



April 27, 2021

The Honorable Chief Justice Steven C. Gonzalez
Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Proposed Rules for Discipline and Incapacity (RDI)

Dear Chief Justice:

The Washington State Association for Justice urges you to REJECT the proposed Rules for Discipline and Incapacity (RDI). These new rules were written as an overhaul of the current system of lawyer discipline and supplant the existing Rules for Enforcement of Lawyer Conduct (ELC). However, the proposed rules were drafted by and for one side of an adversarial system without any meaningful opportunity for input from the other side or interested stakeholders, such as representatives from the bar groups whose members will be subject to these disciplinary rules and are written with the disproportionate impact of disadvantaging the other side. We oppose this one-sided proposal from a one-sided proponent.

We concur with the recent letter submitted by the Criminal Law Section of the WSBA about the manner in which this was proposed and the impact it will have:

We believe that under due process, a committee should be established with representatives of all groups to redraft a balanced set of rules that does not create an omnificent office, which is without oversight by the membership that it serves. It is extremely troubling that the Office of Disciplinary Counsel seeks to have more authority and less oversight. We do not believe a fair or just set of rules can be drafted unless all of those involved in the lawyer discipline process have a say. Criminal Law Section Opposition Letter, March 15, 2020.

The WSAJ whole-heartedly agrees. The present proposal is fraught with one-sided procedural changes and substantive changes that would severely disadvantage an accused lawyer and remove necessary safeguards for the administration of justice. Some of these eliminated safeguards include: empowering ODC to reopen grievances without giving finality to an accused lawyer (RDI 5.11); eliminating the right to appeal ODC's decision regarding deferral of investigation pending civil or criminal litigation (ELC 5.3(d)(2)); eliminating the right to appeal ODC's decision to withhold information from a grievant or respondent (ELC 5.1(c)(3)(B)); increasing discretion of ODC in filing formal charges; eliminating volunteer hearing officers; etc.



This issue of who is the hearing officer is particularly troubling under the new scheme. Currently, an accused lawyer may have a hearing officer from a broad panel of mostly volunteer hearing officers. The new proposal creates an Office of the Regulatory Adjudicator, which will be comprised of professional adjudicators. This scheme will likely curtail diversity of adjudicators inherent in a larger pool in favor of a select few adjudicators hired for the Office of Regulatory Adjudicator. Additionally, the new scheme eliminates the right of an accused to have an assigned hearing officer removed without cause (ELC 10.2(b)(1)).

These issues and many more that are presented in the proposed RDI are inherently due to the fact that this is a set of rules proposed by those lawyers who only see the process from their own perspective. A one-sided proposal from a one-sided proponent will not further the cause of justice in the disciplinary process in the Washington State Bar.

Finally, such significant proposals for changing the attorney disciplinary system should not be considered, let alone implemented, without a meaningful opportunity for input from bar membership, such as bar groups who can offer insight into how any such proposed changes may impact their constituent sections of the bar. It is WSAJ's understanding that the limited "stakeholder" meetings regarding these proposed amendments were not open to the public and documents relating to these meetings are not freely accessible and available to the vast majority of bar membership excluded from these "stakeholder" meetings. This lack of transparency precludes bar membership, including WSAJ, from any meaningful opportunity for "public" comment, let alone the sort of collaborative participation in the process by a diverse array of bar membership necessary to affect not only efficient but *fair* changes to the disciplinary system.

Sincerely,

Celia Rivera
WSAJ President

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Honorable Chief Justice Gonzalez,

Attached please find WSAJ's letter asking you to reject the Proposed Rules for Discipline and Incapacity, and our letter proposal to the Superior Court Judge's Association's proposed amendments to CR 71.

Thank you in advance for you consideration. As always we appreciate the opportunity to be heard,

Respectfully,

Celia M. Rivera
Attorney at Law

RIVERA LAW OFFICES, PLLC
1800 Cooper Point Road SW, #14
Olympia, WA 98502
Main: (360) 705-8200
Direct: (360) 764-7200
Fax: (360) 705-8203
www.riveralawoffices.com