WSBA

WASHINGTON STATE BAR ASSOCIATION

ELC DRAFTING TASK FORCE

Meeting Agenda

June 18, 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.)
   - February 10, 2012, meeting minutes (to be approved) [pp.1344-1346]
2. **Discussion**
   - Chair's May 29, 2012, Memo to ELC Task Force [p. 1347]
   - Seth Fine's March 19, 2012, Memo to ELC Task Force [pp. 1348-1386]
   - Office of Disciplinary Counsel June 11, 2012, Memo to ELC Task Force [pp. 1387-1399]
3. **Adjourn** (noon)

Minutes – February 10, 2012
ELC Drafting Task Force

Present: Geoff Gibbs, Chair, Erika Balazs (telephone), Randy Beitel, Kurt Bulmer, Ron Carpenter (telephone), James Danielson (telephone), Doug Ende, Seth Fine, Joseph Nappi, Jr. (telephone), Julie Shankland, Nan Sullins, Elizabeth Turner (telephone), Norma Linda Ureña, and Scott Busby, Reporter.

Call to Order/Introduction

The Chair called the meeting to order at 1:02 p.m. The Chair apologized for the rescheduling of the meeting and outlined the primary issues for consideration at the meeting: (1) the removal of the public admonition from the ELC and (2) options for a non-public disciplinary action in its place.

Outline of the BOG Decision

Mr. Nappi requested a report on the BOG meeting at which the decision to eliminate public admonitions was made. Mr. Gibbs explained that BOG members did not want public disclosure of low-level violations of the RPC and that they wished to consider some non-public alternative(s) to replace the public admonition. Mr. Ende added that some BOG members perceived little or no difference between a reprimand and a public admonition.

Discussion of BOG Decision & Task Force Response

Mr. Gibbs opened discussion of how to respond to the BOG decision to eliminate public admonitions.

Mr. Fine noted that admonitions are in an odd position between a reprimand and an advisory letter, and he expressed his personal opposition to non-public disciplinary action. Mr. Carpenter was also opposed to non-public disciplinary action. He noted that the goal of lawyer discipline is to protect the public, not to protect lawyers, and opined that non-public disciplinary action does not accomplish that purpose. He questioned whether it was the Task Force's job to implement the BOG's view. He suggested that the Task Force simply make its recommendation to the BOG, and that it was up to the BOG to accept or reject that recommendation.

Mr. Danielson concurred with Mr. Carpenter. He further noted that the removal of admonitions from the ELC would require changes to the Supreme Court's use of the ABA Standards for Imposing Lawyer Sanctions. Mr. Ende pointed out that the removal of admonitions would leave

a gap in the system of sanctions that the Supreme Court has adopted, and that something would have to done to address that gap.

Mr. Nappi expressed concern that hearing officers would lose a tool used to address less-serious conduct, and that in such cases hearing officers would have no alternative but to (a) dismiss a case or (b) order a reprimand. Mr. Bulmer responded that an alternative would be to dismiss with a finding of misconduct but without the imposition of a sanction. He suggested that such a finding could be used in future disciplinary proceedings against the same respondent.

Mr. Fine asked whether the rules should be amended to allow a hearing officer to issue an advisory letter after a hearing. Currently, only a review committee can issue an advisory letter. Mr. Danielson pointed out the difficulty of issuing a non-public advisory letter based on a public disciplinary proceeding.

Mr. Bulmer requested clarification of the draft rule change proposals in the February 8, 2012 meeting materials. The Reporter explained that they were intended as a starting point for discussion and that there were many different ways, with different consequences, to implement the broad goal of removing public admonitions from the ELC. Mr. Bulmer suggested that the Task Force simply inform the BOG that the Task Force's recommendation remains the same. Mr. Bulmer opined that the Supreme Court will not accept the elimination of public admonitions anyway.

Ms. Shankland noted the problems created by any proposed rule change that would depart from the ABA Standards. Mr. Beitel noted that the ELC provide for stipulations at any point in the proceedings, but the draft rule change proposals in the meeting materials would not permit a stipulated admonition after a matter has been ordered to hearing. Mr. Fine asked what would happen in cases that would otherwise be resolved with an admonition. Mr. Ende noted that hearing officers may not be comfortable dismissing a case, and that Mr. Bulmer's proposed solution is not expressly provided for in the rules.

Mr. Gibbs said it was his sense is that the BOG was willing to consider other non-public forms of discipline in lieu of admonition. The problem is in determining what will happen in cases that are ordered to hearing, and therefore public, which currently might be resolved by a public admonition. Mr. Bulmer noted that the ABA Standards provide that probation can be imposed alone, without admonition, reprimand, or suspension, and he analogized this to a finding of misconduct without the imposition of a public sanction.

Mr. Fine moved that the Task Force present the BOG with an option whereby (1) admonitions are eliminated entirely from the ELC, (2) hearing officers are authorized to issue advisory letters, and (3) a reprimand would be the presumptive sanction in any case where the ABA Standards

provide that an admonition is the presumptive sanction. Mr. Fine added that under his proposal, an advisory letter issued by a hearing officer would be in the public file and would be permanent, but there would be no published discipline notice and no associated costs, probation, or restitution.

Mr. Danielson suggested an alternative whereby the Task Force would recommend to the BOG that it adopt the rule revisions previously suggested (including public admonitions) but would provide an alternative along the lines suggested by Mr. Fine for the BOG to consider if it rejected the Task Force's recommendation. Mr. Fine withdrew his motion in favor of Mr. Danielson's suggestion.

Mr. Gibbs asked the Task Force whether there was anyone opposed to recommending to the BOG that it adopt the rule revisions previously suggested, but providing an alternative if the BOG rejected that recommendation. There was no opposition. Mr. Gibbs believed that it was the Task Force's responsibility to present a draft without public admonitions. Mr. Danielson wished to recommend strongly to the BOG that it retain public admonitions, but to provide an alternative if the BOG chose to ignore that recommendation.

Mr. Gibbs suggested forming a subcommittee to draft language for an alternative to be presented to the BOG. He also suggested postponing the presentation of this alternative to the April BOG meeting. The Task Force then discussed scheduling issues. There was consensus that a drafting subcommittee should be formed, and that presentation of an alternative draft should be postponed to the April BOG meeting.

ELC 9.2 Issue

Mr. Ende presented a memo regarding ELC 9.2 that was prompted by a very recent communication from the Supreme Court. The members were generally agreed that more time was needed to review the issue before taking it up for discussion. Mr. Gibbs moved the discussion of the issue to the Task Force's next meeting.

Adjournment

The meeting was adjourned at 2:15 p.m., with the date and time of the next meeting to be determined.

WSBA

ELC Taskforce

(RULES FOR ENFORCEMENT OF LAWYER CONDUCT)
May 29, 2012

Memorandum to the Taskforce Members

Colleagues:

At the last BOG meeting (at which some of you were in attendance), the BOG spent a great deal of time discussing admonitions. To summarize, the BOG would like us to come back to them with proposed language leaving an option of a "non-public admonition".

To accomplish that result, I am convening a Taskforce meeting at the WSBA offices on **Monday, June 18, 2012 from 10:00 a.m. to noon**.

Attached to this memo will be a copy of a draft addressing this issue created by Seth Fine.

Should any of you have suggested amendments to Seth's proposal, have your own proposal or have ideas on how we should accomplish this, please submit them to Scott Busby and myself on or before June 11th if at all possible.

Thank you for your continued participation.

Geoff Gibbs, Chair

March 19, 2012

To: Geoff Gibbs, Chair
ELC Task Force

From: Seth Fine
Task Force member

Re: Proposed Amendments to Substitute Advisory Letters for Admonitions

At the last Task Force meeting, I discussed the possibility of expanding the availability of advisory letters in lieu of admonitions. Attached are draft amendments to accomplish this.

The proposal is not as lengthy as it seems. Most of the proposed amendments simply remove references to admonitions. Also, the amendments are set out in three formats: clean copy, markup showing changes from the amendments already approved by the Task Force, and markup showing changes from existing rules.

The proposal would make the following substantive changes:

1. ELC 5.8 (pages 23-34)

This is the heart of the proposal. It would make the following changes:

a. Subsection (b) would allow an advisory letter to be issued at any stage of a disciplinary proceeding.

b. Subsection (d) would make an advisory letter public only if it is issued after a matter has been ordered to hearing. Under existing rules, an advisory letter could not be issued at all under these circumstances. Advisory letters issued prior to that time would remain confidential, as under existing rules. (This change is also reflected in a proposed amendment to ELC 3.1, pages 10-12.)

c. A new subsection (e) would allow limited use of advisory letters in future disciplinary proceedings. They could be used for the sole purpose of showing that the lawyer was cautioned concerning the conduct described in the letter.

2. ELC 13.10 (page 37)

This new rule would define the effect of admonitions in other jurisdictions or under former rules. A public admonition from another jurisdiction would be considered equivalent to a reprimand. An admonition imposed in Washington under former rules would be treated in accordance with the rules in effect when the imposition became final.

3. ELC 13.11 (p. 37)

This new rule would define the effect of a presumptive "admonition" under the ABA Standards. It would be considered equivalent to a reprimand.

PROPOSED AMENDMENTS TO SUBSTITUTE ADVISORY LETTER FOR ADMONITION

1. AMENDMENT TO ELC 1.3

CLEAN COPY:

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.
(c) "Bar file" means the pleadings, motions, rulings, decisions, and other formal papers filed in a proceeding.
(d) "Board" when used alone means the Disciplinary Board.
(e) "Chair" when used alone means the Chair of the Disciplinary Board.
(f) "Clerk" when used alone means the Clerk to the Disciplinary Board.
(g) "Disciplinary action" means sanctions under rule 13.1.
(h) "Final" means no review has been sought in a timely fashion or all appeals have been concluded.
(i) "Grievant" means the person or entity who files a grievance, except for a confidential source under rule 5.2.
(j) "Hearing officer" means the person assigned under rule 10.2(a)(1) or, when a hearing panel has been assigned, the hearing panel chair.
(k) "Mental or physical incapacity" includes, but is not limited to, insanity, mental illness, senility, or debilitating use of alcohol or drugs.
(l) "Party" means disciplinary counsel or respondent, except in rules 2.3(h) and 2.6(d) "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.

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(~~c~~d) “Board” when used alone means the Disciplinary Board.
(~~d~~e) “Chair” when used alone means the Chair of the Disciplinary Board.
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(~~f~~g) “Disciplinary action” means sanctions under rule 13.1 ~~and admonitions under rule 13.5~~.
(~~g~~h) “Final” means no review has been sought in a timely fashion or all appeals have been concluded.
(~~h~~i) “Grievant” means the person or entity who files a grievance, except for a confidential source under rule 5.2.
(~~i~~j) “Hearing officer” means the person assigned under rule 10.2(a)~~(1) or, when a hearing panel has been assigned, the hearing panel chair~~.
(~~j~~k) “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(~~e~~d) “party” also includes a grievant.
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2. AMENDMENT TO ELC 2.3

CLEAN COPY

RULE 2.3 DISCIPLINARY BOARD
(a) Function. The Board performs the functions provided under these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.
(b) Membership.
(1) *Composition*. The Board consists of not fewer than four nonlawyer members, appointed by the Court, and not fewer than ten lawyer members, appointed by the Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel.
(2) *Qualifications*. A lawyer Board member must 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) ~~t~~The member initially decides whether to remain on the Board or take a leave of absence until the matter is resolved;.
(B) ~~i~~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 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 Conflicts Review Officer who is not conducting the review of the grievance should then, or at any time thereafter as 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 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 Conflict Review Officer's determination is confidential. All materials used in connection with such a 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, 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 membership on the Board. 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 previously served on the Board. 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 for a hearing on 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 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 2.14.

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(C) The Conflicts Review Officer who is not conducting the review of the grievance should then, or at any time thereafter as 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 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 Conflict Review Officer's determination is confidential. All materials used in connection with such a 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, 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.
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(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 for a hearing on the matter~~, or served on a review committee that issued an admonition to the lawyer regarding the matter~~.

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(C) ~~t~~The ~~Board of Governors~~ Conflicts Review Officer who is not conducting the review of the grievance should then, or at any time thereafter ~~it~~ as deem~~s~~ed 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) ~~t~~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. ~~F~~Current and former members of the Disciplinary Board are subject to the restrictions set forth in rule 2.~~13(b)~~14.

3. AMENDMENT TO ELC 3.1

CLEAN COPY

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, 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;

(2) the record upon distribution to a review committee or to the Supreme Court in proceedings based on a conviction of a felony, 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 imposing a sanction or issuing an advisory letter in a matter previously ordered to hearing, and the order approving a stipulation to dismissal of a matter previously made public under these rules;

(6) the record before a hearing officer;

(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 (i) any matter ordered to public hearing, (ii) any matter in which disciplinary action has been taken, (iii) any matter previously ordered to hearing in which an advisory letter has been issued, or (iv) 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 discipline under rule 9.3;

(11) any sanction imposed on a respondent; and

(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.

MARKUP SHOWING CHANGES FROM PREVIOUSLY-APPROVED AMENDMENTS

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, 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, 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~~ issuing an advisory letter in a matter previously ordered to hearing, and the order approving a stipulation to dismissal of a matter previously made public under these rules;

(6) the record before a hearing officer;

(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 (i) any matter ordered to public hearing, ~~or that is deemed ordered to hearing under rule 13.5(a)(2), or~~ (ii) any matter in which disciplinary action has been taken, (iii) any matter previously ordered to hearing in which an advisory letter has been issued, or (iv) 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 discipline under rule 9.3; ~~and~~

(11) any sanction ~~or admonition~~ imposed on a respondent; and

(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.

MARKUP SHOWING CHANGES FROM EXISTING RULE

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~~ issuing an advisory letter in a matter previously ordered to hearing, 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 (i) 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~~ (ii) any matter in which disciplinary action has been taken, (iii) any matter previously ordered to hearing in which an advisory letter has been issued, or (iv) 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; and

(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.

4. AMENDMENT TO ELC 3.3

CLEAN COPY

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 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 provides for dismissal of a grievance without a disciplinary sanction; and

(2) 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.

(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.

(d) Diversion Contracts. Diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, 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.

MARKUP SHOWING CHANGES FROM PREVIOUSLY-APPROVED AMENDMENTS

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 provides for dismissal of a grievance without a disciplinary sanction ~~or admonition~~; and

(2) 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.

(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.

(d) Diversion Contracts. Diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, 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.

MARKUP SHOWING CHANGES FROM EXISTING RULE

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~~1) it provides for dismissal of a grievance without a disciplinary sanction ~~or admonition~~; and

(~~3~~2) 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.

(~~c~~d) 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.

5. AMENDMENT TO ELC 3.5

CLEAN COPY

RULE 3.5. NOTICE OF 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 transfer to disability inactive status; and
(3) a copy of any resignation in lieu of discipline.

(b) Other Notices. The counsel to the Board must also notify the following entities of the imposition of a disciplinary sanction, a transfer to disability inactive status, a resignation in lieu of 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 Lawyer Regulatory Data Bank.

(c) Bar News and Website Notice.

(1) Preparation and content. Notice of the imposition of any disciplinary sanction, 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. Association counsel 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. Association counsel 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 Association counsel within five days of service, but Association counsel'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 Discipline, Interim Suspension, or Disability Inactive Status. 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 discipline, interim suspension, or transfer to disability inactive status of a lawyer 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 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.

MARKUP SHOWING CHANGES FROM PREVIOUSLY-APPROVED AMENDMENTS

RULE 3.5. NOTICE OF 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
(~~4~~3) a copy of any resignation in lieu of 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 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 Lawyer Regulatory Data Bank.

(c) 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. Association counsel 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. Association counsel 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 Association counsel within five days of service, but Association counsel'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 Discipline, Interim Suspension, or Disability Inactive Status. 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 discipline, interim suspension, or transfer to disability inactive status of a lawyer 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 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.

MARKUP SHOWING CHANGES FROM EXISTING RULE

RULE 3.5. NOTICE OF ~~DISCIPLINE~~ DISCIPLINARY ACTION, INTERIM SUSUPENSION, 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~~ a copy of any transfer to disability inactive status; and
(3) 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, 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 con lusively 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.

6. AMENDMENT TO ELC 3.6

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RULE 3.6 MAINTENANCE OF RECORDS
(a) Permanent Records. In any matter in which a disciplinary sanction 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, 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 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.

MARKUP SHOWING CHANGES FROM PREVIOUSLY-APPROVED AMENDMENTS

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 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.

MARKUP SHOWING CHANGES FROM EXISTING RULE

RULE 3.6 MAINTENANCE OF RECORDS
(a) Permanent Records. In any matter in which a disciplinary sanction 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, 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.

7. AMENDMENT TO ELC 5.7 (formerly 5.6)

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RULE 5.7 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 disciplinary counsel no later than 45 days after 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.
(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 5.8;
(4) order a hearing on the alleged misconduct; or
(5) order further investigation as may appear appropriate.
(e) Ordering Hearing without Recommendation from Disciplinary Counsel. When the review committee decides to 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.

MARKUP SHOWING CHANGES FROM PREVIOUSLY-APPROVED AMENDMENTS

RULE 5.7 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 disciplinary counsel no later than 45 days after 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 5.8;
(4) ~~issue an admonition under rule 13.5;~~
~~(5)~~ order a hearing on the alleged misconduct; or
(~~6~~5) 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.

MARKUP SHOWING CHANGES FROM EXISTING RULE

RULE 5.~~6~~7 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.
(d) Authority on Review. In reviewing grievances under this rule, a review committee may:
(1) dismiss the grievance;
(~~1~~2) affirm the dismissal;
(~~2~~3) dismiss the grievance and issue an advisory letter under rule 5.~~7~~8;
~~(3) issue an admonition under rule 13.5;~~
(~~4~~) order a hearing on the alleged misconduct; or
(5) order further investigation as may appear appropriate.
(e) Ordering Hearing without Recommendation from DisciplinaryCounsel. When the review committee decides to 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.

8. AMENDMENT TO ELC 5.8 (formerly 5.7):

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RULE 5.8. ADVISORY LETTER
(a) Grounds. An advisory letter may be issued when:
(1) a respondent lawyer's conduct constitutes a violation, but does not warrant a 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) Issuance. An advisory letter may be issued by a review committee or at any stage of a disciplinary proceeding.
(c) Effect. An advisory letter is not a sanction and is not disciplinary action.
(**d) Public Nature of Information.** An advisory letter is public information only if issued after a matter has been ordered to hearing.
(e) Use in Subsequent Proceedings. In any subsequent disciplinary proceeding, an advisory letter may be used as evidence for the sole purpose of showing that the lawyer was cautioned concerning the conduct described in the letter. If an advisory letter is admitted into evidence at a public proceeding, it shall become part of the public record.

MARKUP SHOWING CHANGES FROM PREVIOUSLY-APPROVED AMENDMENTS:

RULE 5.8. ADVISORY LETTER

(a) Grounds. An advisory letter may be issued ~~by a review committee~~ when:

(1) a respondent lawyer's conduct constitutes a violation, but does not warrant ~~an admonition or~~ a 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~~ Issuance. An advisory letter may ~~only~~ be issued by a review committee or at any stage of a disciplinary proceeding. ~~An advisory letter may not be issued when a grievance is dismissed following a hearing.~~

(c) Effect. An advisory letter is not a sanction and is not disciplinary action.

(d) Public Nature of Information. An advisory letter is ~~not~~ public information~~, and may not be introduced into evidence in any subsequent disciplinary hearing~~ only if issued after a matter has been ordered to hearing.

(e) Use in Subsequent Proceedings. In any subsequent disciplinary proceeding, an advisory letter may be used as evidence for the sole purpose of showing that the lawyer was cautioned concerning the conduct described in the letter. If an advisory letter is admitted into evidence at a public proceeding, it shall become part of the public record.

MARKUP SHOWING CHANGES FROM EXISTING RULE:

RULE 5.~~7~~8. ADVISORY LETTER

(a) Grounds. An advisory letter may be issued when ~~a hearing does not appear warranted~~:

(1) a respondent lawyer's conduct constitutes a violation, but does not warrant an a 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) Issuance. An advisory letter may be issued by a review committee ~~but may not be issued when a grievance is dismissed following a hearing~~ or at any stage of a disciplinary proceeding.

(c) Effect. An advisory letter ~~does not constitute a finding of misconduct,~~ is not a sanction~~,~~ and is not disciplinary action~~, and is not public information~~.

(d) Public Nature of Information. An advisory letter is public information only if issued after a matter has been ordered to hearing.

(e) Use in Subsequent Proceedings. In any subsequent disciplinary proceeding, an advisory letter may be used as evidence for the sole purpose of showing that the lawyer was cautioned concerning the conduct described in the letter. If an advisory letter is admitted into evidence at a public proceeding, it shall become part of the public record.

9. AMENDMENT TO ELC 10.16

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RULE 10.16 DECISION OF HEARING OFFICER

(**a) Decision**. Within 30 days after the proceedings are concluded or (if applicable) the transcript of proceedings is served, 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 either (1) writes findings of fact, conclusions of law, and recommendations without requiring submission of proposed findings, conclusions, or recommendations or (2) announces a tentative decisions then requests one or both parties 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 15 days of service of the decision on the respondent lawyer;

(B) In a bifurcated proceeding, within 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.

(2) *Procedure.* Rule 10.8 governs this motion. The hearing officer should rule on the motion within 15 days after the filing of a timely reply or after the period to file a reply under rule 10.8(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) When Final. If a hearing officer recommends reprimand 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.

MARKUP SHOWING CHANGES FROM PREVIOUSLY-APPROVED AMENDMENTS:

RULE 10.16 DECISION OF HEARING OFFICER

(**a) Decision**. Within 30 days after the proceedings are concluded or (if applicable) the transcript of proceedings is served, 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 either (1) writes findings of fact, conclusions of law, and recommendations without requiring submission of proposed findings, conclusions, or recommendations or (2) announces a tentative decisions then requests one or both parties 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 15 days of service of the decision on the respondent lawyer;

(B) In a bifurcated proceeding, within 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.

(2) *Procedure.* Rule 10.8 governs this motion. The hearing officer should rule on the motion within 15 days after the filing of a timely reply or after the period to file a reply under rule 10.8(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) When Final. If a hearing officer 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.

MARKUP SHOWING CHANGES FROM EXISTING RULE:

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 part~~y~~ies ~~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~~d) 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)~~.

10. AMENDMENT TO ELC 13.1

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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) 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.

MARKUP SHOWING CHANGES FROM EXISTING RULE

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.

[Note: the Task Force has not recommended any changes to this rule.]

11. DELETION OF ELC 13.5

[Note: This rule should be deleted in its entirety. The following are the amendments previously recommended by the Task Force.]

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.
(c) By Stipulation. The parties may stipulate to an admonition under rule 9.1.
(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.
(f) 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.

12. DELETION OF ELC 13.6

[Note: This rule should be deleted in its entirety. The Task Force has not recommended any amendments to this rule.]

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.

13. AMENDMENT TO ELC 13.9

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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 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, 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 the Board; and

(10) compensation provided to hearing officers 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 a matter that becomes final without review by the Board, $1,500;
(2) 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;
(3) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of $2,000;
(4) 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
(5) 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) the decision of a hearing officer or the Board imposing a sanction becomes final;
(B) a notice of appeal from a Board decision is filed and served;
(C) the Supreme Court accepts or denies discretionary review of a Board decision; or
(D) 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 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, 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.

MARKUP SHOWING CHANGES FROM PREVIOUSLY-APPROVED AMENDMENTS

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, 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 the Board; and

(10) compensation provided to hearing officers 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~~2) 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;

(~~4~~3) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of $2,000;

(~~5~~4) 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

(~~6~~5) 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 the Board imposing ~~an admonition or~~ a sanction becomes final;

(~~C~~B) a notice of appeal from a Board decision is filed and served;

(~~D~~C) the Supreme Court accepts or denies discretionary review of a Board decision; or

(~~E~~D) 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 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.

MARKUP SHOWING CHANGES FROM EXISTING RULE

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;
(2) 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;
(3) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of $2,000;
(4) 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
(5) 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~~B) a notice of appeal from a Board decision is filed and served; ~~or~~
(~~D~~C) the Supreme Court accepts or denies discretionary review of a Board decision; or
(D) 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.

14. NEW ELC 13.10

RULE 13.10. EFFECT OF ADMONITION BY OTHER JURISDICTION OR UNDER FORMER RULES

(a) When another jurisdiction imposes a public admonition on a Washington lawyer, for the purposes of reciprocal discipline under rule 9.2, a reprimand will be considered the identical discipline.

(b) An admonition imposed in this State under prior rules shall be treated in accordance with the rules in effect on the date that the imposition was final.

15. NEW ELC 13.11

RULE 13.11. SANCTIONS ANALYSIS

In applying the American Bar Association's *Standards for Imposing Lawyer Sanctions*, an admonition under those Standards shall be considered equivalent to a reprimand under ELC 13.4.

16. NO AMENDMENT RECOMMENDED TO ELC 6.3

[Although ELC 3.6 refers to admonitions, no amendment to that rule is necessary. The reference is to the ABA Standards, which still refer to admonitions.]

ELC 6.3. FACTORS IN DIVERSION

Disciplinary counsel considers the following factors in determining whether to refer a respondent lawyer to diversion:
(A) whether the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions for the violations raised by the grievance or grievances is likely to be no more severe than reprimand or admonition;
(B) whether participation in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of lawyer discipline;
(C) whether aggravating or mitigating factors exist; and
(D) whether diversion was already tried.

Memo

To: ELC Drafting Task Force

From: Office of Disciplinary Counsel

Date: 6/11/12

RE: **Making Admonitions Non-Public**

DISCUSSION:

The Board of Governors has asked the Task Force to prepare revisions that would retain admonitions, but make them non-public. ODC still prefers the original recommendation of the Task Force that would have kept admonitions public (as they have been since 1997), but makes them permanent. Nevertheless, we have drafted this set of changes making admonitions non-public for consideration by the Task Force.

Two Non-Sanction Forms of Disciplinary Action. The key feature of this draft is to have two non-sanction forms of disciplinary action [see ELC 13.1(b) & (c)]:

> (1) Non-public admonitions, which may only be issued by a Review Committee [see ELC 13.5(b)], or stipulated to prior to the matter being ordered to hearing [see ELC 13.5(c)].
>
> (2) A new Public Finding of Misconduct Without Sanction is provided to allow a hearing officer to impose public disciplinary action without imposing a sanction [see a new ELC 13.10]. The parties may also stipulate to a Public Finding of Misconduct Without Sanction [ELC 13.10(b)]. The new Public Finding of Misconduct Without Sanction will authorize costs [ELC 13.9(a)], restitution [ELC 13.7(a)], and probation [ELC 13.8(a)].

Both admonitions and public findings of misconduct without sanction can be used as evidence of prior misconduct in subsequent proceedings [see ELC 10.13(f)], and for that reason are permanent forms of disciplinary action [see ELC 3.6(a) & (b)].

The language of ELC 13.1 is clarified by amending the title and providing for the new public finding of misconduct without sanction.

The language in ELC 2.3(b)(2) and ELC 2.5(b) is amended to provide that only disciplinary sanctions (and neither the new public finding of misconduct without sanction nor an admonition) disqualify one from service on the Disciplinary Board or as a Hearing Officer.

The language of ELC 10.16(a) & (d) is clarified to both indicate the scope of a hearing officer's options for recommendations, and to add the new public finding of misconduct without sanction.

ELC 10.13(f) is amended to provide a procedure for a Review Committee to make a non-public admonition part of the prior disciplinary record for a hearing. The rule

provides a standard for making that determination, based on the ABA Model Rule for Disciplinary Enforcement 10(A)(5) provisions to allow such non-public admonitions to be used as relevant evidence of prior misconduct bearing on the sanction. When so ordered, the formerly non-public admonition becomes part of the public record of the subsequent hearing.

Notice is given to the Supreme Court of both the non-public admonitions and the public finding of misconduct without sanction [see ELC 3.5(a)], but not to other states, the Lawyer Regulatory Data Bank, and the other courts [See ELC 3.5(b)]. There is no Bar News or website notice of the new non-public admonitions, but there is such notice for the new public finding of misconduct without sanction [See ELC 3.5(c)(1)].

These draft changes use the September 23, 2011 version of the proposed changes to the ELC, with the changes proposed here in double underline and ~~double strikethrough~~.

DRAFT RULE CHANGES:

RULE 1.3 DEFINITIONS

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

. . . .

(~~f~~g) "Disciplinary action" means sanctions under rule 13.1(a), public findings of misconduct without sanction under rule 13.10, and admonitions under rule 13.5.

. . . .

RULE 2.3 DISCIPLINARY BOARD

. . . .

(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 ~~L~~lawyer Board member~~s~~ 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~~ disciplinary sanction.

. . . .

RULE 2.5 HEARING OFFICERS~~ OR PANEL~~

. . . .

(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~~ disciplinary sanction, and have experience as an adjudicator or as an advocate in contested adjudicative hearings.

. . . .

RULE 3.1 OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION

. . . .

(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 final 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 under rule 13.1(a) or a public finding of misconduct without sanction under rule 13.10 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~~ or public finding of misconduct without sanction imposed on a respondent; and

(12) a stipulation to dismissal upon institution of proceedings for failure to comply with the terms of the stipulation.

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,~~ Unless approved by the hearing officer or the Board, a stipulation under rule 9.1 is confidential, 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~~1) it provides for an admonition or for dismissal of a ~~grievance~~ matter without ~~a~~ disciplinary ~~sanction or admonition~~ action; and

(~~3~~2) proceedings have not been instituted for failure to comply with the terms of the stipulation.

. . . .

RULE 3.5 NOTICE OF ~~DISCIPLINE~~ DISCIPLINARY ACTION, INTERIM SUSUPENSION, 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 or public finding of misconduct without 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

(~~3~~4) 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, public finding of misconduct without 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 the *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, public finding of misconduct without 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~~ action**,** ~~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 10.13 DISCIPLINARY HEARING

. . . .

(f) Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the hearing officer ~~or panel~~ files a ~~decision~~recommendation. When the prior disciplinary action is a non-public admonition**,** it must not be made a part of the hearing record unless a review committee has ordered that the non-public admonition is to be made a public part of the hearing record**.** In making such determinations**,** a review committee will consider the relevance of the prior admonition as evidence of prior misconduct bearing on the issue of the potential disciplinary action to be imposed**.** The action of a review committee making such a determination is not subject to review or appeal**.**

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 a recommendation~~s~~ of disciplinary action or remedies under rule 13.1**,** or dismissal. 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 part~~y~~ies ~~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~~d) When Final. If a hearing officer ~~or panel~~ recommends a reprimand ~~or an admonition~~ or a public finding of misconduct without sanction, 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)~~.

TITLE 13 – ~~SANCTIONS~~ DISCIPLINARY ACTION AND REMEDIES

RULE 13.1 ~~SANCTIONS~~ DISCIPLINARY ACTIONS 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) Public Finding of Misconduct Without Sanction. A public finding of misconduct without sanction under rule 13.10**.**

(~~b~~c) Admonition. An admonition under rule 13.5.

(~~c~~d) 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~~ Not Permitted After Order to Hearing. ~~A hearing officer or panel may recommend that a respondent receive an admonition following a hearing.~~ An admonition may not be issued or recommended in a matter ordered to hearing.

(c) By Stipulation. The parties may stipulate to an admonition under rule 9.1, but only prior to the matter being ordered to hearing.

(d) Effect. An admonition is a permanent discipline record and ~~is~~ may be admissible in subsequent disciplinary or disability proceedings involving the respondent as evidence of prior misconduct as provided by rule 10.13(f). ~~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.~~

(~~f~~ e) 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 13.7 RESTITUTION

(a) Restitution May Be Required. A respondent lawyer who has been sanctioned under rule 13.1(a), or against whom a public finding of misconduct without sanction under rule 13.10 has been imposed, or who has been admonished under rule 13.5(~~b~~ c) 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

(~~2~~3) 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.

(~~3~~4) 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(a), against whom a public finding of misconduct without sanction under rule 13.10 has been imposed, or who has been 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, against whom a public finding of misconduct without sanction is imposed, 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;

(~~3~~4) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of $2,000;

(~~4~~ 5) 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

(~~5~~6) 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 or a public finding of misconduct without 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~~disciplinary action, 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.

[NEW RULE]

RULE 13.10 PUBLIC FINDING OF MISCONDUCT WITHOUT SANCTION

(a) By Hearing Officer. When misconduct warrants a public finding, but circumstances are such that a sanction is not warranted, a hearing officer may recommend under rule 10.16(a) a public finding of misconduct without sanction, which is a permanent form of disciplinary action.

(b) By Stipulation. At any time, the parties may stipulate under rule 9.1 to a public finding of misconduct without sanction.