

**REVIEW OF OBJECTIONS TO INQUIRIES AND MOTIONS TO DISCLOSE**

**(a) Review Authorized.** Upon motion, the chief hearing officer, or a hearing officer designated by the chief hearing officer, may hear the following matters:

- (1) When a lawyer has objected under ELC 5.3(i) to an investigative inquiry;
- (2) When a lawyer has objected under ELC 5.5(e) to an investigatory subpoena; and
- (3) When disciplinary counsel seeks authorization under rule 5.4(b) to disclose confidential information.

**(b) Procedure.**

(1) A lawyer who has objected under ELC 5.3(i) or 5.5(e) must file a motion seeking review of the objection within 15 days of the date of the objection.

(2) An objection must clearly and specifically set out the challenged inquiry or request and the basis for the objection.

(3) A motion to authorize use in an investigation of confidential information must clearly state the information which has been identified as confidential and the investigatory use for which disciplinary counsel seeks authorization.

(4) When deemed necessary by the chief or other hearing officer considering the matter, that hearing officer may conduct an in camera review of confidential client information.

(5) In considering an objection under this rule, the chief or other hearing officer should consider factors including:

- (A) the relevance and necessity of the information to the investigation;
- (B) whether the information requested by the inquiry is likely to lead to information relevant to the investigation;
- (C) the availability of the information from other sources;
- (D) the sensitivity of the information and potential impact on the client including the client's right to effective assistance of counsel;
- (E) the expressed desires of the client;
- (F) whether the objection was made before the due date of the request or inquiry; and
- (G) whether the burden of producing the requested information outweighs the likely utility of the information to the investigation.

(6) In considering a motion to authorize disciplinary counsel to disclose information identified as confidential client information under this rule, the chief or other hearing officer should consider factors including:

- (A) the relevance and necessity of the disclosure of the information to the investigation;
- (B) whether the investigative disclosure is likely to lead to information relevant to the investigation;

(C) the sensitivity of the information and potential impact on the client of the investigative disclosure, including the client's right to effective assistance of counsel;

(D) the expressed desires of the client; and

(E) whether the above factors outweigh the likely utility of the information to the investigation.

**(c) Ruling.** In ruling on an objection, the chief or other hearing officer may deny the objection, or sustain the objection in whole or in part, and may establish terms or conditions under which specific information may be withheld, provided, maintained, or used. In ruling on a motion to authorize disclosure, the chief or other hearing officer may grant or deny the motion in whole or in part, and may establish terms or conditions for the investigative use of specific information. When appropriate, a ruling may take the form of, or may accompany a protective order under ELC 3.2(e).

**(d) Review.** Any ruling by the chief or other hearing officer under this rule shall be subject to review as an interim ruling under rule 10.9.

[Adopted effective January 1, 2014; Amended effective January 1, 2015; September 1, 2017.]