

ELC 11.12
DECISION OF BOARD

(a) Basis for Review. Board review is based on the hearing officer's Decision, the parties' briefs filed under rule 11.9, and the record on review.

(b) Standards of Review. The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer cannot be considered by the Board.

(c) Oral Argument. The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to their last brief, including a response or reply, under rule 11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the time, place, and terms for oral argument.

(d) Action by Board. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer. The Board may also direct that the hearing officer hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) Order or Opinion. The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. Regardless of whether or not a dissenting member files a written dissent, the Board order or opinion must set forth the result favored by each dissenting member. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. A copy of the complete decision is served by the Clerk on the parties.

(f) Procedure to Amend, Modify, or Reverse if No Appeal.

(1) If the Board intends to amend, modify, or reverse the hearing officer's recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.

(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.

(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.

(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request for reconsideration, the Board issues an order or opinion after reconsideration under subsection (e).

(g) Decision Final Unless Appealed. The Board's decision is final if neither party files a notice of appeal or a petition for review within the time permitted by Title 12 or upon the Supreme Court's denial of a petition for discretionary review. When a Board decision recommending suspension or disbarment becomes final because neither party has filed a notice of appeal or petition for discretionary review, the Clerk transmits to the Supreme Court a copy of the Board's decision together with the findings, conclusions, and recommendation of the hearing officer for entry of an appropriate order.

[Adopted effective October 1, 2002; Amended effective January 1, 2014; January 1, 2023.]