



WSBA

WASHINGTON STATE BAR ASSOCIATION

ELC DRAFTING TASK FORCE

Meeting Agenda

February 8, 2012

10:00 a.m. to noon

Washington State Bar Association

1325 Fourth Avenue – Suite 600

Seattle, Washington 98101

1. **Call to Order/Preliminary Matters** (10:00 a.m.)
 - November 1, 2011 meeting minutes (previously approved) [pp.1311-1314]
2. **Discussion**
 - Chair's January 6, 2010 Memo to ELC Task Force [p.1315]
 - Reporter's January 31, 2012 Memo to ELC Task Force [pp. 1316-1342]
3. **Adjourn** (noon)

Minutes – November 1, 2011
ELC Drafting Task Force

Present: Geoff Gibbs, Chair, Erika Balazs (telephone), Randy Beitel, Kurt Bulmer, Ron Carpenter Balazs (telephone), Doug Ende, Bruce Johnson (telephone), Joseph Nappi, Jr. (telephone), Julie Shankland, Nan Sullins, Elizabeth Turner, and Scott Busby, Reporter.

Call to Order / Introduction

The Chair called the meeting to order at 9:05 a.m. The Chair outlined the issues for consideration in light of the action taken by the Board of Governors at their September 22-23, 2011 meeting. Those issues were: (1) should admonitions be maintained? (2) If so, should they be public or non-public? (3) If public, in what form and for how long?

The Proposals Previously Adopted by the Task Force

At the Chair's request, Mr. Ende outlined the current status of admonitions and the changes that would occur as a result of the proposed rule changes previously adopted by the Task Force. Mr. Ende noted that admonitions are less common now than in the years before the diversion rules were adopted. He noted that, in addition to diversion, there are other actions short of an admonition that can be taken to address less serious misconduct: review committee advisory letters and informal disciplinary counsel advisory letters. Finally, Mr. Ende described the problems created by the current rules, which require the WSBA to "pretend" that an admonition that once was public is nonexistent.

Should Admonitions Be Maintained?

The Chair invited discussion on the issue of whether admonitions should be maintained.

Ms. Shankland noted that because the Supreme Court has adopted the ABA Standards, which provide a framework in which admonitions play an essential role, it would be impossible to do away with them without significantly altering the framework that the Supreme Court has put in place. Mr. Bulmer noted that the ABA Standards were created on the assumption that admonitions are non-public, and he opined that when they were made public in Washington the distinction between admonitions and reprimands disappeared. Mr. Nappi said that admonitions were an important tool for hearing officers who would otherwise have no alternative other than dismissal or reprimand in a case of less serious misconduct. He added that in his view there should be a procedure for expunging admonitions upon some affirmative showing by the respondent lawyer.

The Chair polled the Task Force on the question of whether admonitions should be maintained. The Task Force voted seven to one in favor of maintaining admonitions.

Should Admonitions Be Public?

Next, the Chair invited discussion on the issue of whether admonitions should be public.

Mr. Beitel began by drawing a distinction between two issues: (1) whether admonitions should be public and (2) the manner and means by which they are made public. He then introduced two alternative proposals intended to address some of the concerns expressed at the September 22-23, 2011 Board of Governors meeting. He emphasized, however, that it remained ODC's view that admonitions should be both public and permanent, as they are in the proposals previously adopted by the Task Force. Under "Option A" [Meeting Materials at 1219-20], a notice in the *Bar News* or on the WSBA's website concerning an admonition would not provide any identifying information about the respondent lawyer. Under "Option B" [Meeting Materials at 1221-23], there would be a procedure for removing the notice of an admonition from the WSBA Website. In response to questions from Mr. Carpenter, Mr. Beitel explained (1) that under either option admonitions would still be public information and (2) that neither option affects the proposed rules (e.g., 2.3, 2.5) concerning the qualifications for holding an office under Title 2.

Mr. Nappi asked why admonitions could not be made non-public. Mr. Beitel noted that to do so would, in effect, be a return to the pre-1997 rule. Mr. Ende noted that the ABA Model Rules for Lawyer Discipline Enforcement were adopted in 1993, last amended in 1999, and are currently being reviewed by the ABA, which may well opt for a public-admonition approach. He opined that reversing the trend toward more openness by returning to the pre-1997 rule would be regressive and bad policy from the standpoint of public protection.

Ms. Shankland objected to rules that would create a distinction between the public disciplinary information available through the WSBA website and the public disciplinary information available through other means, such as a telephone inquiry to the WSBA. She believed that, notwithstanding the concerns expressed at the Board of Governors meeting about the effect of a public admonition on the admonished lawyer, keeping admonitions public was necessary to maintain the public's respect for the regulatory system.

Mr. Beitel added that making more changes to what is public disciplinary information and what is not would create confusion and make it more difficult for the WSBA to respond appropriately to inquiries from the public.

Mr. Carpenter said he was in favor of keeping admonitions public because, in his view, protection of the public and maintaining respect for the regulatory system

outweighed the admonished lawyer's interest in the non-disclosure of disciplinary information.

The Chair polled the Task Force on the question of whether admonitions should be public. The Task Force voted seven to one in favor of keeping admonitions public.

In What Form and for How Long Should Admonitions Be Public?

Next, the Chair invited discussion on the issues of (a) the means by which admonitions should be publicized and (b) how long they should remain public.

On the first issue, Mr. Ende noted that ODC still supports the proposed rules previously adopted by the Task Force, under which notices of admonitions would be published in the *Bar News* and on the WSBA website. "Option A" and "Option B" were intended as possible ways to address some of the concerns expressed at the Board of Governors meeting.

The Chair polled the Task Force concerning Option A and Option B. Option A had only one supporter; Option B had none.

Discussion turned to the question of whether there is a meaningful distinction between admonitions and reprimands. Mr. Bulmer opined that there is no meaningful distinction unless there is a distinction in terms of public vs. non-public. Mr. Beitel opined that significant distinctions remained even if both were public and permanent. Among them were that, unlike reprimands, admonitions could be ordered by a review committee, that admonitions could be accepted or agreed to by the respondent lawyer with relatively little expense, and that hearing officers give substantially more weight to a prior reprimand than to a prior admonition.

Should an Admonition Preclude One from Holding Office under Title 2?

Next, the Chair invited discussion on the issues raised by Mr. Fine's memo [Meeting Materials at 1224-25] concerning whether an admonition should preclude one from holding office under Title 2.

Mr. Fine, who was not present, noted in his memo that proposed ELC 2.3(b)(2), 2.5(b), and 2.9(b), read together with proposed ELC 3.1(b)(11) and 13.5(d), would permanently preclude a lawyer from holding office under Title 2 if he or she has received an admonition. Mr. Fine proposed amending proposed ELC 13.5(d) by adding the following: "An admonition shall not preclude the respondent from holding any office under Title 2 of these rules." Mr. Beitel proposed an alternative amendment stating as follows: "An admonition shall not preclude the respondent from holding any office under Title 2 of these rules if more than five years has passed since the admonition was final."

Mr. Bulmer supported Mr. Fine's proposed amendment, stating that, in his view, a lawyer should not be permanently precluded from holding office due to a negligent error made in the early years of his or her practice.

Mr. Nappi said that he would like to see a procedure whereby a lawyer could "restore" himself or herself to pre-admonition status through some affirmative action on the lawyer's part.

Mr. Carpenter opined that Mr. Beitel's proposed alternative amendments should be further amended so that a lawyer with multiple admonitions would be precluded from holding office under Title 2. Ms. Shankland expressed her agreement with Mr. Carpenter. Mr. Carpenter then moved the Task Force to adopt of the following proposed amendments to ELC 13.5(d):

13.5(d) Effect. An admonition is a permanent discipline record and is admissible in subsequent disciplinary or disability proceedings involving the respondent. ~~Rule 3.6(b) governs destruction of file material relating to an investigation or hearing concluded with an admonition including the admonition.~~ A first time admonition shall not preclude the respondent from holding any office under Title 2 of these rules if more than five years has passed since the admonition was final.

The motion carried by a vote of 8-0.

Adjournment

After some discussion about scheduling, the Chair adjourned the meeting at 10:16 a.m.

Minutes Respectfully Submitted by

Scott Busby
Disciplinary Counsel
Task Force Staff Reporter



WSBA

ELC Taskforce

(RULES FOR ENFORCEMENT OF LAWYER CONDUCT)

January 6, 2012

Memorandum to the Taskforce Members

At the last meeting of the Board of Governors, that body voted to eliminate “admonitions” from the ELC’s and directed us to make appropriate amendments to accomplish that result. The debate was lengthy (probably on the order of almost two hours) but the vote was by a substantial majority.

That being said, I have had some discussions with members of the Board and I believe the nexus of the dissatisfaction regarding “admonitions” is the “public” nature of admonitions, not an overall dissatisfaction with “admonitions” as a non-public form of relief in the discipline process. My sense of the staff position in general is that having admonitions, or something similar to them, as a private non-public option has value to the system. It is also my feeling that our chief hearing officer, Joe Nappi, would support having an additional tool in the toolboxes of the hearing officers.

I have asked staff to prepare a revised redline draft of the ELC’s based upon our current redline version with (1) removal of admonitions as a form of discipline and (2) that includes something akin to admonitions (we may want to give the same a different name for political reasons) as a private non-public form of resolution of a grievance. In a meeting with staff, we also had in hand the ABA Model Rules in this regard that will be considered as part of this process.

To further address this issue, I am convening a Taskforce Meeting as set forth below.

Date: **Wednesday, Feb. 8, 2012**
Place: **WSBA Offices**
Time: **10:00 a.m. - Noon**

We will get a draft to you after I have reviewed the same. But I wanted to put you on notice regarding the meeting and the subject matter.

Respectfully .
G. Geoffrey Gibbs, Chair

Memorandum

To: ELC Task Force
From: Scott G. Busby, Reporter
Date: January 31, 2012
Re: Non-Public Admonitions

As described in the Chair's January 6, 2012 memorandum, the BOG voted to eliminate admonitions as a public form of disciplinary action and to direct the Task Force to draft amendments to accomplish that result. The following rule change proposals are offered as one way to move from public to non-public admonitions. Some of the consequences of this approach (especially the bad ones) are noted below. There are other ways to accomplish the same basic result which will have different consequences.

In what follows, the term "admonition" has been retained. In light of the Supreme Court's adoption of the ABA *Standards for Imposing Lawyer Sanctions* and the use of "admonition" as a form of non-public discipline therein (see, e.g., Standard 2.6) it seems inadvisable to use a different term. If the Task Force or the BOG wants a different term, there are many to choose from.

Changes to the suggested rule revisions previously adopted by the Task Force (November 1, 2011 Meeting Materials, pp. 1226-1309) are indicated by ~~double-strikethrough~~ and double underline. **Highlighting** is used to call attention to places where significant changes have or have not been made. The most important changes are to ELC 3.1 and 13.5. Most of the other changes are derivative of those. Brief explanatory comments precede the rules themselves.

TITLE 1 – SCOPE, JURISDICTION, AND DEFINITIONS

ELC 1.3. No change.

TITLE 2 – ORGANIZATION AND STRUCTURE

ELC 2.3. No change. Without change, admonitions would no longer disqualify one from service under ELC 2.3(b)(2).

ELC 2.5. No change. Without change, admonitions would no longer disqualify one from service under ELC 2.5(b).

TITLE 3 – ACCESS AND NOTICE

ELC 3.1. ELC 3.1(b) is the general rule defining the range of public disciplinary information. Under ELC 3.2(a), all disciplinary information not public as defined in ELC 3.1(b) is confidential. This proposal removes admonitions from the range of public disciplinary information as defined in ELC 3.1(b).

ELC 3.3. Under this proposal, only an approved stipulation to a disciplinary sanction (not an admonition) would be public. To resolve a matter by stipulation to both an admonition and a disciplinary sanction would therefore require separate stipulations.

ELC 3.5. On the assumption that the Supreme Court wants notice of all disciplinary actions, not just those that are public, notice of an admonition would be provided to the Supreme Court but not to other courts or regulatory agencies. Additional changes may be needed to ensure that the notice of an admonition provided to the Supreme Court remains confidential. See ELC 3.1(b)(9). There would be no *Bar News* notice or website notice.

ELC 3.6. No change. Admonitions, although non-public, would be permanent since they would be admissible in subsequent proceedings involving the same respondent. See ELC 13.5(c) and 13.6.

TITLE 5 – GRIEVANCE INVESTIGATIONS AND DISPOSITION

ELC 5.7. No change.

ELC 5.8. No change.

TITLE 6 – DIVERSION

ELC 6.2. No change.

ELC 6.3. No change.

TITLE 10 – HEARING PROCEDURES

ELC 10.16. The reference to an admonition recommendation following a hearing has been removed. See ELC 13.5.

TITLE 13 – SANCTIONS AND REMEDIES

ELC 13.1. No change, but see ELC 13.5.

ELC 13.5. Under this proposal, the only admonitions are those issued by a review committee (13.5(a)) and those to which the parties stipulate before a matter is ordered to hearing (13.5(b)). There can be no admonition issued by a hearing officer following a hearing. Likewise, there can be no stipulated admonition after a matter is ordered to hearing. Neither result seems desirable, but each appears to be a necessary consequence of having (a) non-public admonitions and (b) public proceedings that remain public (i.e., without any non-public outcome).

Admonitions, although non-public, would be permanent since they would be admissible in subsequent proceedings involving the same respondent (13.5(c) and 13.6). In such cases, they would become public by virtue of ELC 3.1(b)(1) or 3.1(b)(8) unless they are “kept confidential . . . through a protective order” under ELC 3.2(d).

This proposal does not incorporate the suggested changes to ELC 13.5(d) discussed at the Task Force’s November 1, 2011 meeting. Those suggested changes were not addressed by the BOG at its December meeting. If admonitions are non-public, they would no longer disqualify one from service under ELC 2.3(b)(2) or 2.5(b).

ELC 13.6. No change. In a proceeding under this rule, the predicate admonitions would be public under ELC 3.1(b)(1).

ELC 13.7. The reference to an admonition following a hearing has been removed. See ELC 13.5.

ELC 13.8. The reference to an admonition following a hearing has been removed. See ELC 13.5.

ELC 13.9. References to an admonition following a hearing have been removed. See ELC 13.5.

OTHER ISSUES

What becomes of admonitions that are public under the existing rules? It remains to be determined what should become of admonitions issued under the existing rules. Under currently practice, they become non-public after five years by operation of ELC 3.6(b)

“Anonymous” Bar News notices? Should ELC 3.5(c) be modified to provide for public notice of the imposition of an admonition that does not reveal the identity of the lawyer admonished?

What should the new, non-public disciplinary action be called (if not “admonition”)?

RULE 1.3 DEFINITIONS

Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:

- (a) “Association” means the Washington State Bar Association.
- (b) “Association counsel” means counsel for the Association other than disciplinary counsel.
- (bc) “Bar file” means the pleadings, motions, rulings, decisions, and other formal papers filed in a proceeding.
- (ed) “Board” when used alone means the Disciplinary Board.
- (de) “Chair” when used alone means the Chair of the Disciplinary Board.
- (ef) “Clerk” when used alone means the Clerk to the Disciplinary Board.
- (fg) **“Disciplinary action” means sanctions under rule 13.1 and admonitions under rule 13.5.**
- (gh) “Final” means no review has been sought in a timely fashion or all appeals have been concluded.
- (hi) “Grievant” means the person or entity who files a grievance, except for a confidential source under rule 5.2.
- (ij) “Hearing officer” means the person assigned under rule 10.2(a)(1) ~~or, when a hearing panel has been assigned, the hearing panel chair.~~
- (jk) “Mental or physical incapacity” includes, but is not limited to, insanity, mental illness, senility, or debilitating use of alcohol or drugs.
- (k) ~~“Panel” means a hearing panel under rule 10.2(a)(2).~~
- (l) “Party” means disciplinary counsel or respondent, except in rules 2.3(h) and 2.6(ed) “party” also includes a grievant.
- (m) “Respondent” means a lawyer against whom a grievance is filed or a lawyer investigated by disciplinary counsel.
- (n) “APR” means the Admission to Practice Rules.
- (o) “CR” means the Superior Court Civil Rules.
- (p) “RAP” means the Rules of Appellate Procedure.
- (q) “RPC” means the Rules of Professional Conduct adopted by the Washington Supreme Court.
- (r) **Words of authority.**
 - (1) “May” means “has discretion to,” “has a right to,” or “is permitted to”.
 - (2) “Must” means “is required to”.
 - (3) “Should” means recommended but not required, except:
 - (A) in rules 2.3(h) and 2.6, “should” has the meaning ascribed to it in the Code of Judicial Conduct; and
 - (B) in title 12, “should” has the meaning ascribed to it in the Rules of Appellate Procedure.

RULE 2.3 DISCIPLINARY BOARD

(a) Function. The Board performs the functions provided under these rules, delegated by the ~~Board of Governors of~~ Supreme Court, or necessary and proper to carry out its duties.

(b) Membership.

- (1) *Composition.* The Board consists of not fewer than ~~three~~four nonlawyer members, appointed by the Court, and not fewer than ~~one~~ten lawyers ~~member~~ from each congressional district, appointed by the Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel.
- (2) *Qualifications.* ~~A Lawyer Board members must have been active members of the Association for at least seven years~~ be an Active member of the Association, have been an Active or Judicial member of the Association for at least five years, and have no record of public discipline.
- (3) *Voting.* Each member, including the Chair and the Vice Chair, whether nonlawyer or lawyer, has one vote. Recused members may not attend or participate in the Board's deliberations on a matter. Board staff may attend Board deliberations, to serve as a resource.
- (4) *Quorum.* A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least seven members vote.
- (5) *Leave of Absence While Grievance Is Pending.* If a grievance is filed against a lawyer member of the Board, the following procedures apply:
 - (A) ~~the~~The member initially decides whether to remain on the Board or take a leave of absence until the matter is resolved;.
 - (B) ~~if~~If the member chooses to remain on the Board, the Conflicts Review Officer who is conducting the review of the grievance under rule 2.7 must promptly provide a confidential summary of the grievance to ~~the Board of with a Governors~~ a different Conflicts Review Officer who is not conducting the review. A copy of the summary is provided to the member at the same time;.
 - (C) ~~the Board of Governors~~ Conflicts Review Officer who is not conducting the review of the grievance should then, or at any time thereafter ~~it is~~ deemed appropriate, determine if the member is so impaired from serving on the Disciplinary Board that the member should take, or continue to take, a leave of absence to protect the integrity of the discipline system. In making this determination, the ~~Board of Governors~~ Conflicts Review Officer should consider, among other things, the facts, circumstances, and nature of the misconduct alleged, the possible outcome, and the extent of public concern regarding the matter;.
 - (D) ~~The Board of Governors's deliberations are~~ Conflict Review Officer's determination is confidential. All materials of the ~~Board of Governors~~ used in connection with such a ~~matter~~ determination are confidential unless released under rule 3.4(d) or (e).

(c) Terms of Office. The term of office for a Board member is three years. Newly created Board positions may be filled by appointments of less than three years, as designated by the Court ~~or the Board of Governors~~, to permit as equal a number of

positions as possible to be filled each year. Terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members continue to serve until replaced, except a member's term of office ends immediately if a disciplinary sanction is imposed.

(d) Chair. The Supreme Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, annually designates one lawyer member of the Board to act as Chair and another as Vice Chair. The Vice Chair serves in the absence of or at the request of the Chair.

(e) Unexpired Terms. The Supreme Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, fills unexpired terms in lawyer membership on the Board. ~~The Supreme Court fills unexpired terms in nonlawyer membership.~~ A member appointed to fill an unexpired term will complete the unexpired term of the member replaced, and may be reappointed to a consecutive term if the unexpired term is less than 18 months.

(f) Pro Tempore Members. If a Board member is disqualified or unable to function, the Chair may, by written order, designate a member pro tempore. A member pro tempore must have ~~either previously served on the Board or be appointed as an alternate Board member by the Board of Governors if a lawyer or by the Supreme Court if a nonlawyer.~~ Only a lawyer may be appointed to substitute for a lawyer member, and only a nonlawyer to substitute for a nonlawyer member.

(g) Meetings. The Board meets regularly at times and places it determines. The Chair may convene special Board meetings. In the Chair's discretion, the Board may meet and act through electronic, telephonic, written, or other means of communication.

(h) Disqualification.

(1) A Board member should disqualify him or herself from a particular matter in which the member's impartiality might reasonably be questioned, including, but not limited to, instances in which:

- (A) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;
- (B) the member previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the member practices law serves or has previously served as a lawyer concerning the matter, or such lawyer is or has been a material witness concerning the matter;
- (C) the member knows that, individually or as a fiduciary, the member or the member's spouse or relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under section (i);
- (D) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:
 - (i) is a party to the matter, or an officer, director, or trustee of a party;
 - (ii) is acting as a lawyer in the matter;
 - (iii) is to the member's knowledge likely to be a material witness in the matter;

(E) the member served as a hearing officer ~~or hearing panel member~~ for a hearing on the matter, or served on a review committee that issued an **admonition** to the lawyer regarding the matter.

(i) Remittal of Disqualification. A member disqualified under subsection (h)(1)(C) or (h)(1)(D) may, instead of withdrawing from consideration of the matter, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the member's participation, all agree in writing or on the record that the member's relationship is immaterial or that the member's economic interest is de minimis, the member is no longer disqualified, and may participate in the matter. If a party is not immediately available, the member may proceed on the assurance of the party's counsel that the party's consent will be subsequently given.

(j) Counsel and Clerk. The Executive Director of the Association, ~~under the direction of the Board of Governors,~~ may appoint a suitable person or persons to act as counsel and clerk to the Board, to assist the Board and the review committees in carrying out their functions under these rules.

(k) Restriction on Representing or Advising Respondents or Grievants. ~~Current and former members of the Disciplinary Board are subject to the restrictions set forth in rule 2.13(b)14.~~

RULE 2.5 HEARING OFFICERS OR PANEL

(a) Function. A hearing officer or panel to whom a case has been assigned for hearing conducts the hearing and performs other functions as provided under these rules.

(b) Qualifications. A hearing officer must be an active member of the Association, have been an active or judicial member of the Association for at least seven years, have **no record of public discipline**, and have experience as an adjudicator or as an advocate in contested adjudicative hearings.

~~**(c) Hearing Officer Selection Panel.** The hearing officer selection panel makes recommendations to the Board of Governors for appointment, reappointment, and removal of hearing officers. The panel is appointed by the Board of Governors and includes, but is not limited to, a Board of Governors member who serves as its chair, one or more former Chairs of the Disciplinary Board, and one or more former nonlawyer members of the Disciplinary Board.~~

(dc) Appointment. The Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, appoints hearing officers to the hearing officer list ~~giving consideration to recommendations of the hearing officer selection panel~~. The list should include as many lawyers as ~~the Board of Governors considers necessary~~ to carry out the provisions of these rules effectively and efficiently. ~~In making appointments, the Board of Governors should consider diversity in gender, ethnicity, geography, and practice experience. The Board of Governors also maintains a list of nonlawyers willing to serve on hearing panels under section (h).~~

(ed) Terms of Appointment. Appointment to the hearing officer list, ~~or the list of nonlawyers~~, is for an initial period of ~~one~~two years, followed by periods of ~~five~~four years. Reappointment is in the ~~Board of Governors'~~ discretion of the Supreme Court upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel. A hearing officer ~~or panel member~~ may continue to act in any matter assigned before his or her term expires. On the recommendation of the ~~hearing officer~~Board of Governors in consultation with the Disciplinary Selection Panel, the ~~Board of Governors~~Supreme Court may remove a person from the list of hearing officers ~~or from the list of nonlawyer panel members~~.

(fe) Chief Hearing Officer.

(1) Appointment. ~~The Board of Governors~~Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, appoints a chief hearing officer for a renewable term of two years. ~~who, in addition to hearing matters, assigns cases, monitors and evaluates the performance of hearing officers and panel members, establishes requirements for and supervises hearing officer and hearing panel member training, administers hearing officer compensation, hears prehearing motions when no hearing officer has been assigned, and performs other administrative duties necessary for an efficient and effective hearing system.~~ The person appointed as chief hearing officer must meet the qualifications for hearing officers set forth in paragraph (b) above, have significant experience in the adjudication of contested matters, and have substantial administrative and managerial skills. If the chief hearing officer position is vacant or the chief hearing officer has recused or been disqualified from a particular matter, the Chair may, as necessary, perform the ~~administrative~~ duties of chief hearing officer.

(2) Duties and Authority. The chief hearing officer:

- (A) hears matters,
- (B) assigns cases,
- (C) monitors and evaluates hearing officer performance,
- (D) hears motions for hearing officer disqualification,
- (E) hears prehearing motions when no hearing officer has been assigned,
- (F) hears motions for protective orders under rule 3.2(e),
- (G) hears motions prior to a matter being ordered to hearing, including while a grievance is being investigated,
- (H) approves stipulations to discipline not involving suspension or disbarment when no hearing officer has been assigned,
- (I) responds to hearing officer requests for information or advice related to their duties,
- (J) supervises hearing officer training in accordance with established policies, and
- (K) performs other duties as the chief hearing officer deems necessary for an efficient and effective hearing system.

(gf) Case Assignment. The chief hearing officer assigns hearing officers to cases from the list of hearing officers appointed by the Board of Governors Supreme Court. The chief hearing officer shall be given confidential notice of any grievances filed against any hearing officers, and the ultimate disposition of those grievances, and shall consider this information when making assignments.

(h) Hearing Panel. ~~If a hearing panel is assigned to hear a matter, the chief hearing officer appoints the panel. A panel consists of three persons, with at least one from the hearing officer list and at least one nonlawyer from the list maintained by the Board of Governors.~~

(ig) Training. ~~Hearing officers and hearing panel members must comply with training requirements established by the chief hearing officer.~~

(h) Staff. The Executive Director of the Association may appoint a suitable person or persons to assist the hearing officers and the chief hearing officer in carrying out their functions under these rules.

RULE 3.1 OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION

(a) Open Meetings. Disciplinary hearings and meetings of the Board are public. Except as otherwise provided in these rules, Supreme Court proceedings are public to the same extent as other Supreme Court proceedings. Deliberations of a hearing officer ~~or panel~~, board, review committee, or court, and matters made confidential by a protective order, or by other provisions of these rules, are not public.

(b) Public Disciplinary Information. The public has access to the following information subject to these rules:

- (1) the record before a review committee and the order of the review committee in any matter that a review committee has ordered to hearing ~~or ordered an admonition be issued~~;
- (2) the record upon distribution to a review committee or to the Supreme Court in proceedings based on a conviction of a felony ~~or serious crime~~, as defined in rule 7.1(a);
- (3) the record upon distribution to a review committee or to the Supreme Court in proceedings under rule 7.2;
- (4) a statement of concern to the extent provided under rule 3.4(f);
- (5) the record and order upon approval of a stipulation for discipline imposing a sanction ~~or admonition~~, and the order approving a stipulation to dismissal of a matter previously made public under these rules;
- (6) the record before a hearing officer ~~or panel~~;
- (7) the record and order before the Board in any matter reviewed under rule 10.9 or title 11;
- (8) the bar file and any exhibits and any Board or review committee order in any matter ~~that the Board or a review committee has ordered to public hearing,~~ or that is deemed ordered to hearing under rule 13.5(a)(2), or any matter in which ~~disciplinary action a sanction~~ has been ~~taken imposed~~, or any proceeding under rules 7.1-7.6;
- (9) in any disciplinary matter referred to the Supreme Court, the file, record, briefs, and argument in the case;
- (10) a lawyer's resignation in lieu of ~~disbarment~~ discipline under rule 9.3; and
- (11) any sanction ~~or admonition~~ imposed on a respondent
- (12) a stipulation to dismissal upon institution of proceedings for failure to comply with the terms of the stipulation.

(c) Regulations. Public access to file materials and proceedings permitted by this rule may be subject to reasonable regulation as to time, place, and manner of access. Certified copies of public bar file documents will be made available at the same rate as certified copies of superior court records. Uncertified copies of public bar file documents will be made available at a rate to be set by the Executive Director of the Association.

RULE 3.3 APPLICATION TO STIPULATIONS, DISABILITY PROCEEDINGS, CUSTODIANSHIPS, AND DIVERSION CONTRACTS

(a) Application to Stipulations. A stipulation under rule 9.1 providing for imposition of a disciplinary sanction ~~or admonition~~ is confidential until approved, except that a grievant may be advised concerning a stipulation and its proposed or actual content at any time. An approved stipulation is public, unless:

- ~~(1) it is approved before the filing of a formal complaint;~~
- (2) it provides for an admonition or for dismissal of a grievance without a disciplinary action-sanction or admonition; and
- ~~(3) proceedings have not been instituted for failure to comply with the terms of the stipulation.~~

(b) Application to Disability Proceedings. Disability proceedings under title 8 ~~or rule 9.2~~ are confidential. However, the following are public information: the fact that a lawyer has been transferred to disability inactive status, the fact that a lawyer has been reinstated to active status from disability inactive status, and the fact that a disciplinary proceeding is stayed pending supplemental proceedings under title 8. ~~a grievant may be advised that a lawyer against whom the grievant has complained is subject to disability proceedings. The following information is public:~~

- ~~(1) that a lawyer has been transferred to disability inactive status, or has been reinstated to active status; and~~
- ~~(2) that a disciplinary proceeding is deferred pending supplemental proceedings under title 8.~~

(c) Custodianships. The fact that a custodian has been appointed under rule 7.7, together with the custodian's name and contact information and orders appointing and discharging such custodians, are public information and the notices required by rule 3.5(d) will be given. Client files and records under the control of such custodians will be held confidential absent authorization to release from the client.

(ed) Diversion Contracts. Diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, ~~despite rule 3.1(b)(1), unless admitted into evidence in a disciplinary proceeding,~~ however, a diversion affidavit made under rule 6.6 is public following a final termination of the diversion contract for material breach. When a matter that has previously become public under rule 3.1(b) is diverted by a diversion contract, that contract and the supporting documents are confidential but the fact that the matter was diverted from discipline is public information and a notice of diversion will be placed in the public file. Upon the conclusion of the diversion, whether by successful completion of diversion and dismissal of the grievance, or by breach of the diversion contract, a notice of that result will be placed in the public file.

RULE 3.5 NOTICE OF DISCIPLINE-DISCIPLINARY ACTION, INTERIM SUSPENSION, OR TRANSFER TO DISABILITY INACTIVE STATUS

(a) Notice to Supreme Court. The counsel to the Board must provide the Supreme Court with:

- (1) a copy of any decision imposing a disciplinary sanction when that decision becomes final;
- (2) a copy of any admonition, together with the order issuing the admonition, when the admonition is accepted or otherwise becomes final;
- (3) a copy of any transfer to disability inactive status; and
- (34) a copy of any resignation in lieu of ~~disbarment~~discipline.

(b) Other Notices. The counsel to the Board must also notify the following entities of the imposition of a disciplinary sanction ~~or admonition~~, a transfer to disability inactive status, a resignation in lieu of ~~disbarment~~discipline, or the filing of a statement of concern under rule 3.4(f) as follows, in such form as may appear appropriate:

- (1) the lawyer discipline authority or highest court in any jurisdiction where the lawyer is believed to be admitted to practice;
- (2) the chief judge of each federal district court in Washington State and the chief judge of the United States Court of Appeals for the Ninth Circuit; and
- (3) the National ~~Discipline Data Bank~~ Lawyer Regulatory Data Bank; and
- (4) ~~the Washington State Bar News.~~

(c) ~~Preparation of Bar News and Website Notice.~~

(1) Preparation and content. Notice of the imposition of any disciplinary sanction, ~~admonition~~, resignation in lieu of discipline, interim suspension, or transfer to disability inactive status, or the filing of a statement of concern under rule 3.4(f) must be published in the Washington State *Bar News* and on any electronic or other index or site maintained by the Association for public information. ~~The Association counsel to the Board~~ has discretion in drafting notices for publication in the Washington State *Bar News* and on the Website, and should include sufficient information to adequately inform the public and the members of the Association about the misconduct found, the rules violated and the disciplinary action imposed. For a transfer to disability inactive status, reference will be made to the disability inactive status, but no reference will be made to the specific disability. For an interim suspension, the basis of the interim suspension will be stated. All notices under this subsection should include the respondent lawyer's name, bar number, date of admission, the time frame of the misconduct, the rules violated, and the disciplinary action. ~~The Association counsel to the Board~~ must serve a copy of the draft notice under this subsection on respondent and disciplinary counsel under rule 4.1 and review any comments filed with ~~the Association counsel to the Board~~ within five days of service, but Association counsel's to the Board's decision about the content of the notice is not subject to further review.

(2) Finality. Except as specified in section (c)(3), discipline notices published in the Bar News and posted on the WSBA website are final and may not be modified following publication.

(3) Modification. A respondent lawyer who is the subject of a discipline notice may file a written request with Association counsel seeking modification of a

discipline notice posted on the WSBA website. A notice may be modified only in the following circumstances:

- (A) a criminal conviction, court judgment, or order relating directly to the disciplinary action imposed and referenced in the discipline notice has been subsequently expunged, vacated, or otherwise conclusively nullified;
- (B) the expungement, vacation, or nullification occurred after the notice was published;
- (C) there are no ongoing or pending proceedings relating to the conviction, judgment or order; and
- (D) the fact of the expungement, vacation, or nullification is undisputed and can be conclusively established without any investigation.

The respondent seeking modification bears the burden of establishing each of the above factors. If Association counsel determines each factor has been established, a supplemental note may be added regarding the expungement, vacation, or nullification, but the original discipline notice must otherwise remain unchanged. The supplemental note is not published in Bar News. The decision whether or not to add a supplemental note, and the content of a supplemental note, is solely within the discretion of Association counsel and is not subject to review.

(d) Notices to News Media of Suspension, Disbarment, Resignation in Lieu of Disbarment Discipline, Interim Suspension, or Disability Inactive Status. ~~The Association must publish a~~In addition to the notices published under sections (b) and (c) of this rule, notice in such form as may be appropriate of the disbarment, suspension, resignation in lieu of disbarment discipline, interim suspension, or transfer to disability inactive status of a lawyer in the Washington State Bar News and electronic or other index or site maintained by the Association for public information. The Association must provide copies of these notices must be provided to the news media in a manner designed to notify the public in the county or region where the lawyer has maintained a practice. For a transfer to disability inactive status, reference will be made to the disability inactive status, but no reference may be made to the specific disability. For an interim suspension, the basis of the interim suspension will be stated.

(e) Notice to Judges. The Association must promptly notify the presiding judge of the superior court of the county in which the lawyer maintained a practice of the lawyer's disbarment, suspension, resignation in lieu of ~~disbarment~~discipline, interim suspension, or transfer to disability inactive status, and may similarly notify the presiding judge of any district court located in the county where the lawyer practiced, or the judge of any other court in which the lawyer may have practiced or is known to have practiced.

RULE 3.6 MAINTENANCE OF RECORDS

(a) Permanent Records. In any matter in which a disciplinary sanction or admonition has been imposed or the lawyer has resigned in lieu of discipline under rule 9.3, the bar file and transcripts of the proceeding are permanent records. Related file materials, including investigative files, may be maintained in disciplinary counsel's discretion. Exhibits may be returned to the party supplying them, but copies should be retained where possible.

(b) Destruction of Files. In any matter in which a grievance or investigation has been dismissed without the imposition of a disciplinary sanction or admonition, whether following a hearing or otherwise, file materials relating to the matter may be destroyed three years after the dismissal first occurred, and must be destroyed at that time on the respondent lawyer's request unless the files are being used in an ongoing investigation or unless other good cause exists for retention. However, file materials on a matter ~~concluded with an admonition must be retained at least five years after the admonition was issued.~~ dismissed after a diversion must be retained at least ten years after the dismissal. If disciplinary counsel opposes a request by a respondent for destruction of files under this rule, the Board rules on that request.

(c) Retention of Docket. If a file on a matter has been destroyed under section (b), the Association may retain a docket record of the matter for statistical purposes only. That docket record must not include the name or other identification of the respondent.

(d) Deceased Lawyers. Records and files relating to a deceased lawyer, including permanent records, may be destroyed at any time in disciplinary counsel's discretion.

RULE 5.67 DISPOSITION OF GRIEVANCE

(a) Dismissal by Disciplinary Counsel. Disciplinary counsel may dismiss grievances with or without investigation. On dismissal, disciplinary counsel must notify the grievant of the procedure for review in this rule.

(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~~disciplinary counsel no later than 45 days after ~~the Association~~disciplinary counsel 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.

(c) Report in Other Cases. Disciplinary counsel must report to a review committee the results of investigations except those dismissed or diverted. The report may include a recommendation that the committee order a hearing or issue an advisory letter or admonition.

(d) Authority on Review. In reviewing grievances under this rule, a review committee may:

(1) dismiss the grievance;

(2) affirm the dismissal;

(3) dismiss the grievance and issue an advisory letter under rule 5.78;

(4) issue an admonition under rule 13.5;

(5) order a hearing on the alleged misconduct; or

(6) order further investigation as may appear appropriate.

(e) Issuing Admonition or Ordering Hearing without Recommendation from Disciplinary Counsel. When the review committee decides to issue an admonition or order a matter to hearing, and such action has not been recommended by disciplinary counsel, the committee shall issue notice of its intended action and state the reasons therefor. The matter shall be set for reconsideration by a review committee. The grievant, the respondent lawyer, and disciplinary counsel may submit additional materials. On reconsideration, the committee may take any action authorized by subsection (d) of this rule.

(f) Action Final. Except as provided in subsection (e), a review committee's action under this rule is final and not subject to further review.

RULE 5.78 ADVISORY LETTER

(a) Grounds. An advisory letter may be issued by a review committee when ~~a hearing does not appear warranted~~;

- (1) a respondent lawyer's conduct constitutes a violation, but does not warrant an admonition or sanction, but it appears appropriate to caution a respondent lawyer concerning his or her conduct; or
- (2) a respondent lawyer's conduct does not constitute a violation but the lawyer should be cautioned.

(b) Review Committee. An advisory letter may only be issued by a review committee ~~but~~. An advisory letter may not be issued when a grievance is dismissed following a hearing.

(c) Effect. ~~An advisory letter does not constitute a finding of misconduct, is not a sanction, and is not disciplinary action, and~~. An advisory letter is not public information, and may not be introduced into evidence in any subsequent disciplinary hearing.

RULE 10.16 DECISION OF HEARING OFFICER OR PANEL

(a) Decision. Within ~~20~~30 days after the proceedings are concluded or (if applicable) the transcript of proceedings is served, unless extended by agreement, the hearing officer should file with the Clerk a decision in the form of findings of fact, conclusions of law, and recommendations. This deadline may be extended by agreement.

(b) Preparation of Findings. Either party may submit proposed findings of fact, conclusions of law, and recommendation as part of their argument of the case. The hearing officer or hearing panel either (1) writes their own findings of fact, conclusions of law, and recommendations without requiring submission of proposed findings, conclusions, or recommendations or (2) announces a tentative decisions then ~~At the requests of the hearing officer, or without a request, either one or both parties may submit to prepare proposed findings, conclusions, and recommendations. After notice and an opportunity to respond, the hearing officer considers the proposals and responses and enters findings, conclusions, and recommendations.~~

(c) Amendment.

- (1) *Timing of Motion.* Either party may move to modify, amend, or correct the decision as follows:
 - (A) In a proceeding not bifurcated, within ~~ten~~15 days of service of the decision on the respondent lawyer;
 - (B) In a bifurcated proceeding, within ~~five~~15 days of service of:
 - (i) the violation findings of fact and conclusions of law; or
 - (ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings or conclusions.
 - ~~(C) If a hearing panel member dissents from a decision of the majority, the five or ten day period does not begin until the written dissent is filed or the time to file a dissent has expired, whichever is sooner.~~
- (2) *Procedure.* Rule 10.8 governs this motion, ~~except that all members of a hearing panel must be served with the motion and any response and participate in a decision on the motion. A panel's deliberation may be conducted through telephone conference call. The hearing officer or panel should rule on the motion within 15 days after the filing of a timely response~~reply or after the period to file a ~~response~~reply under rule 10.8(~~b~~c) has expired. The ruling may deny the motion or may amend, modify, or correct the decision.
- (3) *Effect of Failure To Move.* Failure to move for modification, correction, or amendment does not affect any appeal to the Board or review by the Supreme Court.

~~**(d) Dissent of Panel Member.** Any member of a hearing panel who dissents from the decision of the majority of the panel should file a dissent, which may consist of alternative findings, conclusions, or recommendation. A dissent should be filed within ten days of the filing of the majority's decision and becomes part of the record of the proceedings.~~

~~**(e) Panel Members Unable To Agree.** If no two panel members are able to agree on a decision, each panel member files findings, conclusions, and a recommendation, and the Board reviews the matter whether or not an appeal is filed.~~

(f) When Final. If a hearing officer or panel recommends reprimand or an admonition, or recommends dismissal of the charges, the recommendation becomes the final decision

if neither party files an appeal. If a hearing officer recommends disbarment or suspension, the recommendation becomes the final decision only upon entry of an order by the Supreme Court under rule 11.12(g) or final action on an appeal or petition for discretionary review under Title 12~~and if the Chair does not refer the matter to the Board for consideration within the time permitted by rule 11.2(b)(3). If the Chair refers the matter to the Board for consideration of a sua sponte review, the decision is final upon entry of an order dismissing sua sponte review under rule 11.3 or upon other Board decision under rule 11.12(g).~~

RULE 13.1 SANCTIONS AND REMEDIES

Upon a finding that a lawyer has committed an act of misconduct, one or more of the following may be imposed:

(a) Sanctions.

- (1) Disbarment;
- (2) Suspension under rule 13.3; or
- (3) Reprimand.

(b) Admonition. An admonition under rule 13.5.

(c) Remedies.

- (1) Restitution;
- (2) Probation;
- (3) Limitation on practice;
- (4) Requirement that the lawyer attend continuing legal education courses;
- (5) Assessment of costs; or
- (6) Other requirements consistent with the purposes of lawyer discipline.

RULE 13.5 ADMONITION

(a) By a Review Committee.

- (1) A review committee may issue an admonition when investigation of a grievance shows misconduct.
- (2) A respondent lawyer may protest ~~either the review committee's or the Board's prehearing~~ issuance of an admonition by filing a notice to that effect with the Clerk within 30 days of service of the admonition. Upon receipt of a timely protest, the admonition is rescinded, and the grievance is deemed ordered to hearing. A rescinded admonition is of no effect and may not be introduced into evidence in any disciplinary proceeding or appeal.

~~(b) Following a Hearing. A hearing officer or panel may recommend that a respondent receive an admonition following a hearing.~~

~~(be) By Stipulation.~~ The parties may stipulate to an admonition under rule 9.1.

~~(c) Matters Ordered to Hearing. An admonition may not be issued or recommended in a matter ordered to hearing.~~

~~(d) Effect.~~ An admonition is a permanent discipline record and is admissible in subsequent disciplinary or disability proceedings involving the respondent. ~~Rule 3.6(b) governs destruction of file materials relating to an investigation or hearing concluded with an admonition, including the admonition.~~

~~(e) Action on Board Review.~~ Upon review under title 11, the Board may dismiss, issue an admonition, or impose sanctions or other remedies under rule 13.1.

~~(ef) Signing of Admonition.~~ The review committee chair signs an admonition issued by a review committee. The Disciplinary Board Chair or the Chair's designee signs all other admonitions issued by stipulation.

RULE 13.6 DISCIPLINE FOR CUMULATIVE ADMONITIONS

(a) Grounds. A lawyer may be subject to sanction or other remedy under rule 13.1 if the lawyer receives **three admonitions within a five year period**.

(b) Procedure. Upon being presented with evidence that a respondent lawyer has received **three admonitions within a five year period**, a review committee may authorize the filing of a formal complaint based solely on the provisions of this rule. A proceeding under this rule is conducted in the same manner as any disciplinary proceeding. The issues in the proceeding are whether the respondent has received **three admonitions within a five year period** and, if so, what sanction or other remedy should be recommended.

RULE 13.7 RESTITUTION

(a) Restitution May Be Required. A respondent lawyer who has been sanctioned under rule 13.1 ~~or admonished under rule 13.5(b)~~ may be ordered to make restitution to persons financially injured by the respondent's conduct or the Lawyer's Fund for Client Protection.

(b) Payment of Restitution.

- (1) A respondent ordered to make restitution must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.
- (2) A respondent ordered to make restitution to the Lawyer's Fund for Client Protection must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with the Lawyer's Fund for Client Protection Board
- (23) Disciplinary counsel or the Lawyer's Fund for Client Protection Board may enter into an agreement with a respondent for a reasonable periodic payment plan if:
 - (A) the respondent demonstrates in writing present inability to pay restitution and
 - (B) disciplinary counsel consults with the persons owed restitution.
- (34) A respondent may ask the Chair to review an adverse determination by disciplinary counsel of the reasonableness of a proposed periodic payment plan for restitution. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

(c) Failure To Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

RULE 13.8 PROBATION

(a) Conditions of Probation. A respondent lawyer who has been sanctioned under rule 13.1 or admonished under rule 13.5(b)~~or (c)~~ may be placed on probation for a fixed period of two years or less.

- (1) Conditions of probation may include, but are not limited to requiring:
 - (A) alcohol or drug treatment;
 - (B) medical care;
 - (C) psychological or psychiatric care;
 - (D) professional office practice or management counseling; or
 - (E) periodic audits or reports.
- (2) Upon disciplinary counsel's request, the Chair may appoint a suitable person to supervise the probation. Cooperation with a person so appointed is a condition of the probation.

(b) Failure To Comply. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.

RULE 13.9 COSTS AND EXPENSES

(a) Assessment. The Association's costs and expenses may be assessed as provided in this rule against any respondent lawyer who is ordered sanctioned **or admonished, or against whom reciprocal discipline is imposed after a contested reciprocal discipline proceeding.**

(b) Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Association in the complete performance of its duties under these rules, whether incurred before or after the filing of a formal complaint. Costs include, by way of illustration and not limitation:

- (1) court reporter charges for attending and transcribing depositions or hearings;
- (2) process server charges;
- (3) necessary travel expenses of hearing officers, ~~hearing panel members~~, disciplinary counsel, adjunct investigative counsel, or witnesses;
- (4) expert witness charges;
- (5) costs of conducting an examination of books and records or an audit under title 15;
- (6) costs incurred in supervising probation imposed under rule 13.8;
- (7) telephone toll charges;
- (8) fees, costs, and expenses of a lawyer appointed under rule 8.2 or rule 8.3;
- (9) costs of copying materials for submission to a review committee, a hearing officer ~~or panel~~, or the Board; and
- (10) compensation provided to hearing officers ~~or panel members~~ under rule 2.11.

(c) Expenses Defined. "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

- (1) **for an admonition that is accepted under rule 13.5(a)**, \$750;
- (2) for a matter that becomes final without review by the Board, \$1,500;
- (3) for a matter that becomes final upon a reciprocal discipline order under rule 9.2 or rule 9.3, in a matter requiring briefing at the Supreme Court, \$1,500;
- (34) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of \$2,000;
- (45) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of \$2,500; and
- (56) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of \$3,000.

(d) Statement of Costs and Expenses, Exceptions, and Reply.

- (1) *Timing.* Disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:
 - (A) **an admonition is accepted;**
 - (B) the decision of a hearing officer ~~or panel~~ or the Board imposing **an admonition** ~~or~~ a sanction becomes final;
 - (C) a notice of appeal from a Board decision is filed and served; ~~or~~
 - (D) the Supreme Court accepts or denies discretionary review of a Board decision;
or

(E) entry of a final decision imposing reciprocal discipline under rule 9.2 or rule 9.4 in a matter requiring briefing at the Supreme Court.

- (2) *Content.* A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. Disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.
- (3) *Service.* The Clerk serves a copy of the statement on the respondent.
- (4) *Exceptions.* The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.
- (5) *Reply.* Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

(e) Assessment. The Chair enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

(f) Review of Chair's Decision.

- (1) *Matters Reviewed by Court.* In matters reviewed by the Supreme Court under title 12, the Chair's decision is subject to review only by the Court.
- (2) *All Other Matters.* In all other matters, the following procedures apply:
 - (A) Request for Review by Board. Within 20 days of service on the respondent of the order assessing costs and expenses, either party may file a request for Board review of the order.
 - (B) Board Action. Upon the timely filing of a request, the Board reviews the order assessing costs and expenses, based on the Association's statement of costs and expenses and any exceptions or reply, the decision of the hearing officer ~~or panel~~ or of the Board, and any written statement submitted by either party within the time directed by the Chair. The Board may approve or modify the order assessing costs and expenses. The Board's decision is final when filed and not subject to further review.

(g) Assessment in Matters Reviewed by the Court. When a matter is reviewed by the Court as provided in title 12, any order assessing costs and expenses entered by the Chair under section (e) and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion by the Court imposing a sanction ~~or admonition~~, costs and expenses may be assessed in favor of the Association under the procedures of RAP Title 14, except that "costs" as used in that title means any costs and expenses allowable under this rule.

(h) Assessment Discretionary. Assessment of any or all costs and expenses may be denied if it appears in the interests of justice to do so.

(i) Payment of Costs and Expenses.

- (1) A respondent ordered to pay costs and expenses must do so within 30 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.
- (2) The respondent must pay interest on any amount not paid within 30 days of the date the assessment is final at the maximum rate permitted under RCW 19.52.020.

(3) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(B) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review, and the Board's decision is not subject to further review.

(j) Failure To Comply. A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

(k) Costs in Other Cases. Rule 9.1 governs costs and expenses in cases resolved by stipulation. Rule 8.6 governs assessment of costs and expenses in disability proceedings. Rule 5.3(h) governs assessment of costs and expenses pursuant to a respondent's failure to cooperate.

(l) Money Judgment for Costs and Expenses. After the assessment of costs and expenses is final, upon application by the Association, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and expenses if the respondent has failed to pay the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent 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 respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent 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 and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.