

WASHINGTON STATE BAR ASSOCIATION

ELC DRAFTING TASK FORCE

Meeting Agenda

April 8, 2010 10:00 a.m. to 1:00 p.m. Washington State Bar Association 1325 Fourth Avenue – Suite 600 Seattle, Washington 98101

- 1. **Call to Order/Preliminary Matters** (10:00 a.m.)
 - Approval of March 10, 2010 meeting minutes [pp. 678-685]
- 2. Consent Calendar
 - No Entries

3. **Discussion**

- Subcommittee B Supplemental Recommendations held over from March 10, 2010 [pp. 686-692]
- Subcommittee C Recommendations held over from March 10, 2010 [pp. 693-695]
- Subcommittee B New Supplemental Report [pp. 696-699]
- Subcommittee C New Supplemental Report [pp. 700-704]

4. Future meeting schedule

- May 13, 2010, 9:00 a.m. to 12:00 noon
 - Consent Calendar Subcommittee A
 - Materials Deadline: Tuesday, May 4, 2010
- > June 10, 2010, 10:00 a.m. to 12:00 noon
 - Consent Calendar Subcommittee B
 - Materials Deadline: Tuesday, June 1, 2010
- August 12, 2010, 10:00 a.m. to 12:00 noon
 - Consent Calendar Subcommittee C
 - Materials Deadline: Tuesday, August 3, 2010
- 5. **Adjourn** (1:00 p.m.)

DRAFT Minutes – March 10, 2010 ELC Drafting Task Force

Present: Geoff Gibbs, Chair, Randy Beitel, Kim Boyce, Kurt Bulmer, Ron Carpenter, James Danielson (phone), Doug Ende, Seth Fine, Bruce Johnson (phone), Julie Shankland, David Summers, Elizabeth Turner, Charlie Wiggins, Scott Busby, Reporter, and Nan Sullins, AOC/Supreme Court Liaison

Call to Order

The Chair called the meeting to order shortly after 10:00 a.m.

Preliminary Matters

The Chair called for corrections to the draft minutes from the January 14, 2010 meeting. Hearing none, the Chair deemed the minutes approved.

Consent Calendar: Subcommittee C (pp. 638-652)

Mr. Wiggins explained that the consent calendar items submitted by Subcommittee C were rules previously approved by the Board of Governors and included much of the previously approved language. Mr. Fine brought the group's attention to internal inconsistencies in the proposed language for ELC 11.4 (Transcript of Hearing). Mr. Fine moved that the second sentence of the proposed language for ELC 11.4(a) be deleted. The Chair deemed the motion seconded. The motion passed unanimously. Mr. Fine moved to adopt Subcommittee C's consent calendar items as amended. The Chair deemed the motion seconded. With the caveat that typos will be corrected, the motion passed unanimously.

Consent Calendar: Subcommittee B (pp. 653-654)

Mr. Fine explained that Subcommittee B's consent calendar item had been inadvertently omitted from the subcommittee's January submission. Mr. Fine moved to adopt Subcommittee B's consent calendar item. The Chair deemed the motion seconded and the motion carried unanimously.

Subcommittee B's Recommendations

The group moved on to address the recommendations from Subcommittee B that were held over from the January 14, 2010 meeting.

ELC 5.3(a) (Investigation of grievance) (p.656):

Mr. Fine explained that this proposal answers the BOG's adoption of the ABA recommendation that grievances not be opened in the name of the WSBA, where an investigation is initiated without a grievant. Instead, an investigation without a grievant would be opened in the name of the ODC. He moved to adopt the proposed language, the Chair deemed the motion seconded, and the motion passed with one abstention.

ELC 5.1(b) (Grievants, Consent to disclosure) (pp. 655 & 676):

The group moved on to discuss Subcommittee B's recommended changes to ELC 5.1(b) and ODC's counter recommendation. ELC 5.1(b) currently requires disclosure of the contents of the grievance to the respondent lawyer. The subcommittee's recommendation (p. 655) requires disclosure of all information submitted, with two instances in which disclosure may be restricted: (1) when a protective order is issued, and (2) when the grievance is filed under ELC 5.2 (Confidential Sources). ODC's proposal (p. 676) would add a third instance: (3) when necessary to protect a compelling privacy or safety interest of a grievant or other individual.

With the Chair's permission, Mr. Ende introduced Felice Congalton, Sr. Disciplinary Counsel and Intake Manager, and invited her to share her insight on the proposed changes as manager of the ODC team that deals with the issue most often. Ms. Congalton described two situations in which grievants request that their information be withheld from the respondent:

- (1) A grievant who has a confidential address because of abuse by an ex spouse and who is concerned that the ex spouse may get obtain the contact information if it is revealed. In this situation, Ms. Congalton generally redacts the contact information from the face of the grievance since the information is not part of the content of the grievance. This course of action is allowed under the current rule because the grievant's contact information is not part of the content of the grievance. However, without ODC's requested addition, the proposed change to ELC 5.1(b) would foreclose this option.
- (2) A grievant is concerned about harassment of third parties by the respondent lawyer or others where a third party has given corroborating information, or where the grievant has proposed a third party as a source for corroborating information. One example is when corroborating evidence is provided by the respondent lawyer's staff. The grievant may fear that the staff member will be fired as a result of the grievance. Currently, in this type of case, Ms. Congalton returns grievant's information, informs the grievant that all information submitted as part of a grievance must be shared with the respondent lawyer, and asks the grievant to resubmit the grievance minus any information that the grievant is not willing to share with the respondent.

In many instances the grievant simply does not respond and the information is lost. ODC's requested addition would prevent the loss of the information by allowing ODC to redact a grievance to protect a third party, or the grievant, where there are privacy and/or safety concerns.

Mr. Bulmer noted that the respondent lawyer has no remedy of review similar to the grievant's remedy of review of a decision to withhold part of the response to a grievance (under ELC 5.1(c)(3)(B)). He stated that he is not opposed to ODC's proposed addition to ELC 5.1(b), but argued for a respondent's right to review the decision. A discussion ensued in which several issues arguments were made: (a) the difference between a grievant submitting information and a respondent's response is that a respondent is required to respond while the grievant has no obligation to submit information; (b) due process does not allow a respondent to be accused in secrecy; (c) any information that ODC relies on in a prosecution must be disclosed; and (d) ODC can never give an absolute assurance that it will never disclose any protected information anyway.

The Chair entertained a motion that the subcommittee's recommendation on p. 655 be amended to add ODC's proposed language from p. 676. The motion carried unanimously. The Chair next entertained a motion to adopt Subcommittee B's recommendation, as amended, leaving the issue of parallel appeal to be addressed by the subcommittee. The motion carried unanimously.

ELC 5.1(c)(3) (protecting private or confidential information in a response to a grievance) (pp. 655-656):

Ms. Turner moved to adopt Subcommittee B's proposal; the Chair deemed the motion seconded. The motion carried unanimously.

ELC 5.1(c)(5) (excluding a grievant from the hearing when the grievant is also a witness) (p. 656):

Mr. Fine moved to adopt Subcommittee B's proposal; the Chair deemed the motion seconded. The motion carried unanimously.

ELC 5.1(e) (vexatious grievant) (reserved from last meeting)

Ms. Turner requested that the group address the question reserved from the January meeting on whether the Chief Hearing Officer (CHO) or the DBoard Chair would rule on a petition to declare a grievant vexatious. The group had reserved the question because Mr. Summers, current CHO, was absent from the January meeting. Mr. Fine moved to adopt the proposal as submitted (leaving the decision in the hands of the DBoard Chair). Mr. Beitel moved to amend the motion to substitute the CHO as decision maker. The group discussed the benefits of both approaches:

In favor of the CHO: (a) in the federal courts, a trial judge makes the decision to declare a litigant vexatious; (b) the CHO position is a long-term position, allowing a consistency in approach; and (c) the decision requires fact finding rather than review of a previous decision.

In favor of the DBoard Chair: (a) the DBoard Chair has the authority to rule on matters not yet filed or ordered to hearing; (b) the DBoard Chair has experience evaluating hundreds of grievances from serving on Review Committees, while the CHO does not; and (c) the difficulty of the decision requires someone higher up the organizational chart.

The Chair called for a vote on the motion to amend. With a vote of 5 in favor and 6 opposed, the motion failed. Under the proposed language for the vexatious grievant rule, the DBoard Chair remains the decision maker.

After a short break, the Chair reopened the discussion of the rule as a whole. Mr. Wiggins expressed his concern that a single person will make the decision restricting a person's right to participate in the system subject to no review, save discretionary review by the Supreme Court. Mr. Summers suggested providing a mechanism for review within the disciplinary system. The group discussed the merits of adding review a mechanism, but did not raise a motion to amend.

Ms. Turner continues to be concerned that the rule allows a respondent lawyer to file a petition to declare a grievant vexatious. She advocated making the rule clear that conduct giving rise to such a determination must occur in the discipline process. Mr. Carpenter disagreed, based on his experience with the broad range of behavior shown by vexatious litigants. The Chair called for a vote. With 11 in favor and 1 opposed, the motion carried and the subcommittee's original proposal was adopted.

ELC 5.3(a), 5.5(d) & 7.2(a) (creating a respondent's right to object to an inquiry or a request for information) (pp. 656-657):

Mr. Fine explained that the proposal spanned several rules to create a process for a respondent to challenge a request for information from bar counsel during the investigation phase of a grievance. He said that the proposed changes included protections against abuse by respondent lawyers: (1) the challenge must be raised prior to the deadline for a response; (2) if the CHO overrules the objection, there is no further review; and (3) CHO may impose expenses and fees on respondents for objections without a substantial basis, subject to review by the DBoard Chair. The Chair opened the floor for discussion

Mr. Ende expressed his strong disagreement with the proposal. The proposal interposes a mechanism into the investigation process that, whether misused or not, will slow to the point of stalling ODCs ability to conduct investigations and process grievances. And the potential for misuse is enormous. ODC has

reached a point where it has eliminated a huge backlog and is operating in real time, as required by the delegation of responsibility by the Supreme Court. This proposal will seriously disrupt ODC's ability to stay there. Mr. Ende said that it is important to understand that this proposal affects the investigation phase, not discovery. Yet the proposed rule interpolates a discovery-like process into the investigation phase where it has no place. He reminded the group that in the criminal process there exist operating mechanisms to complete investigations. ODC has no enforcement arm. The only enforcement mechanism ODC has is the authority granted by the Supreme Court to ask for a prompt and complete response to a grievance and to issue subpoenas. He also reminded the group that there are mechanisms to challenge subpoenas and if the process gets to the point of a petition for interim suspension, the investigative request is reviewed by the Supreme Court.

Mr. Bulmer countered that a respondent lawyer who truly believes that the scope or subject of the request from ODC is too broad or improper faces the risk of suspension for asserting the right to question the request. The risk of loss for asserting important rights is too high. The proposed rule gives the respondent lawyer the opportunity to raise 5th Amendment, over-broadness, and other important issues before the risk is too great.

Mr. Fine said that the analogy to the criminal process supports the rule because judicial intervention is required for police and prosecutors to get information from an unwilling witness. Mr. Beitel noted that when police arrest a person, they are allowed to ask questions. ODC should be allowed to ask the questions. Mr. Fine countered that the arrested subject can "lawyer-up" and refuse to answer without penalty. Mr. Beitel noted that proposed rule allows costs and fees to be assessed against ODC as well as against respondents. He hoped that disciplinary counsel would be judged on a bad faith standard—that no fees or costs would be imposed on either party without a showing of bad faith. He posited that the proposed rule being cost driven would have a negative impact on choices as to which matters are investigated and how.

Mr. Beitel also reminded the group that what usually occurs when a respondent has concerns about the scope of a request for information is that the respondent talks to disciplinary counsel and they come to an agreement. Mr. Bulmer agreed that 99% of the time respondents and/or their counsel work out the issues with disciplinary counsel, but he wants protection for those times when an agreement cannot be reached.

The Chair called for a vote. With 5 in favor and 3 opposed, the motion passed and Mr. Fine's proposed rule was adopted.

ELC 5.5 (Investigatory Subpoenas) (pp. 657-658)

Mr. Fine explained that this rule would allow ODC to subpoena documents without setting a deposition. Mr. Beitel said that ODC cannot support the rule as drafted because it has been altered substantially from the ODC proposal, specifically in the addition of subsection (c) (notice to respondent) and (d) (challenges). The group discussed the problems with allowing notice to respondents: (1) notice is an invitation to tamper; (2) the proposed notice requirement civil discovery mechanism arafts а onto investigatory/enforcement investigation; and (3) the proposed notice requirement could tie ODC's hands in a way that compromises the investigation.

Mr. Wiggins moved to amend the proposed language to delete subsection (c). Ms. Turner seconded. Mr. Fine made a motion to amend by going back to the original ODC proposal at p. 363. Mr. Beitel seconded. The Chair called for a vote on the second motion. With a vote of 5 in favor and 1 opposed, the motion carried and the language from ODC's proposal at p. 363 was adopted.

ELC 5.6(b) (review of dismissal) (p. 658)

Mr. Fine made a motion to adopt the amendments to ELC 5.6(b) proposed at p. 658. The Chair deemed the motion seconded and called for a vote. The motion carried unanimously.

ELC 5.6(d), (e) (Disposition of Grievance) (p. 658)

Mr. Fine made a motion to adopt the amendments to ELC 5.6(c), (e) proposed at p. 658. The Chair deemed the motion seconded and called for a vote. The motion carried unanimously.

ELC 6.1 (referral to diversion after formal complaint filed) (p. 659)

Mr. Fine made a motion to adopt the amendments to ELC 6.1 proposed at p. 659. The Chair deemed the motion seconded and called for a vote. The motion carried unanimously.

ELC 7.7(a) (appointment of custodian) (p. 659)

Mr. Fine made a motion to adopt the amendments to ELC 7.7(a) proposed at p. 659. The Chair deemed the motion seconded and called for a vote. The motion carried unanimously.

ELC 7.7(d) (allowing WSBA to recover fees/costs of custodianship) (pp. 659-660)

Mr. Fine made a motion to adopt the amendments to ELC 7.7(d) proposed at pp. 659-660. The Chair deemed the motion seconded and called for a vote. The motion carried unanimously.

ELC 9.1(c) (Approval of stipulations, when mandatory) (pp. 660)

Mr. Fine introduced the subcommittee's proposals to amend ELC 9.1 as non-substantive modifications of language proposed by the BOG. He proposed reviewing all of the proposed changes to ELC 9.1, as pulled together in the materials at pp. 666-667. The group decided to address each section separately starting with the proposed language at p. 660-661.

Mr. Fine noted that the BOG's proposed language for ELC 9.1(c)(3) came to a full stop after "manifest injustice." Mr. Wiggins moved to amend the proposal to put a full stop after "manifest injustice." The Chair deemed the motion seconded and called for a vote. The motion carried unanimously. The Chair recognized a motion to adopt the proposed language for ELC 9.1(c) at p. 660 as amended. The motion carried unanimously.

ELC 9.1(d) (Conditional approval) (p. 661)

Mr. Fine explained that this proposal extends the authority to conditionally approve a stipulation to the hearing officer or CHO. Ms. Shankland wanted to make sure that the language would require that a motion to reconsider an order rejecting or conditionally approving a stipulation be filed with the DBoard Clerk as well as served on the hearing officer or CHO. Mr. Fine recommended rephrasing the language later. The Chair recognized a motion and second to accept the concept, but return the proposal to Subcommittee B to rework the language. The motion carried unanimously.

<u>Adjourn</u>

The Chair adjourned the meeting at 1:00 p.m. The Chair proposed extending April's meeting to 3 hours to accommodate material tabled from this meeting (materials pp. 662-675). Ms. Cain will email the group with the details of the extended schedule after confirming conference room availability.

Next Meetings

Thursday, April 8, 2010 10:00 a.m. to 1:00 p.m.

Consent Calendar: Subcommittee A

Deadline for Materials: Tuesday, March 30, 2010

Thursday, June 10, 2010 10:00 a.m. to noon Consent Calendar: Subcommittee B Deadline for Materials: Tuesday, June 1, 2010

<u>Adjournment</u>

Minutes Respectfully Submitted by

Scott Busby Disciplinary Counsel Task Force Staff Reporter

Held over from March 10, 2010 meeting

February 2, 2010

To: Geoff Gibbs, Chair ELC Drafting Task Force

From: Seth Fine, Chair Subcommittee B

Re: Supplemental Subcommittee B Report [Part 2]

This supplements the Subcommittee B report dated December 29, 2009 (p. 614-29). The Subcommittee makes the following additional recommendations.

II. PROPOSALS RECOMMENDED FOR ADOPTION

The Subcommittee recommends that the following additional proposals be adopted after discussion:

1. ELC 5.1(f) [4-1 vote]:

[Note: This supplements the subcommittee proposal at p. 619-20, which was adopted by the Task Force at the 1/14 meeting.]

ELC 5.1 GRIEVANTS

. . . .

(f) Recovery of Attorney's fees and Costs Against a Serial Vexatious Grievant.

- (1) If the Chair grants the motion and finds the person or entity to be a vexatious grievant, disciplinary counsel or the respondent lawyer may recover attorney's fees and costs against a serial vexatious grievant.
- (2) Disciplinary counsel or the respondent lawyer may request fees by filing a motion within 15 days after the Chair issues its order under subpart (e)(3). The motion procedure shall conform to ELC 11.14 and shall also include an affidavit of counsel providing detailed support for the fees and costs requested. The Chair may, in the Chair's discretion, award fees and costs incurred in the preparation of the motion made pursuant to this rule, but only if the Chair further determines that the vexatious grievant is a serial vexatious grievant. A person or entity is a serial vexatious grievant if:
 - (a) the grievant, acting alone or in apparent concert with another, has previously filed
 (i) two other grievances against the respondent lawyer or
- (ii) four other grievances against members of the same "firm" as defined in RPC 1.0(c);
- (b) the principal purpose in filing the grievances was to harass or annoy the respondent lawyer; and
- (c) the prior grievances were dismissed under ELC 5.6 with no more than an advisory letter. A grievance that results in (1) a sanction, admonition or remedy under ELC 13.1 or in (2) diversion under Title 6 may not be counted toward the required number of grievances under part (f)(1).

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- (3) Disciplinary counsel, the respondent lawyer, or the grievant may seek review of the Chair's order on fees by a petition for discretionary review under rule 12.4.
- (4) After the award of costs and fees is final, upon application by the Association or the respondent lawyer, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and fees if the grievant has failed to pay the costs and fees. The Association or respondent lawyer must serve the application for a money judgment on the grievant under rule 4.1. The grievant may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the grievant has complied with the duty to pay costs and fees under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association or respondent lawyer and the grievant of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association or respondent lawyer and notifies grievant of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

2. ELC 5.1(c)(3):

[Note: This replaces the previous Subcommittee proposal at p. 620-21. It is a modified version of the ODC proposal at p. 351.]

ELC 5.1 GRIEVANTS

. . . .

(c) Grievant Rights. A grievant has the following rights:

. . .

- (3) to receive a copy of any response submitted by the respondent, except: subject to the following:
 - (A) <u>Disciplinary counsel may withhold all or a portion of the response from the grievant when:</u>
 - (i) if the response refers to a client's confidences or secrets information protected by RPC 1.6 or RPC 1.9 to which the grievant is not privy; or (B) if
 - (ii) the response contains information of a personal and private nature about the respondent <u>or others</u>; or
 - (iii) (C) if a review committee determines that the interests of justice would be better served by not releasing the response.
 - (B) When either the grievant or respondent disputes in writing a decision by disciplinary counsel to withhold or not withhold all or a portion of a response, the matter will be forwarded to a review committee to resolve the dispute, unless the matter has previously been dismissed under rule 5.6.

3. ELC 5.6:

[Note: This is a modification of the ODC proposal at p. 364.]

ELC 5.6 DISPOSITION OF GRIEVANCE

. . . .

- (d) Authority on Review. In reviewing grievances under this rule, a review committee may:
 - (1) dismiss the grievance;
 - (4 2) affirm the dismissal;
 - (2 3) dismiss the grievance and issue an advisory letter under rule 5.7;
 - (3 4) issue an admonition under rule 13.5;
 - (45) order a hearing on the alleged misconduct; or
 - $(5 \underline{6})$ order further investigation as may appear appropriate.
- (e) Action Final. A review committee's action under this rule is final and not subject to further review.

4. ELC 6.5:

[Note: This is a modification of the ODC proposal at p. 371.]

ELC 6.5 DIVERSION CONTRACT

- **(a) Negotiation.** Disciplinary counsel and the respondent lawyer negotiate a diversion contract, the terms of which are tailored to the individual circumstances.
- (b) Required Terms. A diversion contract must:
 - (1) be signed by the respondent and disciplinary counsel;
 - (2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a practice monitor and/or a recovery monitor and the monitor's responsibilities. If a recovery monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the recovery monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;
 - (3) include a statement in substantially the following form: "This diversion contract is a compromise and settlement of one or more disputes. Except as specifically authorized by the Rules for Enforcement of Lawyer Conduct, it is not admissible in any court, administrative, or other proceedings. It may not be used as a basis for establishing liability to any person who is not a party to this contract";
 - (3 <u>4</u>) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel;
 - (4 <u>5</u>) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the grievances to be deferred; and
 - (5 6) include a specific acknowledgment that a material violation of a term of the contract renders the respondent's participation in diversion voidable by disciplinary counsel.
- (c) Limitations. A diversion contract does not create any enforceable rights, duties, or liabilities in any person not a party to the diversion contract or create any such rights, duties or liabilities outside of those stated in the diversion contract or provided by Title 6 of these rules.
- (e<u>d</u>) Amendment. The contract may be amended on agreement of the respondent and disciplinary counsel.

5. ELC 7.4 and 8.5:

[Note: This is based on the Turner suggestion set out in the 1/4 matrix at p. 18.]

ELC 7.4 STIPULATION TO INTERIM SUSPENSION

At any time a respondent lawyer and disciplinary counsel may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a serious crime, a substantial threat of serious harm to the public, or incapacity to practice law. A stipulation must state the factual basis for the stipulation and be submitted directly to the Supreme Court for expedited consideration. When the stipulation is based on the lawyer's incapacity to practice law, the lawyer must be represented by counsel, and if counsel does not otherwise appear, the Association will appoint counsel. Stipulations under this rule are public upon filing with the Court, but the Court may order that supporting materials are confidential. Either party may petition the Court to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Court may terminate the suspension.

ELC 8.5 STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS

(a) Requirements. At any time a respondent lawyer and disciplinary counsel may stipulate to the transfer of the respondent to disability inactive status under this title. The respondent and disciplinary counsel must sign the stipulation. The respondent lawyer must be represented by counsel in entering into such a stipulation. If counsel does not otherwise appear, the Association will appoint counsel.

. . .

6. ELC 7.7, ODC proposal at p. 385:

ELC 7.7 APPOINTMENT OF CUSTODIAN TO PROTECT CLIENTS' INTERESTS

. . . .

(e) Records. The Bar Association maintains record of the custodianship permanently. The custodian maintains files and papers obtained as custodian until otherwise ordered by the Chair.

7. ELC 9.1:

[Note: This is a consolidation of the following:

- 1. ODC proposal at 386 (adopted by Task Force at 1/14 meeting, p. 617).
- 2. ODC proposal at p. 390-91 (adopted by Task Force at 1/14 meeting, p. 617).
- 3. BOG proposal at p. 124 and 412 (modified as set out in previous Subcommittee report at p. 625).
- 4. ODC proposal at p. 388-89 (modified as set out in previous Subcommittee report at p. 626).
- 5. ODC proposal at p. 387 (modified).
- 6. ODC proposal at p. 394.]

ELC 9.1. STIPULATIONS

. . .

- (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. (e d) Approval.
- (1) <u>Standards.</u> The chief hearing officer, a hearing officer or panel, or the Board must approve a stipulation unless the stipulation results in a manifest injustice after consideration of the purposes of lawyer discipline, the ABA Standards for Imposing Lawyer Sanctions, and Washington authority.
- (2) Approval By Chief Hearing Officer. Subject to 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 or panel, 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(f). The chief hearing officer may not approve of a stipulation that requires the respondent's suspension or disbarment.
- (4 <u>3</u>) <u>Approval</u> By Hearing Officer. <u>Subject to subsection (1), a</u> hearing officer or panel may approve of a stipulation disposing of a matter pending before the officer or panel, unless the stipulation requires the respondent's suspension or disbarment. This approval constitutes a final decision and is not subject to further review.
- (2 <u>4</u>) <u>Approval</u> 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. <u>Subject to subsection (1), the Board may approve, conditionally approve, or reject a stipulation</u>. 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 for approval. 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.

(d 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

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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 hearing panel and chief hearing officer.

- (2) By Board. Subjection 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.
- (e <u>f</u>) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, the parties may serve on the Clerk, hearing officer or panel, or chief hearing officer a joint motion for reconsideration and may ask to address the Board, hearing officer or panel, or chief hearing officer on the motion.
- (f <u>g</u>) Stipulation Rejected. The Board's <u>An</u> 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 panel 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.

8. ELC 9.X and 9.2:

[Note: This is a modification of the ODC proposal at p. 404-05.]

ELC 9.X RECIPROCAL RESIGNATION IN LIEU OF DISCIPLINE

- (a) Duty To Self-Report Resignation In Lieu of Discipline. Within 30 days of resigning in lieu of discipline from another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the resignation in lieu of discipline.
- **(b) Obtaining Order.** Upon notification from any source that a lawyer admitted to practice in this state has resigned in lieu of discipline in another jurisdiction, disciplinary counsel must obtain a copy of the resignation in lieu of discipline and any order approving the resignation and file it with the Supreme Court, except in circumstances set forth in subsection (e).
- **(c) Supreme Court Action.** Except in circumstances set forth in subsection (e), Uupon receipt of a copy of a resignation in lieu of discipline and any order approving the resignation, the Supreme Court orders the respondent lawyer to show cause within 30 days of service why the lawyer should not be disbarred in this jurisdiction. The Association must personally serve this order, and a copy of the resignation in lieu of discipline and any order from the other jurisdiction approving the resignation, on the respondent under rule 4.1(b)(3).

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(d) Discipline To Be Imposed.

- (1) Thirty days after service of the order under section (c), the Supreme Court enters an order disbarring the respondent lawyer unless the lawyer demonstrates that disbarment would result in grave injustice.
- (2) The burden is on the respondent to establish that continuing to remain admitted to practice in this jurisdiction will not place the public at risk.
- (3) If the Supreme Court determines that disbarment would result in a grave injustice, the Court may enter an appropriate order.
- (e) Prior Matter In Washington. No action will be taken against a lawyer under this rule when the lawyer has already been the subject of discipline or other final disposition of a grievance or disciplinary proceeding in Washington for the same conduct that is the basis for discipline or a resignation in another jurisdiction.

ELC 9.2 RECIPROCAL DISCIPLINE AND DISABILITY INACTIVE STATUS; DUTY TO SELF-REPORT

- (a) Duty To Self-Report Discipline or Transfer to Disability Inactive Status. Within 30 days of being disciplined or transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the discipline or transfer.
- **(b) Obtaining Order.** Upon notification from any source that a lawyer admitted to practice in this state was disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel must obtain a certified copy of the order and file it with the Supreme Court, except in circumstances set forth in subsection (g).
- (c) Supreme Court Action. Except in circumstances set forth in subsection (g), Uupon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in this state has been disciplined or transferred to disability inactive status in another jurisdiction, the Supreme Court orders the respondent lawyer to show cause within 30 days of service why it should not impose the identical discipline or disability inactive status. The Association must personally serve this order, and a copy of the order from the other jurisdiction, on the respondent under rule 4.1(b)(3).

. . .

(g) Prior Matter In Washington. No action will be taken against a lawyer under this rule when the lawyer has already been the subject of discipline, disability transfer, or other final disposition of a grievance, disciplinary proceeding, or disability proceeding in Washington for the same conduct that is the basis for discipline, resignation, or disability transfer in another jurisdiction.

Memo

To: Geoff Gibbs, Chair ELC Drafting Taskforce

From: Charlie Wiggins, Chair Subcommittee C

Date: February 3, 2010

Re: Subcommittee C Repo

ITEMS FOR DISCUSSION BY THE TASKFORCE

1. ELIMINATE AUTOMATIC BOARD REVIEW OF HEARING OFFICER SUSPENSION AND DISBARMENT RECOMMENDATIONS, AND ADD PROCEDURE FOR SUA SPONTE REVIEW.

The BOG and Subcommittee C agree that automatic review of suspension and disbarment recommendations should be eliminated, and in its place a procedure for sua sponte review adopted. The Subcommittee's recommendation, listing the relevant material, is at page 530, and the Task Force agreed with the recommendation. Minutes of September 10, 2009 meeting. The minutes reflect that there was a consensus against automatic review, and the vote for sua sponte review was seven in favor and five opposed. The chair directed the Subcommittee to draft appropriate language to incorporate this change.

The proposed language has being submitted as a consent item with this report. Patrick Sheldon has requested that the Task Force reopen the issue of the desirability of these changes.

2. RIGHT OF APPEAL ON SUSPENSION AND DISBARMENT RECOMMENDATIONS FOR BOTH RESPONDENT AND DISCIPLINARY COUNSEL.

Currently only respondents have the right to appeal a suspension or disbarment recommendation. The proposal would extend this right to disciplinary counsel. The BOG approved this change, and Subcommittee C recommended it by a vote of 4 to 1. The Task Force considered this change in the September 10 meeting and approved it by a vote of six in favor and four opposed.

Draft language to accomplish this change is being submitted with this report. Mr. Sheldon has asked that the issue be raised for discussion in the full Task Force.

Date: February 3, 2010

Re: Subcommittee C Report

ODC PROPOSAL FOR A MOTION PROCEDURE.

Although there are provisions for motion practice before the hearing officer and on appeal to the Supreme Court, there is no motion procedure in ELC Title 11 for matters pending before the Disciplinary Board. ODC has proposed a new ELC 11.14 that is loosely modeled on the RAP Title 17 motions practice. The ODC proposal is also at pages 600-01.

Current Disciplinary Board Chair Seth Fine has raised two issues under the proposed rule. Subsection (f) says that the chair must "promptly rule on the motion." ELC 1.3(r)(2) provides that "must" means "is required to." Seth asks how this will be enforced. The Subcommittee discussed this concern and did not feel it would be a problem. We considered changing the language, but the fact is that we believe that the Chair should be required to act promptly, whether or not there is a mechanism for enforcement.

Seth also raises the concern that subsection (h), providing for "motions on minor matters", may be confusing because it fails to define what matters are "minor." The Subcommittee felt that lawyers have a general sense of what is "minor" and what is "non-minor" and that the chair is in a position to make such a determination and rule accordingly. The Subcommittee felt the language of the rule was appropriate.

The Subcommittee recommends adoption of the ODC proposed rule following discussion by the Task Force.

4. PROVISION FOR BOARD REVIEW OF A HEARING OFFICER'S DISMISSAL OF ALL CLAIMS UNDER ELC 10.10(A).

ODC has proposed modifying ELC 11.1 and 11.2 to provide that a hearing officer's dismissal of all claims under ELC 10.10(a) is subject to board review. Rule 10.10(a) provides for dismissal for failure to state a claim upon which relief can be granted.

ODC's proposed language is at page 414. The Subcommittee recommends adoption of the rule.

CONSENT CALENDAR ITEMS

Subject to Task Force approval of the discussion of the items recommended above, Subcommittee C recommends that draft language incorporating these changes be placed on the consent agenda. The following proposed rules are attached incorporating these changes: 11.2, 11.3, 11.4. 11.6, 11.9, 11.11, 12.3, 12.4.

Date: February 3, 2010

Re: Subcommittee C Report

Text of ODC Proposal for Motions Rule:

[NEW SECTION]

ELC 11.14 MOTIONS

- (a) Content of Motion. A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for the relief sought, with supporting argument.
- **(b) Filing and Service.** Motions on matters pending before the Board must be in writing and filed with the Clerk. The motion and any response or reply must be served as required by rule 4.1.
- **(c) Response.** The opposing party may submit a written response to the motion. A response must be served and filed within ten days of service of the motion, unless the time is shortened by the Chair for good cause.
- **(d) Reply.** The moving party may submit a reply to a response. A reply must be served and filed within seven days of service of the response, unless the time for reply is shortened by the Chair for good cause.
- **(e)** Length of Motion, Response, and Reply. A motion and response must not exceed ten pages, not including supporting papers. A reply must not exceed five pages, not including supporting papers. For good cause, the Chair may grant a motion to file an over-length motion, response, or reply.
- **(f) Consideration of Motion.** Upon expiration of the time for reply, the Chair must promptly rule on the motion or refer the motion to the full Board for decision. A motion will be decided without oral argument, unless the Chair directs otherwise.
- **(g) Ruling.** A motion is decided by written order filed with and served by the Clerk under rule 4.2(b).
- **(h) Minor Matters.** Motions on minor matters may be made by letter to the Chair, with a copy served on the opposing party and filed with the Clerk. The provisions of sections (c), (d) and (f) of this rule apply to such motions. A ruling on such a motion is decided by written order filed with and served by the Clerk under rule 4.2(b).

March 29, 2010

To: Geoff Gibbs, Chair

ELC Drafting Task Force

From: Seth Fine, Chair Subcommittee B

Re: Second Supplemental Subcommittee B Report

This supplements the Subcommittee B reports dated December 29, 2009 (p. 614-29) and February 2 (p. 653-68). It covers issues that that the Task Force referred back to the subcommittee at the 3/10 meeting. It also sets out some new proposals.

I. PROPOSALS PREVIOUSLY CONSIDERED BY TASK FORCE

1. ELC 5.1

a. Task Force action

The Task Force adopted the following proposed addition to ELC 5.1(c)(3)(B):

When either the grievant or respondent disputes in writing a decision by disciplinary counsel to withhold or not withhold all or a portion of a response, the matter will be forwarded to a review committee to resolve the dispute no later than when a review committee considers the matter under rule 5.6

The Task Force asked the subcommittee to consider a parallel provision for review of disciplinary counsel's decisions with respect to the withholding of grievances.

b. Subcommittee recommendation

The Subcommittee recommends that the above language be withdrawn and replaced with the following new subsection for ELC 5.1:

() Challenge to Disclosure Decision. Either the grievant or the respondent may file a challenge to disciplinary counsel's decision to withhold or not withhold all or a portion of a grievance or response. The challenge shall be resolved by a review committee, unless the matter has previously been dismissed under rule 5.6.

2. ELC 5.6(b)

a. Task Force Action

The Task Force adopted the following proposed language for ELC 5.6:

(b) **Review of Dismissal.** A grievant may request review of dismissal of the grievance by delivering or depositing in the mail a request for review to the Association no later than 45 days after the Association mails the notice of dismissal. Mailing requires postage prepaid first class mail. If review is requested, disciplinary counsel may either reopen the matter for investigation or refer it to a review committee. If no request for review of the dismissal is made within the 45 days the dismissal is final and may not be reviewed. Disputes regarding the timeliness of a request for review of a dismissal may be submitted to a review committee. A grievant may withdraw in writing a request for review of a dismissal of the grievance, but thereafter the request for review may not be revived.

The Task Force asked the subcommittee to simplify this language.

b. Subcommittee recommendation

The subcommittee recommends that the above language be replaced by the following:

(b) **Review of Dismissal.** A grievant may request review of dismissal of the grievance by delivering or depositing in the mail a request for review to the Association no later than 45 days after the Association mails the notice of dismissal. Mailing requires postage prepaid first class mail. If review is requested, disciplinary counsel may either reopen the matter for investigation or refer it to a review committee. If no timely request for review is made, the dismissal is final and may not be reviewed. Disputes regarding timeliness may be submitted to a review committee. A grievant may withdraw in writing a request for review, but thereafter the request may not be revived.

3. ELC 9.1

a. Task Force action

The Task Force adopted the following language for ELC 9.1(e):

(e) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, the parties may serve on the Clerk,

hearing officer or chief hearing officer a joint motion for reconsideration and may ask to address the Board, hearing officer or chief hearing officer on the motion.

The Task Force asked the subcommittee to clarify this provision with regard to: (1) the application of reconsideration to Board decisions and (2) the entity on whom the motion should be served.

b. Subcommittee recommendation

The Subcommittee recommends that the above language be replaced with the following:

(e) 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 and may ask to address the Board on the motion. If the conditional approval was made by a hearing officer or panel 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.

II. NEW PROPOSALS

The Subcommittee recommends that the following additional proposals be adopted:

1. ELC 9.2(a) and (b), ODC proposal at p. 395-96 [4-1 vote]:

RECIPROCAL DISCIPLINE AND DISABILITY INACTIVE STATUS; DUTY TO SELF-REPORT

- (a) Duty To Self-Report Discipline or Transfer to Disability Inactive Status. Within 30 days of being <u>publicly</u> disciplined, or <u>being</u> transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the discipline or transfer.
- **(b) Obtaining Order.** Upon notification from any source that a lawyer admitted to practice in this state was <u>publicly</u> disciplined, or <u>was</u> transferred to disability inactive status in another jurisdiction, disciplinary counsel must obtain a certified copy of the order and file it with the Supreme Court.

. . .

2. ELC 9.2(b), ODC proposal at p. 397 [4-1 vote]:

(b) Obtaining Order. Upon notification from any source that a lawyer admitted to practice in this state was disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel must obtain a certified copy of the order and file it with the Supreme Court.

Memo

To: ELC Drafting Task Force

From: Subcommittee C

Date: 3/28/10

RE: Supplemental Proposals for the April 8, 2010 Task Force Meeting

Since the last meeting of the Task Force, Subcommittee C met on March 16th and we submit the following supplemental proposals for consideration by the Task Force on the consent calendar:

1. At the March 10, 2010 meeting, the Task Force approved on the consent calendar proposed amendments to ELC 12.3 [see Materials 650]. We have refined that language and have also considered the proposals of ODC set forth at pp. 424-25 to amend this rule to clarify where an appeal is filed and to provide information as to the payment of the filing fee. As a result, we propose the following changes be considered on the consent calendar in lieu of our prior recommendations at p. 650 of the Materials:

ELC 12.3 APPEAL [Redline]

- (a) Respondent's Right to Appeal. The respondent lawyer or disciplinary counsel has the right to appeal a Board decision recommending suspension or disbarment. There is no other right of appeal.
- **(b) Notice of Appeal**. To appeal, the respondent The appealing party must file a notice of appeal with the Clerk within 15 30 days of service of the Board's decision on the respondent that party.
- (c) Subsequent Notice By the Other Party. When a timely notice of appeal has been filed by a party, if the other party wants relief from the Board's decision, that party must file a notice of appeal with the Clerk within the later of:
 - (1) 14 days after service of the notice filed by the other party, or
 - (2) the time for filing a notice under subsection (b) of this rule.
- (d) Filing Fee. The first party to file a notice of appeal must, at the time the notice is filed, pay the statutory filing fee by check payable to the Clerk of the Supreme Court.
- (e) Service. A party filing any notice of appeal must serve the other party.

ELC 12.3 APPEAL [Clean Copy]

(a) Right to Appeal. The respondent lawyer or disciplinary counsel has the right to appeal a Board decision recommending suspension or disbarment. There is no other right of appeal.

- **(b) Notice of Appeal.** The appealing party must file a notice of appeal with the Clerk within 30 days of service of the Board's decision on that party.
- **(c)** Subsequent Notice By the Other Party. When a timely notice of appeal has been filed by a party, if the other party wants relief from the Board's decision, that party must file a notice of appeal with the Clerk within the later of:
 - (1) 14 days after service of the notice filed by the other party, or
 - (2) the time for filing a notice under subsection (b) of this rule.
- **(d) Filing Fee.** The first party to file a notice of appeal must, at the time the notice is filed, pay the statutory filing fee by check payable to the Clerk of the Supreme Court.
- **(e) Service.** A party filing any notice of appeal must serve the other party.
- 2. At the March 10, 2010 meeting, the Task Force approved on the consent calendar proposed amendments to ELC 12.4 [see Materials 651-52]. Consistent with the changes above to ELC 12.3, we have refined that language and have also considered the proposals of ODC set forth at pp. 424-25 to amend this rule to clarify where an appeal is filed and to provide information as to the payment of the filing fee. As a result, we propose the following changes be considered on the consent calendar in lieu of our prior recommendations at p. 651-52 of the Materials:

ELC 12.4 DISCRETIONARY REVIEW [Redline]

- (a) Decisions Subject to Discretionary Review. Respondent or disciplinary counsel may seek discretionary review of Board decisions under rule 11.12(e) not recommending suspension or disbarment subject to appeal under rule 12.3. are subject to Supreme Court review only through discretionary review. The Court accepts discretionary review only if:
 - (1) the Board's decision is in conflict with a Supreme Court decision;
 - (2) a significant question of law is involved;
 - (3) there is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or
 - (4) the petition involves an issue of substantial public interest that the Court should determine.
- (b) Petition for Review. Either party Respondent or disciplinary counsel may seek discretionary review by filing a petition for review with the Court Clerk within 25 30 days of service of the Board's decision on respondent.
- (c) Content of Petition; Answer; Service; Decision. A petition for review should be substantially in the form prescribed by RAP 13.4(c) for pe-

titions for Supreme Court review of Court of Appeals decisions. References in that rule to the Court of Appeals are considered references to the Board. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4(d) - (h) governs answers and replies to petitions for review and related matters including service and decision by the Court.

- (d) Subsequent Petition By Other Parties. If a timely petition for discretionary review is filed by the Respondent or disciplinary counsel, and the other party wants relief from the Board's decision, he or she must file a petition for discretionary review with the Clerk within the later of:
 - (1) 14 days after service of the petition filed by the other party, or
 - (2) the time for filing a petition under subsection (b) of this rule.
- (e) Filing Fee. The first party to file a petition for discretionary review must, at the time the petition is filed, pay the statutory filing fee by check payable to the Clerk of the Supreme Court.
- (d f) Acceptance of Review. The Court accepts discretionary review of a Board decision by granting a petition for review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

ELC 12.4 DISCRETIONARY REVIEW [Clean Copy]

(a) Decisions Subject to Discretionary Review.

Respondent or disciplinary counsel may seek discretionary review of Board decisions under rule 11.12(e) not subject to appeal under rule 12.3. The Court accepts discretionary review only if:

- (1) The board's decision is in conflict with a Supreme Court decision;
- (2) A significant question of law is involved;
- (3) There is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or
- (4) The petition involves an issue of substantial public interest that the Court should determine.
- **(b) Petition for Review.** Respondent or Disciplinary Counsel may seek discretionary review by filing a petition for review with the Court within 30 days of service of the Board's decision.
- (c) Content of Petition; Answer; Service; Decision. A petition for review should be substantially in the form prescribed by RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in the rule to the Court of Appeals are considered references to the Board.

The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4(d)-(h) governs answers and replies to petitions for review and related matters including service and decision by the Court.

- **(d) Subsequent Petition By Other Parties.** If a timely petition for discretionary review is filed by the Respondent or disciplinary counsel, and the other party wants relief from the Board's decision, he or she must file a petition for discretionary review with the Clerk within the later of:
 - (1) 14 days after service of the petition filed by the other party, or
 - (2) the time for filing a petition under subsection (b) of this rule.
- **(e) Filing Fee.** The first party to file a petition for discretionary review must, at the time the petition is filed, pay the statutory filing fee by check payable to the Clerk of the Supreme Court.
- **(f) Acceptance of Review.** The Court accepts discretionary review of a Board decision by granting a petition for review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.
- 3. We also submit for consideration on the consent calendar the following proposal regarding ELC 11.12(g), based on the proposal of ODC at p. 503 of the materials. The current rules are silent as to what happens in this situation, and the following proposal merely sets forth the current practice:

ELC 11.12 DECISION OF BOARD [Redline]

- - - -

(g) Decision Final Unless Appealed. The Board's decision is final if neither party files a notice of appeal nor 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.

ELC 11.12 DECISION OF BOARD [Clean Copy]

. . . .

(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.