

Family Law Section

Family Law Section of the Washington State Bar Association



July 12, 2021

Supreme Court of the State of Washington
VIA EMAIL TRANSMISSION ONLY
supreme@courts.wa.gov

re: Proposed Rules for Discipline and Incapacity

Justices:

I am the Chair of the Family Law Section and in that capacity am advising you that the Family Law Section has unanimously voted to oppose the implementation of the proposed Rules for Discipline and Incapacity, Rules 1.1 - 17.1. The Family Law Section is the second largest section in WSBA behind that of the Criminal Law Section; like the Criminal Law Section, many of our section members are solo or small firm practitioners serving a wide range of clientele ranging from that of indigent parent representation in Title 11.130 RCW UGA cases to that of multimillion dollar divorce actions. Our section serves clientele that are racially, ethnically, socio-economically, gender and sexual orientation diverse in counties ranging from the sparsely populated to that of major urban centers. What has been most concerning to our Section with respect to these proposed rules (hereinafter referred to as RDI's) is that there has been no input whatsoever from the lawyers who may be subject to future disciplinary proceedings and it would appear that WSBA has been unwilling to engage in any studies as to whether there is an increased frequency of grievances against lawyers of color. This is troubling.

FLEC has had the opportunity to review the multiple responses provided by stakeholders to the proposed RDI's and many of the issues raised are concerns with which FLEC shares. For the sake of brevity, FLEC will not reiterate well expressed concerns as provided for in the responses prepared by Anne Seidel, the Respondents' Counsel Roundtable, and the Solo & Small Practice Section. It is clear that the proposed RDI's will result in respondents to grievances being disadvantaged in the disciplinary process procedurally. Respondents to grievances would be prosecuted by a very small group of professional disciplinary counsel on the payroll of WSBA without any internal independent oversight; it is the tireless work of volunteer attorneys, our peers, who pull the laboring oar on attorney discipline.

From an "end result" perspective, the proposed RDI's provide for there never being an end to any disciplinary proceeding; *see e.g.* RDI 5.11(c). There would be no end to a disciplinary proceeding, other than a dismissal or diversion, that would not be made public. The proposed RDI's provide for ODC to

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forever retain a lawyer's "closed" grievance history to use in future disciplinary proceedings. This does not constitute double jeopardy but rather that of *periculum ad infinitum*.

It would appear from even the most cursory of reviews of the proposed RDI's that if adopted, a respondent will have little to no opportunity to have their voice heard with very little in the way of procedural safeguards by an entity lacking independent oversight. And after their voice may or may not have been heard, a respondent will never have any finality which is a concept diametrically opposed to what lawyers argue for on behalf of their clients - finality of judgments.

On behalf of the Family Law Section, I would ask that you reject the proposed RDI's and implement a transparent process with the inclusion of stakeholders "...with the goal of identifying and recommending modifications to the discipline system intended to create efficiencies and improve outcomes."

Sincerely,

/s/

Patrick W. Rawnsley, WSBA 34879
Chair, Family Law Section

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Please see attached.

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