

ELC 9.1
STIPULATIONS

(a) Requirements. Any disciplinary matter or proceeding may be resolved by a stipulation at any time. The stipulation must be signed by the respondent lawyer and approved by disciplinary counsel. The stipulation may impose terms and conditions of probation and contain any other appropriate provisions.

(b) Form. A stipulation must:

(1) provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Board or hearing officer to form an opinion as to the propriety of the proposed resolution, and, if approved, to make the stipulation useful in any subsequent disciplinary proceeding against the respondent;

(2) set forth the respondent's prior disciplinary record or its absence;

(3) state that the stipulation is not binding on disciplinary counsel as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding; and

(4) fix the amount of costs and expenses to be paid by the respondent.

(c) Stipulation to Alleged Facts. A respondent lawyer and disciplinary counsel may agree to stipulate to alleged facts in lieu of admissions to particular acts or omissions. The stipulation must also include an agreement that the facts and misconduct will be deemed proved in any subsequent disciplinary proceeding in any jurisdiction.

(d) Approval.

(1) *Standards.* The chief hearing officer, a hearing officer, or the Board must approve a stipulation unless the stipulation results in a manifest injustice.

(2) *Approval by Chief Hearing Officer.* Subject to a subsection (1), the chief hearing officer may approve of a stipulation disposing of any matter that is not then pending before an assigned hearing officer, the Board, or the Supreme Court. Approval may be granted at any point, during an investigation or otherwise, prior to entry of final decision under rule 10.16(d). The chief hearing officer may not approve of a stipulation that requires the respondent's suspension or disbarment.

(3) *Approval by Hearing Officer.* Subject to subsection (1), a hearing officer may approve a stipulation disposing of a matter pending before the officer, unless the stipulation requires the respondent's suspension or disbarment. This approval constitutes a final decision and is not subject to further review.

(4) *Approval by Board.* All other stipulations must be presented to the Board. The Board reviews a stipulation based solely on the record agreed to by the respondent lawyer and disciplinary counsel. The parties may jointly ask the Chair to permit them to address the Board regarding a stipulation. Such presentations are at the Chair's discretion. Subject to subsection (1), the Board may approve, conditionally approve, or reject a stipulation. Regardless of the provisions of rule 3.3(a), the Board may direct that information or documents considered in reviewing a stipulation be kept confidential.

(5) *Approval by Supreme Court.*

(A) *Suspension and Disbarment.* All stipulations agreeing to suspension or disbarment approved by the Board, together with all materials that were submitted to the Board, must be submitted to the Court. Following review, the Court issues an order regarding the stipulation.

(B) *Matters Pending Before the Supreme Court.* At any time a matter is pending before the Court, the parties may submit to the Court for its consideration a stipulation of the parties to resolve the matter. The Court will resolve the matter under such procedure as the Court deems appropriate.

(e) Conditional Approval.

(1) *By Hearing Officer.* Subject to subsection (d) (1), a hearing officer may condition the approval of a stipulation on the agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the hearing officer deems necessary to accomplish the purposes of lawyer discipline, provided the terms do not involve suspension or disbarment. If the hearing officer conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the hearing officer, both parties serve on the hearing officer written consent to the conditional terms in the order of the hearing officer or chief hearing officer. For purposes of this subsection, “hearing officer” includes the chief hearing officer.

(2) *By Board.* Subject to subsection (d)(1), the Board may condition its approval of a stipulation on the agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the Board deems necessary to accomplish the purposes of lawyer discipline. If the Board conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the Chair, both parties serve on the Clerk written consent to the conditional terms in the Board’s order.

(f) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, the parties may serve on the Clerk a joint motion for reconsideration. If the conditional approval was made by a hearing officer or chief hearing officer, the motion shall also be served on that officer. The parties may ask to address the Board or officer on the motion.

(g) Stipulation Rejected. An order rejecting a stipulation must state the reasons for the rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any disciplinary, civil, or criminal proceeding.

(h) Review. When a hearing officer or chief hearing officer rejects a stipulation, by agreement the parties may present the stipulation to the Board for consideration.

(i) Costs. A final order approving a stipulation is deemed a final assessment of the costs and expenses agreed to in the stipulation for the purposes of rule 13.9, and is not subject to further review.

(j) Failure to Comply. A respondent’s failure to comply with the terms of an approved stipulation may be grounds for discipline.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]