



WSBA

WASHINGTON STATE BAR ASSOCIATION

ELC DRAFTING TASK FORCE

Meeting Agenda

March 17, 2011

9:00 a.m. to noon

Washington State Bar Association

1325 Fourth Avenue – Suite 600

Seattle, Washington 98101

1. **Call to Order/Preliminary Matters** (9:00 a.m.)
 - Approval of February 3, 2011 meeting minutes [pp. 1044-1047]
2. **Discussion**
 - Fine-Bulmer Memo [pp. 1048]
 - Subcommittee C June 2 Memo - Items for Discussion [pp. 1049-1056]
 - Subcommittee B March 8 Memo re ELC 7.1 [pp. 1057-1059]
 - ODC Alternative Proposal for ELC 7.1 [pp. 1060-1062]
 - ODC Memo re ELC 3.4(j) [p. 1063]
 - ODC Memo re ELC 9.2: Technical Correction [p. 1064]
3. **Future meeting schedule**
 - May 19, 2011, 9:00 a.m. to 12:00 noon
 - Materials Deadline: Tuesday, May 10, 2011
 - Tentative:, if needed: July 22, 2011, 9:00 a.m. to 12:00 noon
 - Materials Deadline: Tuesday, July 12, 2011
4. **Adjourn** (noon)

DRAFT Minutes – February 3, 2011
ELC Drafting Task Force

Present: Geoff Gibbs, Chair, Randy Beitel, Kurt Bulmer, Doug Ende, Seth Fine, Bruce Johnson (phone), Joseph Nappi, Jr. (phone), Patrick Sheldon, Scott Busby, Reporter, and Nan Sullins, AOC/Supreme Court Liaison

Call to Order/Approval of Minutes

The Chair called the meeting to order at 9:10 a.m. Mr. Beitel submitted a correction to the minutes from the December 16, 2010 meeting. The Chair called for further corrections and, hearing none, deemed the minutes approved.

Subcommittee C - Consent Items

Mr Beitel introduced the consent items from Subcommittee C: an amendment to ELC 12.3 regarding how and when to pay fees for appeals; an amendment to ELC 13.4 clarifying the DBoard's role when a respondent appeals reprimand language; and technical, conforming amendments to ELC 14.1. The Chair called for a vote. With none opposed, the changes were adopted.

Subcommittee C - July 13, 2010 memo re: Discussion Items

Mr. Beitel introduced the subcommittee's discussion items.

ELC 14.2 - (Lawyer to Discontinue Practice) (pp 1016-1019) (including companion changes to RPC 5.8)

The subcommittee's proposed changes to ELC 14.2 and corresponding changes to RPC 5.8 arose from the BOG's approval of the ABA recommendation that the rules be amended to clarify that a lawyer disbarred, suspended, or on disability inactive status cannot work in a law office or as a paralegal. Mr. Beitel explained that the amendments ensure that both rules apply to lawyers who have been suspended/disbarred or transferred to disability status and lawyers who have resigned in lieu of discipline. The operative language of the prohibition remains in RPC 5.8. Mr. Bulmer objected (1) to the inclusion of lawyers who have transferred to disability inactive status and (3) that the terms "employ" and "hire" in the comments are too broad because they might apply to mediators, computer consultants, or other business consultants who are not involved in the delivery of legal services. Mr. Sheldon also strongly objected to the inclusion of lawyers on disability inactive status: there are many reasons to resign due to disability that do not have to do with dishonesty. Mr. Ende informed the group that transfers to disability status are rare. He noted that the rule would not apply to retired or resigned lawyer (who did not resign in lieu). Because most transfers disability inactive are stipulated, Mr. Ende posited that the stipulated order could provide

otherwise than the rule. Mr. Fine agreed that the rule should not apply to lawyers on disability inactive status. Mr. Bulmer asked if there was any support for his objection to the employee/hire language. Mr. Beitel agreed that the proposed language for the comments could be re-worked to address Mr. Bulmer's concerns. The Chair, in light of the light attendance, suggested referring the item back to the subcommittee. Mr. Beitel will circulate new draft language before the next meeting.

Subcommittee B - ELC 7.1, 1.5, & RPC 8.4 (Suspension on Conviction of Certain Crimes) (pp. 1023-1025)

Mr. Fine presented Subcommittee B's proposed changes regarding interim suspension triggered by conviction of certain crimes. Currently a lawyer may be suspended on conviction of a "serious crime," the definition of which included felonies and crimes of dishonesty. The subcommittee's goals were to (1) better define the crimes meriting suspension by replacing "serious crime" with felony and (2) clarify how the ODC is notified of convictions by requiring a convicted lawyer to self report the conviction. The current rule puts the burden of reporting on the superior court clerks, who often do not do so. After some discussion, it became clear that the group agreed in general that only felonies should trigger the rule and that reporting of conviction should be mandatory for the convicted lawyer, but disagreed as to the mechanics of imposing and/or challenging the suspension. The Chair noted the areas of agreement and suggested that the subcommittee continue work on the rest. Mr. Fine will take the remaining issue back to the subcommittee.

ODC Memos

Mr. Beitel introduced three memos from ODC.

ELC 2.6 - (Hearing Officer Conduct) (pp. 1026-1027)

Mr. Beitel noted that the proposed amendments to ELC 2.6 conformed the ELC to recent changes to the Code of Judicial Conduct (CJC). Mr. Bulmer stated that he had no objections. The Chair called for a motion to adopt the proposed changes. Mr. Sheldon so moved and the Chair called for a vote. With none opposed, the amendments were adopted.

ELC 15.5 - (Trust Account Declaration) & 1.2 (Violations of Duties Imposed by the Rules) (pp. 1028-1030)

Mr. Beitel noted that the proposed changes to ELC 15.5 & 1.2 removes disciplinary action for failure to file a trust account declaration, making the ELC consistent with recent amendments to the by-laws, which provide for administrative suspension for failure to file the declaration. Mr. Fine moved to strike the final provision—that supplying false information in the declaration

would subject the lawyer to discipline—as superfluous. The Chair called for a vote. With 2 in favor, 1 opposed, and 1 abstaining, the motion passed. The Chair called for a vote to adopt the proposed changes as amended. With none opposed, the changes were adopted as amended.

ELC 8.3 - (Disability Proceedings During the Course of the Disciplinary Process; ELC 3.3(b) - (Application to Disability Proceedings); ELC 5.3 - (Investigation of Grievance); ELC 8.5 - (Stipulated Transfer to Disability Inactive); & 8.8 - (Reinstatement to Active Status) (pp. 1032-1033)

Mr. Beitel noted that the proposed changes clarify the effect of disability proceedings on open disciplinary proceedings: formal proceedings are stayed, while open investigations may be, but are not required to be, deferred. Mr. Bulmer had no objection to the ODC gathering information on open grievances, but expressed concern about a lawyer in supplemental proceedings, who has asserted incapacity, being subpoenaed to an investigatory deposition. Mr. Ende noted that ODC would be unlikely to subpoena a respondent who might be incompetent to testify, but pointed out previously approved procedures for seeking a protective order. Accepting Mr. Ende's suggestion as fair, Mr. Bulmer next moved to strike the work "indefinitely" from the proposed changes to ELC 8.3(d)(2) as superfluous. The Chair called for a vote; with none opposes the amendment passed. The Chair called for a vote on ODC's proposed changes as amended. With none opposed, the changes as amended were adopted.

Fine-Bulmer Memo (p. 1034)

Mr. Fine introduced the recommendation for changed to ELC 10.16(b) regarding submission of proposed findings. Mr. Nappi expressed his concern that the proposed changes seemed to require a separate hearing regarding proposed findings. Mr. Sheldon moved to adjust the proposed language to address Mr. Nappi's concern. The Chair called for a vote; with none opposed, the adjustment carried. After further discussion, Mr. Ende suggested that the item be held to a meeting with larger attendance. Mr. Beitel so moved and the Chair called for a vote. With one opposed, the motion carried.

Subcommittee C - discussion items held over from June 2010

Noting the foundational nature of these items, The Chair deferred discussion of them to the next meeting where they could receive a more full discussion among a greater number of task force members.

Announcements

The Chair announced his plan for presentment of the Task Force's work to the BOG:

- March 17, 2011 - the Task Force will meet and finalize all remaining proposed changes to the ELC. [A red-line copy of proposed changes adopted through the February 3, 2011 meeting will be distributed well in advance of the March meeting.]
- March 18-19, 2011 BOG Meeting: the Chair will introduce the work, give the BOG background on the work, and submit the task force's proposed changes through the February 3, 2011 meeting for a first reading.
- May 19, 2011 - the Task Force will meet to review all of the adopted proposed changes.
- July 22-23, 2011 BOG Meeting: The complete set of proposed changes will be presented to the BOG for a second reading and action.

Next Meeting

March 17, 2011, 9:00 a.m. to 12:00 noon
Materials deadline: Tuesday, March 8, 2011

May 19, 2011, 9:00 a.m. to 12:00 noon
Materials deadline: Tuesday, May 10, 2011

Adjournment

The Chair adjourned the meeting at 11:00 a.m.

Minutes Respectfully Submitted by

Scott Busby
Disciplinary Counsel
Task Force Staff Reporter

Fine and Bulmer Recommendation regarding proposed ELC
10.16(b) – page 932

The hearing officer writes findings of fact, conclusions of law, and recommendations without submission of proposed findings, conclusions, or recommendations from the parties. Alternatively, the hearing officer may first announce a tentative decision and then request one or both parties to prepare proposed findings, conclusions, and recommendations. After notice and an opportunity to respond, the hearing officer shall consider the proposal and enter findings, conclusions, and recommendations.

Memo

To: ELC Drafting Task Force

From: Subcommittee C

Date: June 2, 2010

RE: Items Recommended For Discussion [Held Over from June 10, 2010 Meeting]

We recommend the following proposals be considered for discussion by the full Task Force:

1. Mr. Sheldon has asked that the full Task Force have a discussion regarding the issue of granting ODC the same right of appeal to the Supreme Court as respondents. This issue was previously discussed by the Task Force in September 2009, at which time the Task Force noted the Board of Governors decision to add a right of appeal for ODC, and following discussion, voted 6 to 4 to provide a right of appeal for ODC. See minutes at pp. 549-50. Based on that direction, the Subcommittee has prepared the appropriate amendments to ELC 12.3 and ELC 12.4. Mr. Sheldon does not contest any provision of the drafting of the proposed amendments to ELC 12.3 or ELC 12.4, instead, he asks that the Task Force reconsider the decision to allow ODC a right of appeal. The Subcommittee recommends that the Task Force have the discussion requested by Mr. Sheldon. Because there is no objection to the particular wording of the proposed amendments to ELC 12.3 and ELC 12.4, we have included the proposed amendments on the consent calendar, subject, of course, to any decision by the Task Force to reconsider the decision to allow ODC a right of appeal.
2. By a vote of 4 to 1, the Subcommittee recommends the Task Force approve the following proposed amendment to ELC 13.9. This is a modification of the original ODC proposal (Materials p. 512-13) to provide for costs and expenses when reciprocal discipline is imposed. The Subcommittee modified that proposal to provide for such costs and expenses only after a contested reciprocal proceeding that has required briefing.

ELC 13.9 COSTS AND EXPENSES [Redline]

(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.

....

(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 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.X 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.

....

ELC 13.9 COSTS AND EXPENSES [Clean Copy]

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.....

3. By a vote of 3 to 1, with 1 abstention, the Subcommittee recommends that the Task Force reject the ODC proposal set forth at p. 429 – 31 of the Materials to eliminate the distinction between sanctions and admonitions, which would make an admonition a type of sanction. The change proposed by ODC would make the following change to ELC 13.1, along with a number of other conforming changes to other rules:

ELC 13.1 SANCTIONS AND REMEDIES [Redline]

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; ~~or~~

~~(b) Admonition.~~ (4) 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.

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(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.

4. The Subcommittee recommends the Task Force discuss ABA Recommendation No. 22, to have the Disciplinary Board and the Supreme Court administer reprimands, as opposed to the current provision in ELC 13.4(a) which provides that "The Association administers a reprimand to a respondent lawyer by written statement signed by it's President." The Subcommittee notes the action by the Board of Governor's reflected in their January 22, 2009 Minutes (Materials at p. 474). By a vote of 10-1-1, the Board of Governors adopted the ABA recommendation that the Disciplinary Board and the Court administer reprimands. The Subcommittee notes, however, that this recommendation was part of a series of recommendations to remove the administration of lawyer discipline from the WSBA. That specific recom-

mendation was rejected, which removes much of the reason behind the proposal to change the current system of the President of the WSBA signing reprimands. The Subcommittee discussed that the Chief Justice could sign the reprimands, but it was pointed out that the Chief's administrative duties are quite extensive and that this addition could be problematic. Given that, the Subcommittee considers the President of the WSBA to be the next most impressive person to sign a reprimand and therefore the best choice. By a vote of 4-0-1 the Subcommittee voted to recommend that despite the Board of Governors' January 22, 2009 action, that the Task Force recommend rejection of ABA Recommendation 22 and that we retain the current provisions in ELC 13.4(a) providing for reprimands to be issued by the Association and signed by the WSBA President.

5. The Subcommittee recommends the Task Force discuss the recommendation of a hearing officer (Materials at p. 241) that a respondent lawyer who is found to not have violated the RPC be allowed to recover costs from the WSBA. The Subcommittee vote on the proposal was three members voting to leave the cost provisions the way they are, and two members voting to allow recovery of costs by a respondent when all charges are dismissed.

The Subcommittee has had lively discussions on this topic. Ron Carpenter opposed the proposal, noting that the WSBA was doing the task that had been delegated by the Court, and that such a cost provision would potentially chill ODC from pursuing that task as appropriate. Julie Shankland noted that unlike civil litigation, where the parties decide how they will pursue the litigation, ODC is not in charge of what cases it brings. She noted that Review Committees order matters to hearing, including matters that have not been recommended by ODC for hearing. Randy Beitel noted that because this is not civil litigation, using economic factors is inappropriate, because to the extent that economic issues control, the goal of delivering justice to the public will likely suffer. Mr. Beitel noted while he prefers retaining the current cost provisions, that rather than introduce an economic based system with endless prevailing party analysis for costs, he would consider the complete elimination of costs from the system, as that would assure that only justice issues would be influencing prosecutorial decisions. Patrick Sheldon supported the proposal, indicating that the costs to a respondent to defend an action can be very significant and that these costs are rarely covered by insurance. He indicated that this is an issue of fairness.

Charlie Wiggins indicated that he was torn by the issue, and was interested in knowing how often this happens. Mr. Beitel reported back to the Subcommittee with the following information:

I checked the records from the Board of Governors reports for the three-year time period January 1, 2007 – December 31, 2009:
2007 - No matters dismissed by hearing officer after hearing.
2008 - Two matters dismissed by hearing officer after hearing:
Matter One: Dismissed 10/7/08

Matter Two: Dismissed (no date available – because the original dismissal by disciplinary counsel was more than three years ago, file and computer entry destructed per ELC 3.6 based on respondent request.)

2009 - One matter dismissed 1/12/09 by hearing officer after hearing.

Summary: In the last three years, there have been a total of three cases dismissed by hearing officers following a hearing. Essentially, one a year. This should be compared to the disciplinary actions imposed in these years: 73 disciplinary actions in 2007, 81 disciplinary actions in 2008 and 62 disciplinary actions in 2009. While a not insubstantial of the disciplinary actions were the result of stipulations rather than hearing officer decisions, it is still apparent that dismissals by hearing officers following hearings is a distinct rarity.

Mr. Beitel indicated that one of the three matters involved a grievance that was originally dismissed by disciplinary counsel. The grievant protested, and the Review Committee ordered an admonition. The Respondent then protested the admonition and by operation of the rule, the matter was deemed ordered to hearing. It is little wonder that the matter was dismissed by the hearing officer, but reflects that unlike civil litigation where costs are sometimes used to reign in overzealous litigants, the Office of Disciplinary Counsel is not always in control of what cases are ordered to hearing. Mr. Beitel argued that without bringing some cases that are close calls, we are not doing the job necessary to protect the public.

Ron Carpenter submitted additional written comments for the Subcommittee on May 14, 2010:

Comments submitted by Ron Carpenter- 5/14/10:

ELC 13.9(a) generally provides for an assessment of allowable costs and expenses in favor of the Bar Association (Association) against an attorney “who is ordered sanctioned or admonished.” ELC 13.9(g) additionally provides for an assessment for costs and expenses “in favor of the Association” upon the filing of an opinion by this Court imposing a sanction or an admonition. It is significant to note that ELC 13.9(g) makes reference to following the *procedures* set forth in RAP Title 14, but it does not define or establish a substantive right to seek costs and expenses other than as to the Association (contrary to the less specific language of RAP 14.2, which specifies that any party that “substantially prevails on review” will be awarded costs). The purpose statements^[1] that accompanied ELC 13.9(a)&(g) respectively when they were published in the advance sheets for comments on April 16,

^[1] These purpose statements were adopted directly from the “COMMENTS TO Proposed RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC) and Related Amendments to the RULES OF PROFESSIONAL CONDUCT (RPC) ADMISSION TO PRACTICE RULES (APR) and GENERAL RULES (GR) Prepared by Randy Beitel Reporter, Discipline 2000 Task Force”

2002 (145 Wn.2d Proposed –at 181 and 182) stated in pertinent portions:

Section (a) is derived from RLD 5.7(a) with no substantive change. Under this rule costs and expenses may be assessed only against a respondent lawyer. The Discipline 2000 Task Force considered and rejected the concept to allow costs and expenses to be assessed against the Association. (emphasis mine)

and

Section (g) is derived from RLD 5.7(f), modified to allow assessment when an opinion of the Supreme Court imposes an admonition.^[2]

There are sound reasons for a distinction as to who is entitled to an award of costs in attorney discipline matters, as opposed to general litigants involved in appellate review of trial courts matters. In the administrative process of attorney discipline, unlike general litigation in the lower courts, there is no prevailing party below in the classic sense. The Association is charged with the responsibility of determining if professional misconduct has occurred, and then with making a nonbinding recommendation as to the appropriate nature of any discipline to be imposed by the Supreme Court if the Court upholds any of the Board's findings as to professional misconduct. Pursuant to the Court rules, the Association's duty is to ensure the appropriate regulation of attorney conduct; it has no specific client, nor does it ever prevail during that process in the same manner as a party in normal civil litigation. Its duty under the applicable court rules is to simply conduct the initial hearings on complaints and report its findings and recommendation to the Supreme Court; see ELC 12.2(b).

Although ELC 12.1 states that the Rules of Appellate Procedure serve as a guideline for review by this Court, it does provide: "except as to matters specifically dealt with in these rules." Therefore, one seems forced to conclude that the more specific language of ELC 13.9(a) and (g) is controlling over the general language of RAP 14.2 (that is broader in its designation of who is entitled to be awarded costs in that it allows the award to any party that "substantially prevails on review" in general appellate review matters). Clearly, applying these standards, counsel subject to disciplinary proceedings would not be entitled to an award of costs pursuant to any reasonable interpretation and application of the language of ELC 13.9(a) and (g).

One only needs to refer to page 41 of the May 2010 edition of the Washington State Bar News, the 11th line "Discipline", to deter-

^[2] This statement is somewhat incomplete in that the rule (both as proposed and adopted) makes reference to the imposition of either a sanction or an admonition, not merely an admonition.

mine that the revenue collected for conducting disciplinary proceedings is far outdistanced by the almost oppressive costs incurred by the Association to conduct disciplinary proceedings (recovery being only about 2% of what is expended yearly by the Association) - the operating net loss is in part paid by every attorney in this state who pays bar dues. Given that there is always presumably at least a probable cause to believe that misconduct has occurred, and that disciplinary proceedings need to be implemented to protect the public, to ever allow costs to be recouped by responding counsel, would most likely have a "chilling effect" on disciplinary counsel's determination to proceed with disciplinary proceedings. The Association's disciplinary counsel are the designated enforcement arm of the system - tantamount to a prosecuting attorney in the criminal arena - and as such should not be dissuaded in doing what they feel is appropriate or vigorously pursuing discipline by the looming threat that, if unsuccessful, costs could be imposed against the Association.

6. The Subcommittee recommends that the Task Force discuss the proposal of a rule amendment to ELC 11.13 that would provide for the availability of sanctions at the Disciplinary Board. By a consensus, the Subcommittee recommends that the Task Force reject the proposal.

ELC 11.13 CHAIR OR BOARD MAY MODIFY REQUIREMENTS AND IMPOSE SANCTIONS [Redline]

(a) Upon written motion filed with the Clerk by either party, ~~for good cause shown or on its own motion~~, the Chair or Board may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review.

(b) ~~However, the~~ The time period for filing a notice of appeal in rule 11.2(b)(3)(A) may not, however, be extended or altered.

(c) The procedures and sanctions in RAP 18.9(a) and (d) apply to matters before the Disciplinary Board. The Chair is considered to be the commissioner or clerk for the purposes of this rule.

ELC 11.13 CHAIR OR BOARD MAY MODIFY REQUIREMENTS AND IMPOSE SANCTIONS [Clean Copy]

(a) Upon written motion filed with the Clerk by either party, or on its own motion, the Chair or Board may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review.

(b) The time period for filing a notice of appeal in rule 11.2(b)(3)(A) may not, however, be extended or altered.

(c) The procedures and sanctions in RAP 18.9(a) and (d) apply to matters before the Disciplinary Board. The Chair is considered to be the commissioner or clerk for the purposes of this rule.

March 8, 2011

To: Geoff Gibbs, Chair
ELC Drafting Task Force

From: Seth Fine, Chair
Subcommittee B

Re: Modifications to ELC 7.1(e)

At the Task Force meeting on February 3, there was a discussion of the Subcommittee proposal for amendments to ELC 7.1 (materials p. 1023-25). ODC objected to having a "show cause" proceeding in every case of interim suspension. The Subcommittee was asked to draft language providing for a "show cause" proceeding on request of the respondent lawyer.

The following proposed amendment to ELC 7.1 accomplishes this. (This is the same as the proposal at p. 1023-25, except for changes to subsection (e).)

ELC 7.1 ~~INTERIM SUSPENSION FOR~~ PROCEDURE ON CONVICTION OF A CRIME

(a) Definitions.

(1) "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(2) ~~"Serious crime" includes any:~~

~~(A) felony;~~

~~(B) crime a necessary element of which, as determined by its statutory or common law definition, includes any of the following:~~

~~● interference with the administration of justice;~~

~~● false swearing;~~

~~● misrepresentation;~~

~~● fraud;~~

~~● deceit;~~

~~● bribery;~~

~~● extortion;~~

● misappropriation; or

● theft; or

(C) attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".

"Felony" includes any crime denominated as a felony in the jurisdiction in which it is committed.

(b) ~~Court Clerk To Advise Association~~ Reporting of Conviction. When a lawyer is convicted of a ~~crime felony~~, the clerk of the court must advise the Association of the conviction, and on request provide the Association with certified copies of any order or other document showing the conviction the lawyer must report the conviction to disciplinary counsel within 30 days of the conviction as defined by this rule.

(c) Disciplinary Procedure upon Conviction.

(1) If a lawyer is convicted of a felony, disciplinary counsel must file a formal complaint regarding the conviction. Disciplinary counsel must also petition the Supreme Court for an order suspending the respondent lawyer during the pendency of disciplinary proceedings. The petition for suspension may be filed before the formal complaint.

~~(2) If a lawyer is convicted of a crime that is not a felony, disciplinary counsel may refer the matter to a review committee to determine whether the crime is a serious crime. If so, disciplinary counsel proceeds in the same manner as for a felony.~~

~~(3) If a lawyer is convicted of a crime that is neither not a felony ~~nor a serious crime~~, the review committee may considers a report of the conviction in the same manner as any other report of possible misconduct by a lawyer.~~

(d) Petition. A petition to the Supreme Court for suspension under this rule must include a copy of any available document establishing the fact of conviction. ~~If the crime is not a felony, the petition must also include a copy of the review committee order finding that the crime is a serious crime.~~ Disciplinary counsel may also include additional facts, statements, arguments, affidavits, and documents in the petition. A copy of the petition must be personally served on the respondent, and proof of service filed with the Court.

(e) Immediate Interim Suspension. Upon ~~the filing~~ service of a petition for suspension under this rule, ~~the Court determines whether the crime constitutes a serious crime as defined in section (a)~~ the respondent may request a hearing to show why the respondent should not be suspended during the pendency of the disciplinary proceeding. Any request must be filed with the Clerk of the Supreme Court within 15 days after service of the petition on respondent.

(1) If ~~the crime is a felony~~ no timely request for a hearing is filed, the Court must enter an order immediately suspending the respondent from the practice of law.

(2) ~~If the crime is not a felony a timely request for a hearing is filed, the Court conducts a show cause proceeding under rule 7.2(b) to determine if the crime is a serious crime. If the Court determines the crime is a serious crime, the Court must enter an order immediately suspending the respondent from the practice of law. If the Court determines that the crime is not a serious crime, upon being so advised, the Association processes the matter as it would any other grievance. The respondent must be suspended absent an affirmative showing that the respondent's continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest.~~

(3) If suspended, the respondent must comply with title 14.

(4) Suspension under this rule occurs:

(A) whether the conviction was under a law of this state, any other state, or the United States;

(B) whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and

(C) regardless of the pendency of an appeal.

(f) Duration of Suspension. A suspension under this rule must terminate when the disciplinary proceeding is fully completed, after appeal or otherwise. A copy of the final decision, stipulation or order terminating the disciplinary proceeding will be provided to the Court.

(g) Termination of Suspension.

(1) *Petition and Response.* A respondent may at any time petition the Board to recommend termination of an interim suspension. Disciplinary counsel may file a response to the petition. The Chair may direct disciplinary counsel to investigate as appears appropriate. If disciplinary counsel recommends that the suspension should be terminated, the Clerk will transfer the petition and response to the Court for its consideration.

(2) *Board Recommendation.* If either party requests, the Board must hear oral argument on the petition at a time and place and under terms as the Chair directs. The Board may recommend termination of a suspension only if the Board makes an affirmative finding of good cause to do so. There is no right of appeal from a Board decision declining to recommend termination of a suspension.

(3) *Court Action.* The Court determines the procedure for its consideration of a recommendation to terminate a suspension.

~~**(h) Notice of Dismissal to Supreme Court.** If disciplinary counsel has filed a petition for suspension under this rule, and the disciplinary proceedings based on the criminal conviction are dismissed, the Supreme Court must be provided a copy of the decision granting dismissal whether or not the respondent is suspended at the time of dismissal.~~

Memo

To: ELC Drafting Task Force
From: Office of Disciplinary Counsel
Date: March 9, 2011
RE: Alternative Proposal Regarding Interim Suspension for Felony Convictions
ELC 7.1(e) & (g)

Proposal:

This is an alternative proposal to that recommended by Subcommittee B. We believe we should maintain the automatic suspension of a lawyer upon a felony conviction, as has been the rule not only under the ELC, but under the predecessor RLD (RLD 3.1, 1983) as well as the predecessor DRA (DRA 9.1(a), 1975). The rare instance of a felony convicted respondent whose interim suspension is not warranted, can be accommodated by streamlining the existing procedure in ELC 7.1(g) for terminating the interim suspension and by adding language from the ABA Model Rules for Lawyer Disciplinary Enforcement (Rule 19(B)) to allow a respondent to raise jurisdictional challenges to the interim suspension.

This proposal differs from that proposed by Subcommittee B in only three respects:

- (1) subsection (e) does not provide for a show cause procedure to challenge the interim suspension; but,
- (2) does allow a respondent to raise jurisdictional challenges such as the crime not being a felony or the respondent not being the person who was convicted; and
- (3) subsection (g) is amended to streamline the existing process for a respondent seeking to end an interim suspension. At the last meeting, respondent's counsel noted that the current procedure requires that a respondent first get the recommendation of the Disciplinary Board to terminate the interim suspension and then petition the Court. It was noted that this process could take many months. We eliminate the Disciplinary Board step and allow a respondent to petition the Court directly. By streamlining this procedure, we believe that it is not necessary to have the separate show cause procedure proposed by the Subcommittee.

Draft Rule Change:

ELC 7.1 INTERIM SUSPENSION FOR PROCEDURE ON CONVICTION OF A CRIME

(a) Definitions.

(1) "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(2) "~~Serious crime~~" includes any:

(A) felony;

(B) ~~crime a necessary element of which, as determined by its statutory or common-law definition, includes any of the following:~~

- ~~interference with the administration of justice;~~
- ~~false swearing;~~
- ~~misrepresentation;~~
- ~~fraud;~~
- ~~deceit;~~
- ~~bribery;~~
- ~~extortion;~~
- ~~misappropriation; or~~
- ~~theft; or~~

(C) ~~attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".~~

"Felony" includes any crime denominated as a felony in the jurisdiction in which it is committed.

(b) ~~Court Clerk To Advise Association Reporting of Conviction.~~ When a lawyer is convicted of a crime felony, the clerk of the court must advise the Association of the conviction, and on request provide the Association with certified copies of any order or other document showing the conviction the lawyer must report the conviction to disciplinary counsel within 30 days of the conviction as defined by this rule.

(c) Disciplinary Procedure upon Conviction.

(1) If a lawyer is convicted of a felony, disciplinary counsel must file a formal complaint regarding the conviction. Disciplinary counsel must also petition the Supreme Court for an order suspending the respondent lawyer during the pendency of disciplinary proceedings. The petition for suspension may be filed before the formal complaint.

(2) ~~If a lawyer is convicted of a crime that is not a felony, disciplinary counsel may refer the matter to a review committee to determine whether the crime is a serious crime. If so, disciplinary counsel proceeds in the same manner as for a felony.~~

(3) ~~If a lawyer is convicted of a crime that is neither not a felony nor a serious crime, the review committee may considers a report of the conviction in the same manner as any other report of possible misconduct by a lawyer.~~

(d) Petition. A petition to the Supreme Court for suspension under this rule must include a copy of any available document establishing the fact of conviction. ~~If the crime is not a felony, the petition must also include a copy of the review committee order finding that the crime is a serious crime.~~ Disciplinary counsel may also include additional facts, statements, arguments, affidavits, and documents in the petition. A copy of the petition must be personally served on the respondent, and proof of service filed with the Court.

(e) Immediate Interim Suspension. Upon the filing of a petition for suspension under this rule, ~~the Court determines whether the crime constitutes a serious crime as defined in section (a).~~

- (1) ~~If the crime is a felony~~ Court determines that the lawyer has been convicted of a felony, the Court must enter an order immediately suspending the respondent from the practice of law.
- (2) ~~If the crime is not a felony, the Court conducts a show cause proceeding under rule 7.2(b) to determine if the crime is a serious crime. If the Court determines the crime is a serious crime, the Court must enter an order immediately suspending the respondent from the practice of law. If the Court determines that the crime is not a serious crime, upon being so advised, the Association processes the matter as it would any other grievance.~~
- (3) ~~If~~ Upon suspension, the respondent must comply with title 14.
- (4) Suspension under this rule occurs:
 - (A) whether the conviction was under a law of this state, any other state, or the United States;
 - (B) whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and
 - (C) regardless of the pendency of an appeal.
- (4) On or before the date established for the entry of the order of interim suspension the respondent may assert to the Court any jurisdictional deficiency that establishes that the suspension may not properly be ordered, such as that the crime did not constitute a felony or that the respondent is not the individual convicted.

(f) Duration of Suspension. A suspension under this rule must terminate when the disciplinary proceeding is fully completed, after appeal or otherwise. A copy of the final decision, stipulation or order terminating the disciplinary proceeding will be provided to the Court.

(g) Termination of Suspension.

- (1) *Petition and Response.* A respondent may at any time petition the ~~Board~~ Court to recommend termination of an interim suspension. Disciplinary counsel may file a response to the petition. ~~The Chair may direct disciplinary counsel to investigate as appears appropriate.~~
- (2) *Board Recommendation.* ~~If either party requests, the Board must hear oral argument on the petition at a time and place and under terms as the Chair directs. The Board may recommend termination of a suspension only if the Board makes an affirmative finding of good cause to do so. There is no right of appeal from a Board decision declining to recommend termination of a suspension.~~
- (3) *Court Action.* The Court determines the procedure for its consideration of a ~~recommendation~~ petition to terminate a suspension.

(h) Notice of Dismissal to Supreme Court. ~~If disciplinary counsel has filed a petition for suspension under this rule, and the disciplinary proceedings based on the criminal conviction are dismissed, the Supreme Court must be provided a copy of the decision granting dismissal whether or not the respondent is suspended at the time of dismissal.~~

Memo

To: ELC Drafting Task Force
From: Office of Disciplinary Counsel
Date: March 9, 2011
RE: Clarifying Access for Other Association Counsel
ELC 3.4(j)

Proposal:

A variety of lawyers perform functions in the disciplinary system or otherwise represent the Association in various contexts in which it is necessary for the lawyer to have access to otherwise confidential disciplinary information in order to perform their function. This includes conflicts review officers, special disciplinary counsel, adjunct disciplinary counsel (formerly adjunct investigatory counsel), association counsel, counsel for petitioners in limited guardian proceedings under ELC 8.9, counsel appointed to represent respondents in disability proceedings, and other outside counsel who represent the Association in matters such as the defense of tort claims or employment litigation. We believe we are implicitly authorized to provide otherwise confidential information to these lawyers, but only to the extent necessary for them to perform their respective duties. ELC 4.3(j) currently makes a provision for conflicts review officers. We propose expanding the scope of that rule to make it clear that confidential information may, when necessary, be provided to these other categories of lawyers working in the discipline system.

Draft Rule Change:

ELC 3.4 RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

.....

(j) Conflicts Review Officer Other Counsel. Conflicts review officers, special disciplinary counsel, adjunct disciplinary counsel, association counsel, counsel for a petitioner under rule 8.9(d), counsel appointed under rule 8.10, and any lawyer representing the Association in any matter have access to any otherwise confidential disciplinary information necessary to perform their duties.

Memo

To: ELC Drafting Task Force
From: Office of Disciplinary Counsel
Date: March 9, 2011
RE: Technical Correction to ELC 9.2 Proposal

Proposal:

This is not a substantive proposal, but corrects a drafting error in the proposed changes to ELC 9.2 that were previously approved at the April 8, 2010 meeting. At that time, we approved deleting the requirement in ELC 9.2(b) that the order obtained for reciprocal discipline purposes be a certified order. In drafting that proposal, we neglected to make the same change in the corresponding reference to a certified order in ELC 9.2(c). This proposal corrects that oversight.

Draft Rule Change:

[Note: This draft starts with the Reporter's current Redline version and shows the already approved changes in underline and ~~crossout~~. The new changes recommended by this proposal are shown in bold underline and ~~double-crossout~~. The only change in this proposal is deleting the word "certified" in ELC 9.2(c).]

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

....

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

(c) Supreme Court Action. Except in circumstances set forth in subsection (g), ~~U~~pon receipt of a ~~certified~~ copy of an order demonstrating that a lawyer admitted to practice in this state has been disciplined or transferred to disability inactive status in another jurisdiction, the Supreme Court orders the respondent lawyer to show cause within ~~30~~60 days of service why it should not impose the identical discipline or disability inactive status. The Association must personally serve this order, and a copy of the order from the other jurisdiction, on the respondent under rule 4.1(b)(3).

....

Memo

To: ELC Drafting Task Force

From: ODC

Date: March 15, 2011

RE: **Revised Proposal re Working in a Law Office After Disbarment, etc.
ELC 14.2; RPC 5.8**

At the February 3, 2011 meeting, the Task Force considered the proposal from Subcommittee C [materials pp. 1015 – 19] to amend ELC 14.2 and RPC 5.8 to implement the Board of Governors decision adopting ABA Recommendation No. 24 to clarify that a lawyer disbarred, suspended or on disability inactive status cannot work in a law office as a paralegal. The Subcommittee recommended that ELC 14.2 and RPC 5.8 be better coordinated so that they both apply to the same groups of lawyers (they currently don't), with the operative language in RPC 5.8 with a reference in ELC 14.2 to the RPC. Following discussion and objections being raised to parts of the proposal, it was agreed that Mr. Beitel would circulate a new draft that would attempt to satisfy the objections that had been raised. Unfortunately, Randy spaced on this assignment, and did not realize it until he read the draft minutes that were posted a few days ago. At that point, ODC put together a new draft, but we have not had time to get the Subcommittee together. We did run it quickly by Mr. Bulmer, who had raised many of the objections. Mr. Bulmer informs us that based on a quick read, he is fine with the proposal. In order that the Task Force be able to review a revised draft at the March 17th meeting, we are circulating this to the full Task Force.

As noted in the minutes, two objections were raised to the proposal. First, Mr. Bulmer and others objected to the inclusion of disability inactive lawyers, noting that some provision needed to be made for the former senior partner who has lost the ability to practice law and has transferred to disability inactive, but wants to still come to the office from time to time. We believe this could be accommodated by adding language at RPC 5.8(b)(2) to exempt from the general prohibition on use of the office, when the order transferring the lawyer to disability inactive makes a provision for that. The new language is shown in **bold underline**.

The other objection, raised by Mr. Bulmer, was to the broad prohibition on "hiring or employing" such lawyers. Mr. Bulmer was worried about a disbarred, suspended, or disability inactive lawyer who goes on to be a mediator, or process server or an independent business or computer consultant. The rule is not intended to prevent a lawyer from being able "to hire or employ" a person who is independently operating a trade or business. We have redrafted the proposed Comments [2] and [3] to RPC 5.8. Note that the comments in their entirety are new, with just the revised language shown in redline.

Draft Rule Changes to ELC 14.2 [No Change from February 3rd Materials]:

ELC 14.2 LAWYER TO DISCONTINUE PRACTICE [redline]

(a) Discontinue Practice. A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, resignation in lieu of disbarment or discipline, suspension, or transfer to disability inactive status, and also must take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on him or her as a lawyer authorized to practice law.

(b) Continuing Duties to Former Clients. This rule does not preclude a disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, from disbursing assets held by the lawyer to clients or other persons or from providing information on the facts and the lawyer's theory of a case and its status to a succeeding lawyer, provided that the ~~suspended or disbarred~~ lawyer not be involved in any discussion regarding matters occurring after the date of the suspension, resignation in lieu of disbarment or discipline, transfer to disability inactive, or disbarment. The lawyer must provide this information on request and without charge.

(c) Working In Law Office Prohibited. A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment, or a lawyer who has resigned in lieu of discipline, or a lawyer transferred to disability inactive status is prohibited from employment by a lawyer or law firm as provided in Rule of Professional Conduct 5.8.

ELC 14.2 LAWYER TO DISCONTINUE PRACTICE [clean copy]

(a) Discontinue Practice. A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, resignation in lieu of disbarment or discipline, suspension, or transfer to disability inactive status, and also must take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on him or her as a lawyer authorized to practice law.

(b) Continuing Duties to Former Clients. This rule does not preclude a disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, from disbursing assets held by the lawyer to clients or other persons or from providing information on the facts and the lawyer's theory of a case and its status to a succeeding lawyer, provided that the lawyer not be involved in any discussion regarding matters occurring after the date of the suspension, resignation in lieu of disbarment or discipline, transfer to disability inactive, or disbarment. The lawyer must provide this information on request and without charge.

(c) Working In Law Office Prohibited. A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment, or a lawyer who has resigned in lieu of discipline, or a lawyer transferred to disability inactive status is prohibited from employment by a lawyer or law firm as provided in Rule of Professional Conduct 5.8.

Draft Rule Changes to RPC 5.8(b) [Change from February 3rd Materials in Bold Underline and Crossout]:

**RPC 5.8
MISCONDUCT INVOLVING DISBARRED, SUSPENDED, RESIGNED,
AND INACTIVE LAWYERS [redline]**

(a) A lawyer shall not engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.

(b) A lawyer shall not engage in any of the following with an individual who is a disbarred or suspended lawyer, or who has resigned in lieu of disbarment or discipline, or who has been transferred to disability inactive status:

(1) practice law with or in cooperation with such an individual;

(2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual, except to the extent authorized by the order transferring a lawyer to disability inactive status;

(3) permit such an individual to use the lawyer's name for the practice of law;

(4) practice law for or on behalf of such an individual; or

(5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

Washington Comments

[1] The provisions of this Rule were taken from former Washington RPC 5.5(d) and (e) (as amended in 2002).

[2] This rule prohibits a lawyer from ~~hiring or employing a lawyer in connection with or related to the practice of law~~ having a lawyer who is disbarred, or suspended, or a lawyer who is on disability inactive status or who has resigned in lieu of disbarment or discipline work in the lawyer's practice of law. It does not prohibit a lawyer from ~~hiring~~ having such an individual work in capacities not involving the practice of law. Thus, a lawyer may employ such an individual in other, nonlaw-related capacities from such mundane tasks as mowing lawns or washing windows, to more sophisticated employment such as managing a business or property not related to the lawyer's practice of law.

[3] This rule clearly prohibits a lawyer from sharing offices with a disbarred or suspended lawyer, or a lawyer who is on disability inactive status or a lawyer

who has resigned in lieu of disbarment or discipline, or from having any arrangement with such an individual which relates to the practice of law. **However, in the case of a lawyer on disability inactive status, an exception is made, to the extent authorized by the order transferring a lawyer to disability inactive status, which is designed to allow retired partners to continue to come to the office under appropriate restrictions.** A disbarred or suspended lawyer, or a lawyer who is on disability inactive status, or a lawyer who has resigned in lieu of disbarment or discipline, may not be employed as a paralegal or law clerk, may not be employed to do legal research or writing, or work as a law office secretary or other office employee. Neither may such an individual be employed in the law office as an investigator, messenger, or accountant ~~in connection with a lawyer's law practice~~, because that would constitute a violation of the prohibition against "practic[ing] law under any arrangement or understanding for division of fees or compensation of any kind with such an individual." **This rule does not, however, prohibit a lawyer from hiring such an individual to serve in an independent role, such as an outside mediator, messenger, process server, or accountant, or as a business or computer consultant, provided that the individual is not directly assisting the lawyer in the representation of clients.**

RPC 5.8
MISCONDUCT INVOLVING DISBARRED, SUSPENDED, RESIGNED,
AND INACTIVE LAWYERS [clean copy]

- (a) A lawyer shall not engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.
- (b) A lawyer shall not engage in any of the following with an individual who is a disbarred or suspended lawyer, or who has resigned in lieu of disbarment or discipline, or who has been transferred to disability inactive status:
- (1) practice law with or in cooperation with such an individual;
 - (2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual, except to the extent authorized by the order transferring a lawyer to disability inactive status;
 - (3) permit such an individual to use the lawyer's name for the practice of law;
 - (4) practice law for or on behalf of such an individual; or
 - (5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

Washington Comments

[1] The provisions of this Rule were taken from former Washington RPC 5.5(d) and (e) (as amended in 2002).

[2] This rule prohibits a lawyer from having a lawyer who is disbarred or suspended, or a lawyer who is on disability inactive status or who has resigned in

lieu of disbarment or discipline work in the lawyer's practice of law. It does not prohibit a lawyer from having such an individual work in capacities not involving the practice of law. Thus, a lawyer may employ such an individual in other, non-law-related capacities from such mundane tasks as mowing lawns or washing windows, to more sophisticated employment such as managing a business or property not related to the lawyer's practice of law.

[3] This rule clearly prohibits a lawyer from sharing offices with a disbarred or suspended lawyer, or a lawyer who is on disability inactive status or a lawyer who has resigned in lieu of disbarment or discipline, or from having any arrangement with such an individual which relates to the practice of law. However, in the case of a lawyer on disability inactive status, an exception is made, to the extent authorized by the order transferring a lawyer to disability inactive status, which is designed to allow retired partners to continue to come to the office under appropriate restrictions. A disbarred or suspended lawyer, or a lawyer who is on disability inactive status, or a lawyer who has resigned in lieu of disbarment or discipline, may not be employed as a paralegal or law clerk, may not be employed to do legal research or writing, or work as a law office secretary or other office employee. Neither may such an individual be employed in the law office as an investigator, messenger, or accountant, because that would constitute a violation of the prohibition against "practic[ing] law under any arrangement or understanding for division of fees or compensation of any kind with such an individual." This rule does not, however, prohibit a lawyer from hiring such an individual to serve in an independent role, such as an outside mediator, messenger, process server, or accountant, or as a business or computer consultant, provided that the individual is not directly assisting the lawyer in the representation of clients.

Memo

To: ELC Drafting Task Force
From: Office of Disciplinary Counsel
Date: March 17, 2011
RE: Alternative Proposal for ELC 10.16(b)

Proposed Amendment:

Either party may at any time submit proposed findings of fact, conclusions of law, and recommendation as part of their argument of the case. The hearing officer either writes findings of fact, conclusions of law, and recommendations without requiring submission of proposed findings, conclusions, or recommendations from the parties- or a Alternatively, the hearing officer may first announce a tentative decision and then request one or both parties to prepare proposed findings, conclusions, and recommendations. After notice and an opportunity to respond, the hearing officer shall consider the proposal and enter findings, conclusions, and recommendations.