GR 9 COVER SHEET

Suggested Amendments to the
RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)
And Related Amendments to Rule 5.8 of the
RULES OF PROFESSIONAL CONDUCT (RPC)
Submitted by the Washington State Bar Association

A. Name of Proponent: The Washington State Bar Association (WSBA)

B. Spokespersons:

- Michele Radosevich, President, Washington State Bar Association, Davis Wright Tremaine LLP, 1201 Third Avenue, Suite 2200, Seattle, WA 98101 (Telephone: 206-757-8124) (Email: micheleradosevich@dwt.com)
- G. Geoffrey Gibbs, Chair, ELC Task Force, Anderson Hunter Law Firm PS, 2707 Colby Avenue, Suite 1001, PO Box 5397, Everett, WA 98206 (Telephone: 425-252-5161) (Email: ggibbs@andersonhunterlaw.com)
- Scott G. Busby, Reporter, ELC Task Force, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539 (Telephone: 206-733-5998) (Email: scottb@wsba.org)
- **C. Purpose:** The suggested amendments arise out of a comprehensive review of the ELC that began in 2008. More than five years after the ELC became effective in October 2002, the WSBA's Board of Governors (BOG) believed it was appropriate to analyze the impact and effectiveness of the rules and determine whether modifications and improvements were warranted. The BOG appointed an ELC Task Force to review the ELC, draft suggested amendments, and present them to the BOG for its approval. After much discussion, drafting, and redrafting, the ELC Task Force began presenting suggested amendments to the BOG at its July 2011 meeting. After further discussion, drafting, and redrafting, these suggested amendments were finally approved by the BOG at its September 2012 meeting.

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. Some 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).
- **D. Hearing:** The proponent does not believe that a public hearing is needed.
- **E. Expedited Consideration:** Expedited consideration is not requested.

Supporting Information

In addition to (1) a complete redline of the suggested amendments to the ELC, (2) a "clean" version of the suggested amendments to the ELC without redlining, (3) a redline of the suggested amendments to RPC 5.8, and (4) a "clean" version of the suggested amendments RPC 5.8, a set of Reporter's Explanatory Comments is submitted as supporting information. Additional supporting information available at the Washington State Bar Association website (http://www.wsba.org/Legal%20Community/Committees%20Boards%20and%20Other%20Groups/ELC%20Drafting%20Taskforce) includes the following:

- ELC Task Force Charter and Rosters
- ELC Task Force Meeting Materials (including Subcommittee Reports)
- ELC Task Force Minutes
- ELC Task Force Reports (including Minority Reports)