board, the Conflicts Review Officer who is conducting the review of the grievance under rule 2.7 must promptly provide a confidential summary of the grievance to ~~the Board of with a Governors~~a different Conflicts Review Officer who is not conducting the review. A copy of the summary is provided to the member at the same time~~;~~.

(C) ~~t~~The ~~Board of Governors~~Conflicts Review Officer who is not conducting the review of the grievance should then, or at any time thereafter ~~it~~as deem~~s~~ed 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~~Conflicts Review Officer 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) ~~t~~The ~~Board of Governors's deliberations are~~Conflict Review Officer's determination is confidential. All materials ~~of the Board of Governors~~used in connection with such a ~~matter~~determination 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 Supreme Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, 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 Supreme Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, 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 <u>or Advising</u> Respondents <u>or Grievants</u>. ~~F~~<u>Current and former</u> members of the Disciplinary Board are subject to the restrictions set forth in rule 2.~~13(b)~~<u>14</u>.

RULE 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 that is deemed ordered to hearing under rule 13.5(a)(2), 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~~discipline under rule 9.3; and

(11) any sanction or admonition imposed on a respondent

(12) a stipulation to dismissal upon institution of proceedings for failure to comply with the terms of the stipulation.

(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.

RULE 3.3 APPLICATION TO STIPULATIONS, DISABILITY PROCEEDINGS, CUSTODIANSHIPS, 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~~1) it provides for dismissal of a grievance without a disciplinary sanction or admonition; and

(~~3~~2) 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 or rule 9.2 are confidential. However, the following are public information: the fact that a lawyer has been transferred to disability inactive status, the fact that a lawyer has been reinstated to active status from disability inactive status, and the fact that a disciplinary proceeding is stayed pending supplemental proceedings under title 8. ~~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) Custodianships. The fact that a custodian has been appointed under rule 7.7, together with the custodian's name and contact information and orders appointing and discharging such custodians, are public information and the notices required by rule 3.5(d) will be given. Client files and records under the control of such custodians will be held confidential absent authorization to release from the client.

(ed) 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~~, however, a diversion affidavit made under rule 6.6 is public following a final 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 and a notice of diversion will be placed in the public file. Upon the conclusion of the diversion, whether by successful completion of diversion and dismissal of the grievance, or by breach of the diversion contract, a notice of that result will be placed in the public file.

RULE 3.5 NOTICE OF ~~DISCIPLINE~~ DISCIPLINARY ACTION, INTERIM SUSPENSION, OR TRANSFER TO DISABILITY INACTIVE STATUS

(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;

(3) a copy of any transfer to disability inactive status; and

(~~3~~4) a copy of any resignation in lieu of ~~disbarment~~discipline.

(b) Other Notices. The counsel to the Board must also notify the following entities of the imposition of a disciplinary sanction or admonition, a transfer to disability inactive status, a resignation in lieu of ~~disbarment~~discipline, 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; and

(3) the National ~~Discipline Data Bank~~ Lawyer Regulatory Data Bank~~; and~~

~~(4) the Washington State Bar News~~.

(c) ~~Preparation of~~Bar News and Website Notice.

(1) Preparation and content. Notice of the imposition of any disciplinary sanction, admonition, resignation in lieu of discipline, interim suspension, or transfer to disability inactive status, or the filing of a statement of concern under rule 3.4(f) must be published in the Washington State *Bar News* or other official publication of the Washington State Bar Association and on any electronic or other index or site maintained by the Association for public information. ~~The~~ Association counsel ~~to the Board~~ has discretion in drafting notices for publication in the Washington State *Bar News* or other official publication of the Washington State Bar Association and on the Website, 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. For a transfer to disability inactive status, reference will be made to the disability inactive status, but no reference will be made to the specific disability. For an interim suspension, the basis of the interim suspension will be stated. All notices under this subsection 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~~ Association counsel ~~to the Board~~ must serve a copy of the draft notice under this subsection on respondent and disciplinary counsel under rule 4.1 and review any comments filed with ~~the~~Association counsel ~~to the Board~~ within five days of service, but Association counsel's ~~to the Board's~~ decision about the content of the notice is not subject to further review.

(2) Finality. Except as specified in section (c)(3), discipline notices published in the Bar News or other official publication of the Washington State Bar Association and posted on the WSBA website are final and may not be modified following publication.

(3) Modification. A respondent lawyer who is the subject of a discipline notice may file a written request with Association counsel seeking modification of a discipline notice post-

ed on the WSBA website. A notice may be modified only in the following circumstances:

(A) a criminal conviction, court judgment, or order relating directly to the disciplinary action imposed and referenced in the discipline notice has been subsequently expunged, vacated, or otherwise conclusively nullified;

(B) the expungement, vacation, or nullification occurred after the notice was published;

(C) there are no ongoing or pending proceedings relating to the conviction, judgment or order; and

(D) the fact of the expungement, vacation, or nullification is undisputed and can be conclusively established without any investigation.

The respondent seeking modification bears the burden of establishing each of the above factors. If Association counsel determines each factor has been established, a supplemental note may be added regarding the expungement, vacation, or nullification, but the original discipline notice must otherwise remain unchanged. The supplemental note is not published in Bar News. The decision whether or not to add a supplemental note, and the content of a supplemental note, is solely within the discretion of Association counsel and is not subject to review.

(d) Notices to News Media of Suspension, Disbarment, Resignation in Lieu of ~~Disbarment~~Discipline, Interim Suspension, or Disability Inactive Status. ~~The Association must publish a~~In addition to the notices published under sections (b) and (c) of this rule, notice in such form as may be appropriate of the disbarment, suspension, resignation in lieu of ~~disbarment~~discipline, interim suspension, 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~~ must be provided 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, reference will be made to the disability inactive status, but no reference may be made to the specific disability. For an interim suspension, the basis of the interim suspension will be stated.

(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~~discipline, interim suspension, 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.

RULE 3.6 MAINTENANCE OF RECORDS

(a) Permanent Records. In any matter in which a disciplinary sanction or admonition has been imposed or the lawyer has resigned in lieu of discipline under rule 9.3, 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 or admonition, 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.~~dismissed after a diversion must be retained at least ten years after the dismissal. 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.

RULE 5.67 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~~disciplinary counsel no later than 45 days after ~~the Association~~disciplinary counsel 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. If no timely request for review is made, the dismissal is final and may not be reviewed. Disputes regarding timeliness may be submitted to a review committee. A grievant may withdraw in writing a request for review, but thereafter the request may not be revived.

(c) Report in Other Cases. Disciplinary counsel must report to a review committee the results of investigations except those dismissed or diverted. The report may include a recommendation that the committee order a hearing or issue an advisory letter or admonition.

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

(1) dismiss the grievance;

(~~1~~2) affirm the dismissal;

(~~2~~3) dismiss the grievance and issue an advisory letter under rule 5.~~7~~8;

(~~3~~4) issue an admonition under rule 13.5;

(~~4~~5) order a hearing on the alleged misconduct; or

(~~5~~6) order further investigation as may appear appropriate.

(e) Issuing Admonition or Ordering Hearing without Recommendation from Disciplinary Counsel. When the review committee decides to issue an admonition or order a matter to hearing, and such action has not been recommended by disciplinary counsel, the committee shall issue notice of its intended action and state the reasons therefor. The matter shall be set for reconsideration by a review committee. The grievant, the respondent lawyer, and disciplinary counsel may submit additional materials. On reconsideration, the committee may take any action authorized by subsection (d) of this rule.

(f) Action Final. Except as provided in subsection (e), a review committee's action under this rule is final and not subject to further review.

RULE 5.~~7~~8 ADVISORY LETTER

(a) Grounds. An advisory letter may be issued by a review committee when ~~a hearing does not appear warranted~~:

(1) a respondent lawyer's conduct constitutes a violation, but does not warrant an admonition or sanction, but it appears appropriate to caution a respondent lawyer concerning his or her conduct; or

(2) a respondent lawyer's conduct does not constitute a violation but the lawyer should be cautioned.

(b) Review Committee. An advisory letter may only be issued by a review committee ~~but~~. An advisory letter may not be issued when a grievance is dismissed following a hearing.

(c) Effect. An advisory letter ~~does not constitute a finding of misconduct,~~is not a sanction~~,~~ and is not disciplinary action~~, and~~. An advisory letter is not public information, and may not be introduced into evidence in any subsequent disciplinary hearing.

RULE 10.16 DECISION OF HEARING OFFICER ~~OR PANEL~~

(a) Decision. Within ~~20~~30 days after the proceedings are concluded or (if applicable) the transcript of proceedings is served, ~~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 recommendations. This deadline may be extended by agreement.

(b) Preparation of Findings. Either party may submit proposed findings of fact, conclusions of law, and recommendation as part of their argument of the case. The hearing officer ~~or hearing panel~~ either (1) writes ~~their own~~ findings of fact, conclusions of law, and recommendations without requiring submission of proposed findings, conclusions, or recommendations or (2) announces a tentative decisions then ~~At the~~ requests ~~of the hearing officer, or without a request, either~~one or both party~~ies~~ ~~may submit~~to prepare proposed findings, conclusions, and recommendations. After notice and an opportunity to respond, the hearing officer considers the proposals and responses and enters findings, conclusions, and recommendations.

(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~~15 days of service of the decision on the respondent lawyer;

(B) In a bifurcated proceeding, within ~~five~~15 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~~reply or after the period to file a ~~response~~reply under rule 10.8(~~b~~c) 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~~d) 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. If a hearing officer recommends disbarment or suspension, the recommendation becomes the final decision only upon entry of an order by the Supreme Court under rule

11.12(g) or final action on an appeal or petition for discretionary review under Title 12~~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)~~.

RULE 13.1 SANCTIONS AND REMEDIES [NO CHANGE]

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.

RULE 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. A rescinded admonition is of no effect and may not be introduced into evidence in any disciplinary proceeding or appeal.

(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 a permanent discipline record and 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.

RULE 13.6 DISCIPLINE FOR CUMULATIVE ADMONITIONS [NO CHANGE]

(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.

RULE 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) or (c) 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.

RULE 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, or against whom reciprocal discipline is imposed after a contested reciprocal discipline proceeding.

(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 upon a reciprocal discipline order under rule 9.2 or rule 9.3, in a matter requiring briefing at the Supreme Court, $1,500;
(~~3~~4) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of $2,000;
(~~4~~5) 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~~6) 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; or
(E) entry of a final decision imposing reciprocal discipline under rule 9.2 or rule 9.4 in a matter requiring briefing at the Supreme Court.

(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. Rule 5.3(h) governs assessment of costs and expenses pursuant to a respondent's failure to cooperate.

***(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.