

**REPORTER’S EXPLANATORY COMMENTS
TO THE SUGGESTED AMENDMENTS TO THE
RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)**

I. INTRODUCTION

A. Background

In 2000, the WSBA Board of Governors (BOG) and the Supreme Court established a “Discipline 2000” Task Force to examine then current disciplinary procedures as reflected in the Rules for Lawyer Discipline (RLD) and to suggest appropriate changes. The 12-member Task Force, co-chaired by Justice Charles W. Johnson and J. Richard Manning, issued a report to the BOG in 2001 recommending substantive and structural changes to the disciplinary procedural rules and suggesting adoption of a new codification to be known as the Rules for Enforcement of Lawyer Conduct (ELC). After modifications were incorporated at the behest of the BOG, the ELC were submitted to the Supreme Court, which adopted the ELC effective October 1, 2002.

After more than five years of experience with the ELC, it was appropriate to analyze the impact and effectiveness of the rules in light of the purposes of lawyer discipline, and to determine whether any modifications and improvements were warranted. In addition, following the issuance of the ABA’s Report on the Washington Lawyer Regulation System in August 2006, the BOG Discipline Review Committee conducted a systematic review of the lawyer discipline and disability system as a whole. Implementation of the Committee’s recommendations required amendments to the ELC.

B. Purposes of the Task Force

According to its charter, the purposes of the ELC Task Force were to:

- Review the current ELC.
- Evaluate whether the rules as adopted in 2002 were functioning as intended, and whether amendments are warranted.
- Review the recommendations of the Board of Governors (BOG) Discipline Review Committee addressing the ABA Report on the Washington Lawyer Regulation System and, following approval by the Board of Governors, determine whether ELC amendments were needed to implement the recommendations.
- Draft suggested amendments to the ELC for presentation to the Board of Governors.
- Solicit and receive input on the suggested ELC amendments.
- After consideration of the input, draft a final version of a set of suggested amendments to the ELC.

C. Composition of the Task Force

Members of the Task Force were selected for their knowledge about Washington's lawyer discipline and disability system, and to reflect a diversity in point of view, practice area, location, and other factors. Appointments to the Task Force were made by the WSBA President after consultation with the Board of Governors. The past and present members who served under the direction of Task Force Chair Geoff Gibbs are: Erika Balazs, Randy Beitel, Kim Boyce, Kurt Bulmer, Ron Carpenter, James Danielson, Seth Fine, Bruce Johnson, Joseph Nappi, Jr., Julie Shankland, Patrick Sheldon, David Summers, Elizabeth Turner, Norma Linda Ureña, Charlie Wiggins, and Matt Williams. Nan Sullins served as the liaison to the Administrative Office of the Courts (AOC) and the Supreme Court, and Scott Busby served as reporter.

The Task Force was divided into subcommittees which were assigned different subsets of the ELC. Each subcommittee produced reports and proposed rule revisions that were presented for consideration by the Task Force as a whole. The subcommittee assignments were as follows:

- Subcommittee A – Organization & General Procedures (Titles 1-4) and Hearing & Disability Procedures (Titles 8, 10): Bruce Johnson, Chair, Kim Boyce, Kurt Bulmer, Jim Danielson, Norma Linda Ureña, Elizabeth Turner, Randy Beitel.
- Subcommittee B – Investigations & Interim Procedures (Titles 5, 7, 15) and Resolutions without Hearings (Titles 6, 9): Seth Fine, Chair, Kurt Bulmer, Patrick Sheldon, Randy Beitel, Erika Balazs, Matt Williams.
- Subcommittee C – Review by Board and Supreme Court (Titles 11, 12) and Sanctions & Remedies (Titles 13, 14): Charlie Wiggins, Chair, Ron Carpenter, Julie Shankland, Randy Beitel, Patrick Sheldon.

D. The Work of the Task Force

The Task Force met 16 times between November 2008 and June 2012 to consider proposed rule revisions produced by the subcommittees, as well as comments and suggestions from other members of the WSBA and members of the public. Some of the suggested rule revisions were uncontroversial, while others provoked substantial discussion and disagreement among the Task Force Members. Suggested rule revisions were adopted or rejected, or in some cases referred back to subcommittee, by a majority vote of the Task Force members in attendance. Proposals adopted by the Task Force were then posted in redline on the WSBA website along with meeting minutes and other materials related to the Task Force's work.

E. Approval by the WSBA Board of Governors

The Task Force began presenting suggested amendments to the WSBA Board of Governors at the Board's July 2011 meeting. The Board discussed and considered the Task Force's proposals at this and five subsequent meetings. The Board twice referred proposals concerning admonitions back to the Task Force, and ultimately rejected the Task Force's recommendation in favor of an alternate proposal. The suggested amendments submitted to the Supreme Court were finally approved by the Board of Governors at its September 2012 meeting.

II. Summary of Suggested Amendments

The suggested amendments do not alter the basic structure of the ELC. Rather, they are intended to improve the effectiveness, fairness, and efficiency of the procedures within their existing structure. Many of the suggested amendments are clarifying and not substantive. Some of the notable suggested amendments include:

- Admonitions are abolished as a form of disciplinary action. ELC 13.1, 13.5, and other rules.
- Advisory letters are replaced with a new Warning Letter that may be issued at any stage of a disciplinary proceeding. ELC 5.8.
- New procedures are added for maintaining the confidentiality of client information in a disciplinary investigation. ELC 5.4(b), ELC 5.6.
- Interim suspension for a criminal conviction is limited to felony convictions. ELC 7.1.
- Stipulations are to be approved unless the stipulation would result in a “manifest injustice.” ELC 9.1(d).
- Resignation in lieu of disbarment is changed to a resignation in lieu of discipline that is available in a wider range of cases. ELC 9.3.
- Reprimands are simplified. ELC 13.4.
- Automatic review by the Disciplinary Board of all suspension and disbarment recommendations is eliminated in favor of an appeal-driven system. ELC 11.2.
- Both respondents and disciplinary counsel have the same rights of appeal to the Supreme Court. ELC 12.3.
- The authority and duties of the chief hearing officer are delineated and expanded. ELC 2.5(e).
- The procedures for protective orders are revised and expanded. ELC 3.2(e).
- A Disciplinary Selection Panel appointed by the Supreme Court will make recommendations to the Board of Governors regarding appointment of Disciplinary Board members, hearing officers, the chief hearing officer, and conflicts review officers. ELC 2.2(d).
- Disciplinary Board members, hearing officers, and conflicts review officers will be appointed by the Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel. ELC 2.3(b)(1), 2.5(c), 2.5(e), 2.7(b)(1).

- A new procedure will allow the Disciplinary Board Chair to restrict the rights of a person found to a vexatious grievant to file additional grievances. ELC 5.1(3).

III. Explanatory Comments on Individual Rules

Each comment begins with a brief description of the current rule's derivation, followed by a description of the suggested amendments, if any, approved by the WSBA Board of Governors. With a few exceptions as noted, the current rules were adopted in 2002 and derived from various provisions of the Rules for Lawyer Discipline (RLD). Where no change to a current rule is suggested, this has been noted. In some cases, a new rule, as opposed to amendments to a current rule, is suggested.

ELC Title 1

ELC 1.1. This rule is derived from the introductory language and subsection (i) of RLD 1.1. No change is suggested.

ELC 1.2. This rule is derived from RLD 1.2, with modifications to make the rule consistent with an earlier version of RPC 8.5. The suggested amendments are intended to make the rule consistent with the current version of RPC 8.5.

ELC 1.3. This rule is derived from RLD 10.2, 11.2(a), and 12.15, with the addition of some definitions that were new but not intended to effect substantive changes. The suggested amendments add a definition of "association counsel," a term used in current ELC 7.7(a) and in the suggested amendments to ELC 3.4(j), 3.5(c), 4.1(b), and 13.4(b). References to hearing panels and admonitions have been deleted here and throughout the suggested amendments.

ELC 1.4. This rule is derived from RLD 12.10. The Task Force considered, but did not adopt, any suggested amendments to this rule.

ELC 1.5. This rule is derived from RLD 1.1(j), 1.1(m), and 1.1(n). The suggested amendments are intended to make the rule consistent with ELC 15.4(d) and the suggested amendments to ELC 15.5.

ELC Title 2

ELC 2.1. This rule is derived from RLD 2.1. No change is suggested.

ELC 2.2. This rule is derived from RLD 2.2 and 12.5. The suggested amendments to ELC 2.2(a) are intended to more accurately reflect the current role of the Board of Governors (BOG) in lawyer discipline, especially in light of the BOG Discipline Review Committee's recommendations concerning the ABA Report on the Washington Lawyer Regulation System. The suggested amendments to ELC 2.2(b) are intended to make clear that the BOG, the officers of the Association, and the Executive Director are not directly involved in the investigative or prosecutorial decisions of the Office of Disciplinary Counsel (ODC). The suggested amendments to ELC 2.2(c) incorporate the current restrictions on the representation of respondents by BOG members, officers of the Association, and the Executive Director into a suggested new rule, ELC 2.14. ELC 2.2(d) and 2.2(e) are new subsections relating to the

selection of Disciplinary Board members, hearing officers, and Conflicts Review Officers that would replace and expand current ELC 2.5(c).

ELC 2.3. This rule is derived from RLD 2.3 with additions modeled after the Code of Judicial Conduct. The suggested amendments are intended to clarify the rule and to make it consistent with other suggested amendments concerning the role of the BOG in lawyer discipline and the Disciplinary Selection Panel. The suggested amendments to subsection (b)(5) provide a new procedure whereby a Conflicts Review Officer rather than the BOG determines whether a Disciplinary Board member should take a leave of absence when a grievance is filed against him or her.

ELC 2.4. This rule is derived from RLD 2.4 with the addition of subsection (g) relating to adjunct review committee members. The suggested amendments to subsection (f) clarify that a majority of a three-person review committee constitutes a quorum.

ELC 2.5. This rule is derived from RLD 2.5. The suggested amendments delete references to hearing panels throughout. References to the hearing officer selection panel have been deleted in favor of references to the Disciplinary Selection Panel provided for in the suggested amendments to ELC 2.2(d). Under the suggested amendments, the authority to appoint or remove hearing officers would be vested in the Supreme Court rather than the BOG. The duties of the chief hearing officer would be clarified and expanded to include some matters (motions prior to a matter being ordered to hearing) that are currently among the duties of the Disciplinary Board Chair.

ELC 2.6. This rule is based on Canons 2 and 3 of the Code of Judicial Conduct (CJC) as they existed when the ELC were adopted. Suggested subsection (a) deletes references to Canons 2 and 3 in light of the recent revisions and reorganization of the CJC. Suggested subsection (g) applies restrictions on advising or representing respondents or grievants to hearing officers.

ELC 2.7. This was a new rule adopted in 2002 establishing a Conflicts Review Officer to provide the initial review of grievances filed against lawyers holding positions in the discipline system. The suggested amendments to subsection (a) clarify that the rule applies to grievances against officers and members of the BOG, and to members of the Supreme Court staff, as well. Suggested subsection (f) applies restrictions on advising or representing respondents or grievants to Conflicts Review Officers.

ELC 2.8. This rule is derived from RLD 2.6(a), 2.6(b)(5), and 2.6(b)(6). The suggested amendments are intended to make the rule consistent with other suggested amendments concerning the role of the BOG and the Executive Director in lawyer discipline, and to more closely reflect actual managerial and personnel practices related to disciplinary counsel and special disciplinary counsel.

ELC 2.9. This rule is derived from RLD 2.7. The suggested amendments change the title of “adjunct investigative counsel” to “adjunct disciplinary counsel” to reflect that their functions may extend beyond investigation. The provisions concerning diversity have been deleted from subsection (b) because they are subsumed under suggested rule 2.2(e). Suggested subsection (c)

applies restrictions on advising or representing respondents or grievants to adjunct disciplinary counsel.

ELC 2.10. This rule is derived from RLD 12.7. No change is suggested.

ELC 2.11. This rule is derived from RLD 12.4. The suggested amendments authorize the Board of Governors to compensate special disciplinary counsel and provide for the reimbursement of expenses incurred by special disciplinary counsel.

ELC 2.12. This rule is derived from RLD 12.11 and was amended effective January 2, 2008. No change is suggested except for the deletion of a reference to hearing panels.

ELC 2.13. This rule is derived from RLD 2.8(a)(4), 2.8(e), and 12.5. No change is suggested except for the deletion of subsection (b), which is subsumed under a suggested new rule, ELC 2.14.

ELC 2.14. This is a suggested new rule that applies to restrictions on representing or advising respondents or grievants. Current rules (ELC 2.2(c), 2.3(k), and 2.13(b)) only address conflicts in the representation of respondents. The suggested new rule also draws distinctions in the nature of the restrictions among current officeholders, former officeholders, and other volunteers.

ELC Title 3

ELC 3.1. This rule is derived from RLD 11.1 and 11.2. The suggested amendments to ELC 3.1(b) are intended to conform the rule to suggested amendments elsewhere concerning admonitions (ELC 13.1, 13.5, and other rules) interim suspension (ELC 7.1), and resignation in lieu of disbarment (ELC 9.3).

ELC 3.2. This rule is derived from RLD 11.1 with the addition of subsection (b), which was a new provision. The suggested amendments to subsection (e) are intended to clarify when, how, and by whom protective orders, including temporary protective orders, may be issued at various stages of an investigation or formal proceeding. The suggested amendments to subsection (f) are intended to broaden the scope of that subsection to include any person subject to a protective order. Information not subject to a protective order, court order, or other law would still be subject to disclosure under ELC 3.4(a).

ELC 3.3. This rule is derived from subsections (h), (p), and (r) of RLD 1.1. The suggested amendments to subsection (b) are intended to clarify that reciprocal disability proceedings under ELC 9.2 are confidential, and to further clarify what can be disclosed to the public. The current provision relating to grievants would be subsumed under ELC 3.4(b). Suggested subsection (c) is a new subsection that specifies what information may be disclosed to the public concerning a custodian appointed under ELC 7.7. The suggested amendments to current subsection (c) (subsection (d) in the redline) are intended to clarify how the fact that a public matter was diverted from discipline becomes public information.

ELC 3.4. This rule is derived with few substantive changes from RLD 11.1. The suggested amendments to subsections (a) through (i) and current subsection (l) (subsection (m) in the redline) are largely clarifying and non-substantive. The suggested amendments to subsection (j)

are intended to make clear that, in addition to conflicts review officers, there are other lawyers in the discipline system who may have access to otherwise confidential disciplinary information necessary to perform their duties. Suggested subsection (k) is a new subsection that allows the chief hearing officer and the Disciplinary Selection Panel (ELC 2.2(d)) to have access to otherwise confidential disciplinary information necessary to perform their duties. The suggested amendments to current subsection (k) (subsection (l) in the redline) are intended to more accurately reflect the role of the Board of Governors (BOG) in lawyer discipline in light of the BOG Discipline Review Committee's recommendations and the suggested amendments to ELC 2.2.

ELC 3.5. This rule is derived from RLD 11.2 and 8.4 with a new provision (subsection (c)) concerning the preparation of *Bar News* notices, as well as modifications to include resignation in lieu of disbarment (ELC 9.3) and transfer to disability inactive status (ELC 8.1-8.5). The suggested amendments to subsections (a) and (b) are intended to provide notice of a transfer to disability inactive status and to conform the rule to suggested amendments elsewhere concerning admonitions (ELC 13.1, 13.5, and other rules) and resignation in lieu of disbarment (ELC 9.3). The suggested amendments to subsection (c) provide a new procedure for the modification of a WSBA website notice when a criminal conviction or court order relating to a disciplinary action has been expunged or vacated. Under the suggested amendments to subsection (d), that subsection applies only to notices to the news media, while notices in the official publication of the WSBA and on the WSBA website are addressed in subsection (c).

ELC 3.6. This rule is derived from RLD 12.8 without substantive change except that subsection (b) was modified to require matters concluded by an admonition to be retained for at least five years. The suggested amendments are intended to conform the rule to suggested amendments elsewhere concerning admonitions (ELC 13.1, 13.5, and other rules) and resignation in lieu of disbarment (ELC 9.3). In addition, a suggested amendment to subsection (b) addresses matters dismissed after diversion, which are not specifically addressed elsewhere.

ELC Title 4

ELC 4.1. This rule is derived from RLD 12.1 and the last sentence of RLD 12.2(a) with no substantive change except for a provision concerning when service by mail is deemed accomplished. Under the suggested amendments to subsection (b)(1)(B), service by mail may be by first class mail in some circumstances where certified mail is currently required. The suggested amendments to subsection (b)(1)(C) set forth the service address for hearing officers, the chief hearing officer and others whose service addresses were previously unspecified. The suggested amendments to subsection (c) are intended to conform the rule to current statutes and usage.

ELC 4.2. This rule is derived from RLD 12.2, modified to clarify that filing is with the Clerk, and that orders are served by the Clerk. Suggested subsection (c) is a new subsection that provides for electronic filing.

ELC 4.3. This rule is derived from RLD 12.3 with no substantive change. No change is suggested.

ELC 4.4. This rule is derived from RLD 12.12 with no substantive change. No change is suggested.

ELC 4.5. This rule is derived from RLD 12.13, modified to include reduction, as well as extension, of time. No change is suggested.

ELC 4.6. This was a new rule adopted in 2002 modeled after Rule 14(G) of the *ABA Model Rules for Lawyer Disciplinary Enforcement*. No change is suggested.

ELC 4.7. This was a new rule adopted in 2002 modeled after the Washington Administrative Procedures Act provisions for superior court enforcement of administrative agency subpoenas. No change is suggested.

ELC 4.8. This is a suggested new rule intended to clarify that a declaration as provided in GR 13 may be used in place of an affidavit.

ELC 4.9. This is a suggested new rule concerning service and filing of papers by an inmate intended to conform the ELC to GR 3.1.

ELC 4.10. This is a suggested new rule concerning the redaction of personal identifiers intended to conform the ELC to GR 15, 22, and 31.

ELC Title 5

ELC 5.1. With the exception of subsection (a), which was a new provision, this rule is derived from RLD 2.9. The suggested amendments to subsection (a) are intended to make the rule consistent with the current version of RPC 8.5(a), as well as the suggested amendments to ELC 1.2. The suggested amendments to subsection (b) are intended to make clear that, subject to certain exceptions, the grievant's consent to disclosure extends to all information submitted by the grievant, as well as the contents of the initial grievance itself. The suggested amendments to subsection (c) provide a new procedure (subsection (c)(3)(B)) whereby the grievant or the respondent may seek review of disciplinary counsel's decision to withhold or not withhold all or part of a grievance or response. Suggested subsection (e) is a new subsection that provides a procedure whereby a person who has "engaged in a frivolous or harassing course of conduct" may be declared a "vexatious grievant" and restrained from filing grievances.

ELC 5.2. This rule is derived from RLD 12.9, modified to clarify that a confidential source will have neither the rights nor the duties of a grievant. No substantive change is suggested.

ELC 5.3. This rule is derived from a number of provisions in the RLD that were reorganized to reflect more clearly how a matter progresses through the discipline system. A new subsection (b) would exempt some preliminary requests for a lawyer's response to a grievance from the procedures in a suggested new rule, ELC 5.6, for making objections to investigative inquiries from disciplinary counsel. The suggested amendments to current subsection (c) (subsection (d) in the redline) make clear that a disability proceeding under ELC 8.2 or 8.3 is good cause for deferral of an investigation. A new subsection (g), derived from current subsection (e), defines a class of "investigative inquiries" that may be subject to objections under a new subsection (i) and a suggested new rule, ELC 5.6.

ELC 5.4. This rule is derived from RLD 2.8(c) and 2.8(d), modified to clarify that the rule does not waive or require waiver of a lawyer’s own privilege as a client. The suggested amendments to subsection (b) would replace the phrase “client confidences or secrets” with “information relating to the representation of a client” to make the rule consistent with the current version of RPC 1.6 and 1.9. Subsection (b)(1) would allow for an objection on the grounds of attorney-client privilege or RPC 1.6 to an investigative inquiry or subpoena. Such objections would be reviewed under a suggested new rule, ELC 5.6. The duties of disciplinary counsel upon receiving privileged or confidential information are clarified and reorganized in subsection (b)(2).

ELC 5.5. This rule is derived from RLD 2.6(d), modified to provide for enforcement of subpoenas under ELC 4.7 and to clarify the duty of every lawyer to respond to discovery requests. The suggested amendments are intended to conform the rule to the recent amendments to CR 45 that provide for a subpoena for the production of documents without a command to appear for a deposition. The suggested amendments to subsections (a) and (b) would make clear that notice to a “party to the action” other than the deponent, as provided in CR 30, 31, and 45(b)(2), is not required, because at this stage there is no “action” and there are no parties as that term is used in CR 30, 31, and 45(b)(2). The provision for requests for admission was deleted, as those have proven to have little utility before the commencement of formal proceedings. Finally, the suggested amendments in subsections (c) and (e) provide for objections to an investigatory subpoena.

ELC 5.6. This is a suggested new rule concerning objections to investigative inquiries (ELC 5.3(i)), investigatory subpoenas (ELC 5.5(e)), and disclosures of confidential information (ELC 5.4(b)). Under subsection (a), the chief hearing officer, or a hearing officer designated by the chief hearing officer, considers the objection. Subsection (b) sets forth requirements for the content of objections or motions, as well as the factors to be considered in ruling on them. Subsection (d) provides for interim review of a ruling under ELC 10.9.

ELC 5.7. This rule (currently ELC 5.6) is derived from RLD 2.6(b)(3), 2.6(c), and 2.4(d). The suggested amendments to subsection (b) are intended to clarify what occurs when a grievant fails to request review of a dismissal within the allotted time. The suggested amendments to subsection (c) are intended to clarify what other dispositions disciplinary counsel may recommend when a grievance has neither been dismissed nor diverted. The suggested amendments to subsection (d) are intended to conform the rule to other suggested amendments concerning warning letters (ELC 5.8) and admonitions (ELC 13.1, 13.5, and other rules). Suggested subsection (e) is a new provision requiring notice and an opportunity to be heard before a review committee may order a hearing when such action has not been recommended.

ELC 5.8. This rule (currently ELC 5.7) is derived from RLD 5.6. The suggested amendments are part of a package of suggested amendments to multiple rules (ELC 5.8, 13.1, 13.5, 13.6, 13.10, 13.11, and other rules from which references to admonitions have been deleted) intended to substitute “warning letters” for public admonitions. These suggested amendments were put forward by the ELC Task Force and approved by the Board of Governors (BOG) after the BOG rejected the Task Force’s near unanimous recommendation that admonitions be retained as a public and permanent form of disciplinary action. Under the current rule, an advisory letter may only be issued by a review committee, and may not be issued after a hearing. Under the

suggested amendments, a warning letter may be issued by a review committee or at any stage of a disciplinary proceeding (ELC 5.7(d)(3), 5.8(b)). A warning letter is not a sanction or a disciplinary action (ELC 1.3(g), 5.8(c), 13.1(a)), and is not public information unless it is issued after a matter has been ordered to a public hearing (ELC 3.1(b), 5.8(d)). Even when issued after a matter has been ordered to hearing, the public notice provisions of ELC 3.5 do not apply to warning letters.

ELC Title 6

ELC 6.1. This rule is derived from RLD 14.1 and 2.6(e) with no substantive change. Where the current rule provides for a referral to diversion only before the filing of a formal complaint, the suggested amendments would allow a referral within 60 days after service of a formal complaint.

ELC 6.2. This rule is derived from RLD 14.2 with no substantive change. The suggested amendments are intended to conform the rule to the suggested amendments to ELC 7.1.

ELC 6.3. This rule is derived from RLD 14.4 with no substantive change. No change is suggested.

ELC 6.4. This rule is derived from RLD 14.3 with no substantive change. No change is suggested.

ELC 6.5. This rule is derived from RLD 14.5 with no substantive change. The suggested amendments are intended to make clear that a diversion contract does not create any enforceable rights or liabilities outside those specifically provided for under ELC Title 6 or give rise to any claims in any civil or other proceedings.

ELC 6.6. This rule is derived from RLD 14.6 with no substantive change. No change is suggested.

ELC 6.7. This rule is derived from RLD 14.7 with no substantive change. No change is suggested.

ELC 6.8. This rule is derived from RLD 14.8 with no substantive change. No change is suggested.

ELC 6.9. This rule is derived from RLD 14.9 with no substantive change. Currently, the rule requires an affidavit or declaration demonstrating fulfillment of the diversion contract before a grievance may be dismissed. Under the suggested amendments, disciplinary counsel may dismiss a grievance upon determination that the contract has been completed. The provisions concerning the effect of completion of a diversion have been moved to a new subsection (d).

ELC Title 7

ELC 7.1. This rule is derived from RLD 3.1, with no substantive change. Under the suggested amendments, only a felony conviction would trigger interim suspension procedures under the rule. The suggested amendments to subsection (b) would require a lawyer to self-report upon conviction of a felony, recognizing that convictions are often not reported to the WSBA by the

superior court clerks. A new subsection (e)(4) provides a procedure whereby the respondent may assert that the suspension should not be ordered because, e.g., the crime is not a felony or the respondent is not the individual convicted. Under the suggested amendments to subsection (g), a petition to terminate an interim suspension would be directed to the Court, not the Disciplinary Board. The provisions of current subsection (h) are subsumed under the suggested amendments to subsection (f).

ELC 7.2. This rule is derived from RLD 3.2. The suggested amendments to subsection (a)(1) identify two other instances in which petitions for interim suspension may be filed: (1) where a review committee orders a hearing on a lawyer's capacity to practice law, and (2) where a hearing officer orders supplemental proceedings on a lawyer's capacity to defend a disciplinary proceeding. ELC 8.2(d) and 8.3(e) already provide for petitions for interim suspension in these instances. The suggested amendments to subsection (a)(2), pertaining to a lawyer's failure to cooperate with an investigation, reference the suggested new procedures in ELC 5.3(i), 5.5(e), and 5.6 for objecting to an investigative subpoena.

ELC 7.3. This was a new rule adopted in 2002 providing for automatic interim suspension when a respondent lawyer asserts incapacity to conduct a proper defense in disciplinary proceedings. No change is suggested.

ELC 7.4. This was a new rule adopted in 2002 providing a procedure for a lawyer to stipulate to interim suspension. The suggested amendments require that the lawyer be represented by counsel when the stipulation is based on mental incapacity.

ELC 7.5. This rule is derived from RLD 3.3 with no substantive change. No change is suggested.

ELC 7.6. This was a new rule adopted in 2002 to clarify the effective date of interim suspensions. No change is suggested.

ELC 7.7. This rule is derived from RLD 8.6. The suggested amendments to subsection (a) provide that a custodian may be appointed when a lawyer abandons practice or is otherwise incapable of meeting obligations to clients, in addition to the other circumstances enumerated in the current rule. The suggested amendments to subsection (d) allow fees and costs associated with a custodianship to be claimed against a lawyer's estate. Suggested subsection (e) would be a new subsection concerning the retention of records of a custodianship.

ELC Title 8

ELC 8.1. This rule is derived from RLD 10.1 with no substantive change. The suggested amendments to subsection (a)(3) substitute the term "incapacity" for "incompetency" in conformity with Chapter 11.88 RCW. The suggested new subsection (a)(4) adds involuntary commitment for more than 14 days to the grounds for automatic transfer to disability inactive status. The suggested amendments to subsection (b) add a lawyer's guardian ad litem to the persons who must receive notice of a transfer to disability inactive status.

ELC 8.2. This rule is derived from RLD 10.2, which was divided into two separate rules, ELC 8.2 and 8.3. The suggested amendments to subsection (a) make clear that a respondent lawyer

receives notice and an opportunity to be heard when disciplinary counsel reports to a review committee on the lawyer's capacity to practice law. This already occurs in practice, but it is currently not required by rule. Under the suggested amendments to subsection (c)(1), the respondent lawyer's initials, rather than the lawyer's full name, would be used in the case caption. The same amendments are suggested in ELC 8.3(d)(1) for supplemental proceedings. Under RAP 3.4, the title of the case would be the same in the Supreme Court, so it could be cited without using the lawyer's name. Under the suggested amendments to subsection (c)(6), both the respondent and disciplinary counsel would have a right of appeal, consistent with ELC 11.2(b) and the suggested amendments to ELC 12.3(a).

ELC 8.3. This rule, along with ELC 8.2, is derived from RLD 10.2. The suggested amendments to subsection (a) make clear that a different hearing officer must be appointed for supplemental proceedings during the course of disciplinary proceedings. This already occurs in practice, but is currently not required by rule. The suggested amendments to subsection (d)(2) expand this subsection to include investigations as well as formal proceedings. The suggested amendments to subsection (d)(7)(B) are intended to clarify, not to alter, the effect of the current rule, which is to resume disciplinary proceedings upon a finding that the respondent is capable of adequately assisting defense counsel. Under the suggested amendments to subsection (d)(7)(D), both the respondent and disciplinary counsel would have a right of appeal, consistent with ELC 11.2(b) and the suggested amendments to ELC 12.3(a).

ELC 8.4. This rule is derived from RLD 10.2(f) with no substantive change. Under the suggested amendments, both the respondent and disciplinary counsel would have a right of appeal, consistent with ELC 11.2(b) and the suggested amendments to ELC 12.3(a).

ELC 8.5. This was a new rule adopted in 2002 providing a procedure for a lawyer to stipulate to disability inactive status, subject to approval by the Disciplinary Board. The suggested amendments add a new subsection (c) which provides that a lawyer who stipulates to disability inactive status must be represented by counsel.

ELC 8.6. This was a new rule adopted in 2002 allowing the Disciplinary Board discretion to authorize disciplinary counsel to seek assessment of costs in a disability matter. No change is suggested.

ELC 8.7. This was a new rule adopted in 2002 to clarify the burden and standard of proof in disability proceedings. Under the current rule, the party asserting incapacity has the burden of establishing it by a preponderance of the evidence, whether that party is the respondent lawyer or disciplinary counsel. In In re Disability Proceeding Against Diamondstone, 153 Wn.2d 430, 441, 105 P.3d 1 (2005), the Court declined to decide whether the simple preponderance of the evidence standard in ELC 8.7 is unconstitutional, because disciplinary counsel had proven incapacity by a clear preponderance of the evidence. In order to avoid the constitutional question posed, but not decided, in Diamondstone, the suggested amendments would require disciplinary counsel to establish incapacity by a clear preponderance of the evidence.

ELC 8.8. This rule is derived from RLD 10.3 with modifications. Under the suggested amendments to subsections (f) and (g), both the respondent and disciplinary counsel would have a right of appeal, consistent with ELC 11.2(b) and the suggested amendments to ELC 12.3(a).

ELC 8.9. This was a new rule adopted in 2002 authorizing a limited guardianship for actions with respect to a lawyer’s license or any disability or disciplinary proceeding. The suggested amendments to subsection (a) clarify who may request review committee authorization to file a petition for a limited guardianship. The suggested amendments to subsection (b) provide that the party not making the request will have an opportunity to respond to it before the review committee makes a decision. The suggested amendments to subsections (d)(2) and (d)(4) would replace the phrase “confidences and secrets” to make the rule consistent with the current versions of RPC 1.6 and 1.9.

ELC 8.10. This is a suggested new rule concerning the appointment of counsel for the respondent in disability proceedings. Currently ELC 8.2(c)(2), 8.3(d)(3), and 8.3(d)(7)(B) provide that counsel must be appointed in certain circumstances, but no rule sets forth how that is to be accomplished, what appointed counsel’s role is, under what circumstances appointed counsel may withdraw, or what occurs following the withdrawal of appointed counsel. The language in subsection (b) is taken from RCWA 11.88.045(b). Subsections (c) and (d) are intended to strike a balance between protecting the rights of the respondent and protecting the public and the integrity of the disability system in cases where the respondent refuses to cooperate with or seeks to discharge appointed counsel.

ELC Title 9

ELC 9.1. This rule is derived from RLD 4.14, with modifications. Suggested subsection (c) is a new subsection intended to make clear that the respondent may, with disciplinary counsel’s agreement, stipulate to alleged facts without admitting particular acts or omissions. Such stipulations are akin to Alford guilty pleas. Suggested subsection (d)(1) provides a standard for hearing officers and the Disciplinary Board to use in deciding whether to approve stipulations. Suggested subsection (d)(2) provides that the chief hearing officer may approve of a stipulation not requiring suspension or disbarment in a matter not pending before a hearing officer, the Board, or the Supreme Court. This would occur, for example, when the parties stipulate to a reprimand before a matter is ordered to hearing. Suggested subsection (d)(5), a new subsection concerning Supreme Court consideration of stipulations to suspension or disbarment, is intended to make explicit in the rules what already occurs in practice. Suggested subsection (e)(1) is a new subsection that grants hearing officers the authority to conditionally approve stipulations. Currently ELC 9.1(d) grants such authority to the Board, but not to hearing officers. Suggested subsection (g) requires hearing officers to state their reasons for rejecting a stipulation. Currently ELC 9.1(f) imposes such a requirement on the Board, but not on hearing officers. Suggested subsection (h) would allow the parties to present to the Board a stipulation that has been rejected by a hearing officer. Suggested subsection (i) is intended to correct an omission in subsection (b)(4) by making clear that final approval of a stipulation constitutes a final assessment of costs and expenses for purposes of ELC 13.9.

ELC 9.2. This rule is derived from RLD 12.6, modified to closely parallel Rule 22 of the *ABA Model Rules for Lawyer Disciplinary Enforcement* and expanded to include reciprocal disability inactive proceedings. The suggested amendments to subsections (a) and (b) provide that only public discipline in another jurisdiction will trigger the duty to report and the commencement of reciprocal discipline proceedings. Suggested subsection (e)(3) is a new subsection that provides for the appointment of counsel for respondent if the Supreme Court orders further proceedings to

determine if respondent should be transferred to disability inactive status. Suggested subsection (g) is a new subsection intended to make clear that action taken against a lawyer in another jurisdiction will not trigger reciprocal proceedings when there has already been a final disposition in Washington arising out of the same circumstances that are the basis for the action in the other jurisdiction.

ELC 9.3. This was a new rule adopted in 2002. The suggested amendments are intended to make the resignation procedure available in a wider range of cases. There are, for example, lawyers facing disciplinary proceedings not likely to result in disbarment who no longer wish to practice and would prefer to permanently resign. There are others who would prefer to resign but are unable or unwilling to either admit the alleged misconduct or agree that the Association could prove it. In such cases, resignation in lieu of discipline would serve the interests of the lawyer, protect the public, and conserve the scarce resources of the Association. The suggested amendments to subsection (a) make the resignation procedure available either before or after a respondent's answer to the formal complaint is due. The suggested amendments to subsection (b)(1) and the suggested new subsection (b)(2) allow the respondent to resign without admitting the alleged misconduct or agreeing that it could be proven. Suggested subsection (b)(4)(d) is intended to make it possible for other jurisdictions to take reciprocal disciplinary action based on a resignation in lieu of discipline. The suggested amendments to this rule require a conforming amendment to RPC 5.8(b), to which the words "or discipline" would be added immediately following the words "resigned in lieu of disbarment."

ELC 9.4. This is a suggested new rule that provides for reciprocal discipline based on a lawyer's resignation in lieu of discipline in another jurisdiction. The rule mirrors the provisions of ELC 9.2(a)-9.2(c) and 9.2(g).

ELC Title 10

ELC 10.1. This rule is derived from RLD 4.1(a), 4.1(b), and 4.2(c). No change is suggested except for deletion of the reference to hearing panels.

ELC 10.2. This rule is derived from RLD 4.2. The suggested amendment to the title of the rule is intended to avoid confusion between hearing officer appointment (ELC 2.5(c)) and hearing officer assignment. The suggested amendments to subsection (a) delete all provisions relating to hearing panels. Conforming amendments have been made throughout these suggested rule changes. No Task Force member could recall a single case since the ELC were adopted in which a hearing panel was assigned, and the members unanimously agreed that a panel was unwieldy and impractical as a fact-finding body. The suggested amendments to subsection (b) are intended to clarify the procedures for (1) requests for removal without cause and (2) motions for disqualification for cause.

ELC 10.3. This rule is derived from RLD 4.3. The suggested amendments to subsection (c) and the suggested new subsection (d) were recommended to the Board of Governors by the Disciplinary Advisory Round Table (DART). They are intended to (1) make clear that the rule applies both to consolidation of different matters against the same respondent and to joinder of matters against different respondents, (2) expressly provide that a consolidation or joinder order includes authorization to combine multiple matters in one formal complaint or to file an amended

formal complaint reflecting the consolidation or joinder, (3) give the chief hearing officer authority to order consolidation or joinder, and (4) give the assigned hearing officer discretion to sever matters previously consolidated or joined.

ELC 10.4. This rule is derived from RLD 4.4. No substantive change is suggested except for deletion of references to hearing panels.

ELC 10.5. This rule is derived from RLD 4.5. No change is suggested except for deletion of the reference to hearing panels.

ELC 10.6. This rule is derived from RLD 4.10A, with modifications. No substantive changes are suggested except for the deletion of references to hearing panels and the addition of the requirement in subsection (a)(2)(C) that a motion for default include notice that a default will result in the allegations and violations in the formal complaint being admitted and established.

ELC 10.7. This rule is derived from RLD 4.6. The suggested amendments were recommended to the Board of Governors by the Disciplinary Advisory Round Table (DART). They are intended to (1) provide the respondent with an opportunity to object to the amendment of a formal complaint under subsection (a), (2) provide a new procedure for amendments other than those under subsection (a) and allow the chief hearing officer to authorize such amendments, and (3) provide a general standard for hearing officers to use in deciding motions and objections concerning the amendment of a formal complaint.

ELC 10.8. This rule is derived from RLD 4.8 with no substantive change, except for the addition of a new subsection (f). The suggested amendments alter the time allowed for a response to a motion and provide for a reply to a response.

ELC 10.9. This rule is derived from RLD 2.3(f)(5) with no substantive change. No change is suggested.

ELC 10.10. This was a new rule adopted in 2002 allowing for two types of prehearing dispositive motions. The suggested amendments to subsection (c) are intended to make the rule consistent with CR 12(b), which requires that a motion to dismiss for failure to state a claim be made “before pleading if a further pleading is permitted,” and with CR 12(c), which requires that a motion for judgment on the pleadings be made “[a]fter the pleadings are closed but within such time as not to delay the trial.”

ELC 10.11. This rule is derived from RLD 4.7 with modifications and the addition of new provisions in subsections (a) and (f). The suggested amendments to subsection (c) are intended to conform the rule to the recent amendments to CR 45 which provide for a subpoena for the production of documents without a command to appear for a deposition. The provisions concerning commissions have been moved to new subsection (f) for greater clarity.

ELC 10.12. This rule is derived from RLD 4.10 with no substantive change except in subsection (c). The suggested amendments to subsection (a) are intended to clarify that a disciplinary hearing may not be held outside the state unless the parties so agree. The suggested amendments to subsection (b) would require a scheduling conference, which currently occurs in most cases but is not required by rule. The suggested amendments to subsection (c) and a new subsection

(h) would establish a new settlement conference procedure, following recommendations by the BOG Discipline Review Committee and the Disciplinary Advisory Round Table (DART). A new subsection (d) would provide explicit remedies for a party's failure to comply with the scheduling order.

ELC 10.13. This rule is derived from RLD 4.10-4.12. The suggested amendments to subsection (b) are intended to clarify that the hearing may proceed if the respondent, who must attend, fails to attend without good cause after proper notice. The suggested amendments to subsection (c) limit the materials that the respondent can be required to bring to the hearing to materials that were previously requested. The suggested amendments to subsection (d) would explicitly allow for testimony by contemporaneous electronic means from a different location, consistent with recent amendments to CR 43.

ELC 10.14. This rule is derived from RLD 4.9 and 4.11. No change is suggested.

ELC 10.15. This rule is derived from RLD 4.12(b). No change is suggested except for deletion of references to hearing panels.

ELC 10.16. This rule is derived from RLD 4.13. The suggested amendments to subsection (a) modify the time within which the hearing officer should file a decision, recognizing that hearing officers often want to have a transcript before the decision is filed. The suggested amendments to subsection (b) set forth procedures for proposed findings and conclusions. Either party may submit proposed findings and conclusions as part of that party's argument. The hearing officer may request proposed findings and conclusions after announcing a tentative decision. If the hearing officer considers a party's proposed findings and conclusions, the opposing party has an opportunity to respond before the hearing officer enters a decision. The suggested amendments to subsection (c) modify the time requirements for a motion to modify a decision and incorporate the suggested amendments to ELC 10.8, which provide for a reply to a response to a motion. The suggested amendments to subsection (f) (subsection (d) in the redline) modify the provisions concerning finality in cases involving suspension or disbarment, recognizing that suspension or disbarment may only occur upon entry of an order by the Supreme Court.

ELC Title 11

ELC 11.1. This was a new rule adopted in 2002 intended to clarify the scope of the title. The suggested amendments clarify that the Board may review a prehearing dismissal of all claims, as well as a hearing officer's findings, conclusions, and recommendation.

ELC 11.2. This rule is derived from RLD 2.3(f) and 6.1, with a new provision to define the term "decision." The suggested amendments to subsection (a) clarify that the Board may review a prehearing dismissal of all claims, as well as a hearing officer's findings, conclusions, and recommendation. The suggested amendments to subsection (b) implement part of Recommendation 4 of the ABA Report on the Washington Lawyer Regulation System, as adopted by the Board of Governors Discipline Review Committee and the Board of Governors as a whole. Under the suggested amendments, automatic review of decisions recommending suspension or disbarment would be eliminated in favor of review initiated by either a notice of appeal (subsection (b)(1)) or a notice of referral for sua sponte consideration (subsection (b)(2)).

The suggested amendments to subsection (c) provide a procedure for a party to initiate a cross-appeal when the other party has filed a notice of appeal.

ELC 11.3. This rule is derived from RLD 2.3(f)(3) and 6.3(f). Under the suggested amendments, there would be two procedures for sua sponte review by the Board: one for decisions recommending suspension or disbarment (subsection (a)), which under the suggested amendments to ELC 11.2 would no longer be reviewed automatically, and one for decisions not recommending suspension or disbarment (subsection (b)). The primary difference between the two is that all decisions recommending suspension or disbarment will be distributed to the Board members for consideration of whether to order sua sponte review. The procedures following an order for sua sponte review would be the same whether or not the decision under review recommends suspension or disbarment. Under the suggested amendments to subsection (b) (subsection (d) in the redline), the standards for ordering sua sponte review remain the same. The provision concerning the standards of review has been removed from this rule to avoid confusion and because those standards are clearly set forth in ELC 11.12(b).

ELC 11.4. This rule is derived from RLD 6.2(b), 6.3(a), and 6.6. Under the suggested amendments to subsection (a), a hearing transcript need not be ordered unless a notice of appeal is filed or sua sponte review is ordered.

ELC 11.5. This rule is modeled after RAP 9.1 with provisions derived from RLD 6.4 and 6.5(b). No change is suggested.

ELC 11.6. This was a new rule adopted in 2002 that incorporates by reference the procedures of RAP 9.6 for the designation of bar file documents and exhibits. The suggested amendments to subsection (c) (subsection (d) in the redline) are intended to conform the rule to other suggested amendments to this title whereby automatic review of decisions recommending suspension or disbarment would be eliminated.

ELC 11.7. This was a new rule adopted in 2002, modeled after RAP 9.7. No change is suggested.

ELC 11.8. This rule is derived from RLD 6.2. It is suggested that this rule be eliminated in light of the other suggested amendments to this title whereby automatic review of decisions recommending suspension or disbarment would be eliminated. Briefs in all cases of review by the Board, whether initiated by a notice of appeal or an order for sua sponte review, would be governed by a single rule, ELC 11.9.

ELC 11.9. This rule is derived from RLD 6.3. The suggested amendments to subsection (b), (c), and (d) would conform the time for filing briefs to RAP 10.2. The suggested amendments to subsection (e) would designate the party filing first as the party seeking review in cases where both parties file notices of appeal, following RAP 10.1(f).

ELC 11.10. This was a new rule adopted in 2002 incorporating the RAP 9.6 procedures for supplementing the record, with the exception that leave to supplement will be freely granted. No change is suggested.

ELC 11.11. This rule is derived from RLD 6.5(a) with no substantive change. No substantive change is suggested.

ELC 11.12. This rule is derived from RLD 6.7, with modifications. The suggested amendments to subsection (e) would require the Board's decision to set forth the result favored by each dissenting Board member, whether or not a dissenting member files a written dissent. The suggested amendments to subsection (g) set forth what currently occurs in practice, recognizing that suspension or disbarment may only occur upon entry of an order by the Supreme Court.

ELC 11.13. This rule is derived from RLD 6.8 with no substantive change. No substantive change is suggested.

ELC 11.14. This is a suggested new rule governing motions in matters pending before the Board. Subsection (a) is based on RAP 17.3(a). Subsections (b)-(h) are based on ELC 10.8.

ELC Title 12

ELC 12.1. This rule is derived from RLD 7.4 with no substantive change. No change is suggested.

ELC 12.2. This rule is derived from RLD 7.1 with no substantive change. No change is suggested except for deletion of a reference to ELC 7.1(h), a subsection which has been deleted in the suggested amendments to ELC 7.1.

ELC 12.3. This rule is derived from RLD 7.2 with no substantive change. The suggested amendments implement two recommendations of the Board of Governors Discipline Review Committee, both of which were approved by the Board of Governors as a whole. First, under the suggested amendments to subsections (a), the respondent lawyer and disciplinary counsel would have the same right of appeal from a Board decision recommending suspension or disbarment. Second, the suggested new subsection (c) provides for a cross-appeal, following RAP 5.2(f). The suggested amendments to subsection (b) alter the time for filing a notice of appeal to conform to RAP 5.2. A new subsection (d) has been suggested because the ELC are currently silent on filing fees, which has caused confusion among some respondents.

ELC 12.4. This rule is derived from RLD 7.3. The suggested amendments to subsections (a) and (b) are intended to clarify who may seek discretionary review. The suggested amendments to subsection (b) would alter the time for filing a petition for review and require that it be filed with the Clerk to the Disciplinary Board, following RAP 13.4(a). The suggested new subsection (d) would provide for a cross-petition, similar to the cross-appeal in the suggested new subsection (c) of ELC 12.3. The suggested new subsection (e) concerning filing fees follows the suggested new subsection (d) of ELC 12.3.

ELC 12.5. This rule is derived from RLD 7.5. The suggested amendments to subsection (a) address the payment and transmission of filing fees, which are not addressed in the current rules. The suggested amendments to subsection (e) are based on RAP 9.6(a), and would allow a party to ask the Clerk to transmit additional portions of the record to the Court up to the time of filing the party's last brief.

ELC 12.6. This rule is derived from RLD 7.6 with no substantive change. No change is suggested.

ELC 12.7. This rule is derived from RLD 7.7 with no substantive change. No change is suggested.

ELC 12.8. This rule is derived from RLD 7.8, with no substantive change. Under the suggested amendments, subsection (a) has been deleted for consistency with the suggested amendments to ELC 13.2.

ELC 12.9. This rule is derived from RLD 7.9 with no substantive change. No change is suggested.

ELC Title 13

ELC 13.1. This rule is derived from RLD 5.1 restructured to distinguish between sanctions, admonitions, and other remedies, and modified to provide consistency with the *ABA Standards for Imposing Lawyer Sanctions*. Under the suggested amendments, to subsection (b), admonitions have been deleted as a form of disciplinary action. This suggested amendment was the subject of much discussion both within the ELC Task Force and the Board of Governors. The Board ultimately rejected the Task Force's near unanimous recommendation that admonitions be retained as a public and permanent form of disciplinary action. In place of admonitions, the Board approved a package of suggested amendments to multiple rules (ELC 5.8, 13.1, 13.5, 13.6, 13.10, 13.11, and other rules from which references to admonitions have been deleted) intended to remove admonitions from the ELC and to substitute "warning letters" (ELC 5.8) in their place.

ELC 13.2. This was a new rule adopted in 2002 intended to establish uniformity in the effective date of suspensions and disbarments, which require an order of the Supreme Court. Under the suggested amendments, the effective date would be seven days after the date of the Court's order or opinion, unless the order or opinion sets a different date.

ELC 13.3. This was a new rule adopted in 2002 that extended the maximum length of a suspension from two years to three years to be consistent with the *ABA Standards for Imposing Lawyer Sanctions* and added provisions for administrative reinstatement and resolving disputes regarding compliance with conditions. No change is suggested.

ELC 13.4. This rule was amended in 2005 to delete provisions for the personal administration of reprimands by the Board of Governors. The suggested amendments would provide a more streamlined procedure whereby the written reprimand in its current form is replaced by a simple notice of reprimand consisting of the order imposing the reprimand together any final documents that form the basis for the reprimand.

ELC 13.5. This rule is derived from RLD 5.5A, modified for consistency with the *ABA Standards for Imposing Lawyer Sanctions*. The rule has been deleted as part of the package of suggested amendments approved by the Board of Governors whereby admonitions would be removed from the ELC as a form of disciplinary action.

ELC 13.6. This rule is derived from RLD 5.5B, modified for consistency with the ABA *Standards*. The rule has been deleted as part of the package of suggested amendments approved by the Board of Governors whereby admonitions would be removed from the ELC as a form of disciplinary action.

ELC 13.7. This rule is derived from RLD 5.3, modified to provide for review of a decision concerning a payment plan. The suggested amendments are intended to clarify that restitution must be paid to the Lawyer's Fund for Client Protection in cases where the Lawyer's Fund has made payments to other persons financially injured by the respondent's conduct.

ELC 13.8. This rule is derived from RLD 5.2 with no substantive change. The suggested amendments to subsection (a) are intended to conform the rule to the suggested amendments to other rules whereby admonitions would be removed from the ELC as a form of disciplinary action.

ELC 13.9. This rule is derived from RLD 5.7, with modifications. The ELC Task Force considered and rejected proposals to allow costs and expenses to be assessed against the Association. The suggested amendments to subsections (a), (c), and (d) provide for an assessment of costs and expenses in a contested reciprocal discipline proceeding under ELC 9.2 or 9.4. The suggested amendments to subsection (k) include a reference to ELC 5.3(h) in the list of rules governing costs in other cases.

ELC 13.10. This is a suggested new rule approved by the Board of Governors as part of the package of suggested amendments whereby admonitions would be removed from the ELC as a form of disciplinary action. Under subsection (a), a public admonition in another jurisdiction would be treated as a reprimand for purposes of reciprocal discipline. Under subsection (b), a prior admonition in this jurisdiction would be treated in accordance with the rules in effect at the time it was imposed.

ELC 13.11. This is another suggested new rule approved by the Board of Governors as part of the package of suggested amendments whereby admonitions would be removed from the ELC. The ABA *Standards for Imposing Lawyer Sanctions*, which have been applied by our Supreme Court for over twenty-five years, see, e.g., In re Rentel, 107 Wn.2d 276, 283, 729 P.2d 615 (1986), employ a four-tier system of disciplinary sanctions: disbarment, suspension, reprimand, and admonition. Removing admonitions from the ELC would create a gap in this system. Consequently, guidance is needed as to which presumptive sanction to apply under these rules when admonition would be the presumptive sanction under the ABA *Standards*.

ELC Title 14

ELC 14.1. This rule is derived from RLD 8.1. The suggested amendments to subsections (a) and (c) make the rule applicable to lawyers who have resigned in lieu of disbarment or discipline, as well as lawyers who have been disbarred, suspended, or transferred to disability inactive status. The suggested amendments to subsection (b) replace the requirement that the lawyer notify clients of "the reason" for the suspension with the more precise requirement that the lawyer notify clients that the suspension is a disciplinary suspension. Similarly, the suggested amendments to subsection (c) require the lawyer to notify clients of the nature of the

suspension. The suggested amendments to subsection (d) require that notice to the clients of a lawyer transferred to disability inactive status must include notice of the transfer to disability inactive status, but not of the specific disability.

ELC 14.2. This rule is derived from RLD 8.2, with modifications. The suggested amendments make the rule applicable to lawyers who have resigned in lieu of disbarment or discipline, as well as lawyers who have been disbarred, suspended, or transferred to disability inactive status.

ELC 14.3. This rule is derived from RLD 8.3, modified to make the affidavit of compliance a confidential document. No change is suggested.

ELC 14.4. This rule is derived from RLD 8.5 with no substantive change. No change is suggested.

ELC Title 15

ELC 15.1. This rule is derived from RLD 13.1. Under the suggested amendments, current subsection (b) has been eliminated as superfluous because such examinations are authorized and in practice are conducted under ELC 5.3.

ELC 15.2. This rule is derived from RLD 13.2 with no substantive change. No change is suggested.

ELC 15.3. This rule is derived from RLD 13.3 with no substantive change. The suggested amendments are intended to reflect that the Board of Governors has no role in individual investigations, as articulated in the suggested amendments to ELC 2.2 and the BOG Discipline Review Committee's recommendations concerning the ABA Report on the Washington Lawyer Regulation System.

ELC 15.4. This rule is derived from RLD 13.4 with no substantive change. No change is suggested.

ELC 15.5. This rule is derived from RLD 13.5. The suggested amendments are intended to make the rule consistent with current practice and with the September 2010 amendments to the WSBA bylaws, whereby a member may be administratively suspended for failing to file a trust account declaration. The language of suggested ELC 15.5(b) is taken from APR 26(c). Amendments to ELC 1.5 have been suggested to make that rule consistent with the suggested amendments to ELC 15.5.

ELC 15.6. This rule is derived from RLD 13.6 with no substantive change. No change is suggested.

ELC 15.7. This was a new rule adopted in 2009. No change is suggested.

ELC Title 16

ELC 16.1. This rule is derived from RLD 12.16, modified to provide for the same effect on pending proceedings as CR 86. No change is suggested except for deletion of the reference to hearing panels.