THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of	**)**	
The SUGGESTED New Rule	**)**	**Comments by**
Classification: Rules for	**)**	**Attorney V. Parker**
Discipline and Incapacity (RDI)	**)**	
Amendments to GR 1--	**)**	
Classification System for	**)**	
Court Rules, et al.	**)**	

INTRODUCTION

While well-written and certainly well meant, a proposal, whether needed or not, is a given for one reason -- a committee was formed. The reason the committee was formed is unknown but began about the same time the Bar was directed to administer LPOs and LLLTs.

This proposal should be rejected. It does not simplify. It expands the structure of the Bar; increases footprint and cost; and gives rise to an appearance of unfairness.

CURRENT SYSTEM IN GENERAL

Is the current system broken? The answer from the Chief Disciplinary Counsel is that the current system actually works and works well. So, why change?

Currently, a practicing attorney is hired as the Chief Hearing Officer to manage the appointment of hearing officers to the various cases of alleged unethical behavior, to offer training, and to assure cases are handled in a timely manner. This methodology is effective, unbiased, and contains no question of an appearance of fairness. It is efficient.

Disciplinary counsel identified to me that the main problem currently is the process of producing advisory letters upon dismissal of a complaint. Moving the review process to a new creation i.e. the Office of Regulatory Adjudicator (ORA) does not solve the problem.

This neither simplifies the process nor reduces the Office of Disciplinary Counsel (ODC) staff. More than likely, the ORA will quickly want to be enlarged.

INCREASED STAFF and FOOTPRINT

Professionalizing the hearing officers and creating the position of a Chief Regulatory Adjudicator is a structural and not a procedural change. The creation of an (ORA) with a professional adjudicator and hearing staff is very much oriented to organizational growth not simplification.

The ORA is an addition intended to copy the practice in State agencies judicial divisions. Those who come before the agency hearing officers question the fairness of the hearings because of the close contact between the agency and the hearings offices.

Valid or not, why create a situation resulting in a perception of unfairness? The appearance of fairness is vital for the sake of the public and the accused attorney.

The Chief Hearing Officer on the other hand is not located within the Bar Offices thus avoiding this perception.

Agency hearings involve only one subject matter but Attorney ethics and client disputes resulting in complaints are complex. They are better handled by practicing attorneys who abide daily with the ethics rules and understand the realities faced by an attorney and the vagaries of clients.

More importantly, at a time when WSBA is working to reduce its footprint and budget, this proposal adds the expense of another full-time person (salary, benefits) plus staff, plus a dedicated office space, plus supplies and so forth. No fiscal note was included.

Why would do that when our system is working well?

BENEFITS OF ROTATING NON-PROFESSIONAL HEARING OFFICERS

A professionalized staff will grow over time (adding cost and footprint) and seriously restricts the role of volunteer attorneys to that of assisting in stipulated resolutions.

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The loss of attorneys as hearing officers in judging their peers is a loss of the practical experience of working with clients and maintaining an office. Fresh perspectives by rotating hearing officers permit a better understanding of the application of ethics to the practice of law and those clients who avail themselves of legal services. This will be lost if a professionalized staff is emplaced.

A hearing officer must maintain a clean ethics record and be an experienced attorney. A professional adjudicator is not subject to the same rules certainly not in the same way.

As an aside, it is sad that a belief exists that only trial attorneys should be eligible to serve as hearing officers. What a loss.

GREATER BURDEN ON THE SUPREME COURT

Because this proposal requires all disciplinary actions and not just those involving disbarment and suspension to be reviewed by Supreme Court, a greater burden is placed on the Court.

PROPOSAL ELIMINATES PROACTIVE GUIDANCE

When I served on the Professional Responsibility Committee, the committee responded to hypothetical ethics questions. The written response was available to the requesting attorney as a defense if a future question arose against that attorney. However, that ability bit to rely on a response from the Bar to a proposed set of facts is eliminated under this proposal. The loss is to inquiring attorneys AND to attorneys in general who gain from avoiding ethical problems. This tool to prevent misconduct should be encouraged.

DISMISSAL PROCESS

The Proposal recommends a five-member panel to review dismissals reasoning that the current review is a lengthy process rarely resulting in a different outcome. Would the panels review result in a different outcome? No.

Suggestion: eliminate the review step rather than creating a new structure within the Bar.

ELIMINATES STATUTE OF LIMITATIONS

This is patently unfair unless it is tied to a continuing pattern unethical behavior. There is no justification for this.

MIXING CATEGORIES of WSBA "members"

The committee from which this proposal came was established about the same time LLLT's and LPO's were created and the Bar was made responsible for administration. Thus, it is important to examine these programs.

The court is wisely capping the LLLT program. It currently has 50 out of 57 licensees. This program will disappear over time.* The LLLT's are limited to the use of forms with the limited privilege of going to court. The ethics rules are specific to this group. The complaint process is specific to this group.

Of the original number of 3326 LPO's 799 remain limited to using forms for one aspect of law – Escrow/Loans. ** Again, the ethics rules are specific to this group as is the complaint process.

The flow-chart masks the continuation of separate rules and processes. The proposal appears to be simpler but isn't.

There are no cost savings. As discussed earlier, an increase in costs is certain.

CONFUSION CREATED

The designation of LLLT's and LPO's as legal "professionals" confuses the nature of these entities and confuses the public. In researching this proposal, I contacted the well-respected, non-attorney executive director for a private group which offers extensive manuals for LLLTs. Selecting the correct form is important but the focus is risk-management (minimizing the potential losses of the Escrow/Loan company).*** CYA is not the main focus of an attorney.

While the court has ultimate authority over whoever practices law as an attorney or as a practitioner, I find it impossible to believe the intent of the court is to minimize the importance of the practice of law by attorneys.

And, yet, applying the term "legal professionals" to both the approximately 33,515 attorneys**** and these categories of non-attorneys equalizes them thus adding to public confusion.

THE COMPLAINANT AS A PARTY TO THE ACTION

An interesting fact is that the ELC actually created at least one of the problems being "corrected". The complainant was NOT a party to a disciplinary action under the original procedural rules. The grievant was giving an inappropriate role through the ELC. Eliminate that provision and the problem is solved.

PUBLIC RECORDS ACT

The Supreme Court recently ruled on the question of the Public Records Act as applied to the Bar Association. That ruling makes the provisions in the proposal regarding public vs. private information irrelevant and inconsistent with the ruling.

CONCLUSION AND RECOMMENDATIONS

In addition to the recommendations above, a fiscal note, a public hearing, and an RCW 2.48.050 vote of the Membership should be ordered. The Chief Counsel of the Office of Disciplinary has no objection to a public hearing or a vote of the membership.

The Bar Association has proudly handled the discipline of its members throughout its existence. It is efficient and the outcomes are appropriate.

This proposed should be rejected. It is not needed; confuses the public; gives rise to an appearance of unfairness; and increases costs and footprint.

Respectfully submitted,

Vicki Parker, #7194
Attorney at Law,
Former Hearing Officer

*It may actually be better managed by the Supreme Court directly or by a small management team created by the court and financed by the members in the LLLT group.

**Like Real Estate Agents (Brokers), LPO's may only use forms. Real Estate Agents use forms affecting contract law (involves legal rights). LPO's determine which form for Escrow/loans. This program could be managed by Department of Licensing which has massive experience in various professions and discipline. Nursing and Nurse Practitioners are conceptually consistent examples of this management.

*** Compare "client" and client responsibilities for LPOs with that of an attorney.

****33,515 attorneys practice in Washington State. All possess undergraduate degrees and doctoral degrees. Many have Masters and Doctoral Degrees in other fields. Many have advanced degrees in law.

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Cc: Tracy, Mary
Subject: FW: Comments on Changes to Discplinary Process
Date: Thursday, July 29, 2021 8:06:24 AM
Attachments: Disciplinary proposal.docx

From: vlaparker@aol.com [mailto:vlaparker@aol.com]
Sent: Thursday, July 29, 2021 7:37 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on Changes to Discplinary Process

As Attached.

Thank you for providing these comments to the appropriate committee.

Vicki