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UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ROBERT E. CARUSO and SANDRA L. FERGUSON, Plaintiffs, v. WASHINGTON STATE BAR ASSOCIATION 1933; a legislatively created Washington association, State Bar Act (WSBA 1933); WASHINGTON STATE BAR ASSOCIATION after September 30, 2016 (WSBA 2017), *et al.* Defendants.	Case No. 2:17-cv-00003-RSM DECLARATION OF STEPHEN KERR EUGSTER

Stephen Kerr Eugster, under penalty of perjury under the laws of the state of Washington, declares the following to be true:

1. I am over the age of 18 and competent to be a witness in these proceedings; I make the statements herein based upon my own personal knowledge.

2. An Appendix of materials is attached hereto and incorporated herein by this reference.

Two Washington State Bar Associations - WSBA 1933 and WSBA 2017

3. WSBA of the State Bar Act of 1933 (WSBA 1933) came to an end of its purposes when WSBA Bylaw Amendments of September 39, 2017, became effective January 1, 2017.

4. The amended bylaws form the association of WSBA 2017.

5. The purpose of a single bar membership of WSBA 1933 ended when membership of the WSBA 2017 became Lawyers, Limited Practice Officers, and Limited License Legal Technicians.

6. The purpose of a lawyer discipline system by the WSBA 1933 ended when the WSBA 2017 became the disciplinary agency for all of the new members – Lawyers, Limited Practice Officers, and Limited License Legal Technicians.

Comparison – WSBA 1933 to WSBA 2017

7. There are significant, substantive and consequential differences between WSBA 1933 and WSBA 2017. Here, is a comparison of the differences:

CHARACTER	WSBA 1933	WSBA 2017
Organic Source	Bar Act 1933Legal Status (Legal) Entity Association, as an "Agency" of State of Washington	Bylaws of September 30, 2016, effective January 1, 2017
Entity	RCW 2.48.010	Common Law Association
Members	Lawyers	Lawyers, LPOs (APR 12), and LLLTs (APR 28)
Compelled Membership and Compelled Dues	Yes	Yes as to all members
Integrated	Lawyers	Yes as to all members

WSBA 1933 Washington Lawyer Discipline System -
Its Impartiality Can be Reasonably Questioned
American Bar Association and the Discipline System

8. American Bar Association, WASHINGTON STATE BAR ASSOCIATION, REPORT ON THE LAWYER REGULATION SYSTEM 18, August 2006[1] has been observant of a number of concerns about the discipline system operated by WSBA 1933. Here are some quotations. Appendix 167.

a. ". . . ., the Standing Committee on Professional Discipline's 1993 Report focused on the importance of distancing the discipline system from the Washington State Bar Association."

b. "The current consultation team's interviews and research led it to believe that the ability of Disciplinary Counsel's Office and the adjudicative part of the system to function with requisite independence is still at risk due to the manner in which the system operates and is controlled."

c. "Optimally, the disciplinary agency should not be housed within the Washington State Bar Association."

d. "However, when elected bar officials control all or parts of the disciplinary process, the appearance of impropriety or conflicts of interest is created, regardless of the actual fairness of the system."

e. "This alleviates the risk of any public misperception that the agency is overly protective of lawyers and gives proper credit to the Court for the efforts of its agency."

f. "While some disciplinary agencies remain under the purview of the state bar association in unified bar states, the majority are physically separate and governed more directly by the highest court of appellate jurisdiction. Examples of unified bar states where the disciplinary function is more separate from the other bar functions for the Court to consider include Wisconsin, the District of Columbia, Michigan, Missouri, New Mexico, Montana, South Carolina and North Dakota."

[1] http://www.wsba.org/~/media/Files/Legal%20Community/Committees_Boards_-Panels-/ELC%20Task%20Force/ABA%20Discipline%20Report.ashx (2017/02/13).

Location of the Discipline System Offices

9. The WSBA Washington Lawyer Discipline System is located within the offices of the WSBA in downtown Seattle, Washington.

10. The reception areas and main hearing rooms for discipline hearings and WSBA Disciplinary Board hearings are just off the reception area of the WSBA.

11. The major hearing room for discipline cases is a conference room within the offices of the Bar Association very near the reception desk and the reception area.

12. One must doubt whether there is truly a separation between the discipline system and the Bar Association in that it appears people using the space of the Bar Association all enter and exit from the same area.

People Populate the WSBA 1933 Discipline System

Persons Appointed to WSBA Discipline System Positions

13. The WSBA controls the selection of people who are selected to the various positions in the Washington Lawyer Discipline System. See the spreadsheet below:

Person or Group	Authority to Appoint	
Board of Governors (BOG)	WSBA Members	
Executive Director	BOG	
Disciplinary Selection Panel	Recommendation of the Board of Governors	The Panel is appointed by the Supreme Court, upon the recommendation of the Board of Governors, shall include a Board of Governors member who serves as its chair, and should include, without limitation, one or more former Chairs of the Disciplinary Board, one or more current or former hearing officers, and one or more former nonlawyer members of the Disciplinary Board.
Chief Disciplinary Counsel ELC 2.8 (b)	Executive Director	"under the direction of the Board of Governors"
Disciplinary Counsel	Executive Director	in consultation with the Chief Disciplinary Counsel, selects and employs suitable members of the association as disciplinary counsel, in a number to be determined by the executive director. Special disciplinary counsel may be appointed by the Executive Director whenever necessary to conduct an individual investigation or proceeding
Special Disciplinary Counsel	Executive Director	

Person or Group	Authority to Appoint	
Chief Hearing Officer ELC 2.5 (e)(1)	Recommendation of the Board of Governors	The Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel appoints a chief hearing officer for a renewable term of two years.
Hearing Officers ELC 2.5	Recommendation of the Board of Governors	The Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, appoints hearing officers to the hearing officer list. The list should include as many lawyers as necessary to carry out the provisions of these rules effectively and efficiently.
Disciplinary Board ELC	Recommendation of the Board of Governors	appointed by the Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel. (2) Qualifications. A lawyer Board member must be an Active member
Review Committees	Chair of Disciplinary Board	The Chair appoints three or more review committees of three members each from among the Board members. Each review committee consists of two lawyers and one nonlawyer. The Chair may reassign members among the several committees on an interim or permanent basis. The Chair does not serve on a review committee.

14. **WSBA Executive Director.** The executive to director of the Bar Association is an at-will employee of the Bar Association hired by the Bar Association Board of Governors.

15. It is interesting to note that the bylaws amended provide that the Board of Governors' decision to terminate the executive director is subject to veto by the Supreme Court if it is determined that the executive director was terminated because she failed to essentially follow the will of the Supreme Court. WSBA 2017 Bylaw IV. B. 7. (b).

Discrete Aspects (Some), Due Process Concerns

16. **Grievance Process.** The grievance process of the system is unfair and replete with due process infirmities and concerns:

a. A lawyer is subjected to discipline based upon the filing of a grievance by someone or by filing a grievance by the Bar Association based upon information the Bar Association received from someone acting anonymously.

b. Invariably, the grievance is against a single or small firm lawyer.

c. Invariably, the grievance is from a client or an opposing lawyer who has a bone to pick with the lawyer who practices family law, criminal law, tort law, and the like. Never, does one observe that the WSBA 1933 has pursued any lawyer other than a non-elite lawyer, primarily one who practices outside of the Seattle – King County metropolitan area.

d. If it turns out that the matter contained in the grievance in no way indicated or would lead one to think that the lawyer who has been grieved against has done something wrong, the Bar Association still considers itself free to parse the information which was received in response to the

grievance from the lawyer and to develop from that charges against the lawyer for violation of a rule of conduct.

e. Another interesting aspect of the grievance procedure is that very often what is contained in the grievance is a single act. Yet, WSBA counsel will utilize a discrete single course of conduct so as to turn it into a violation of multiple rules of professional conduct. Of course, there are two aspects of this: It creates a milieu or gestalt which influences others into thinking of the lawyer as a terribly bad person because obviously nobody would violate the rules of professional conduct so much. Another aspect is that bar counsel uses this overcharging as a way of further insuring her success in prosecuting a lawyer.

17. **Ad hominem Nature of ODC Counsel Efforts**. The danger of this is even more telling in that discipline proceedings seem to involve attempts by the office of disciplinary counsel to paint the respondent lawyer in a bad light so as to influence the hearing officer. One sees this when a respondent lawyer might bring two or three motions during the course of the disciplinary proceedings and the hearing officer uses this fact to emphasize that there is something wrong about a respondent lawyer who would do this.

One must wonder whether this is done by design by disciplinary counsel. Obviously, disciplinary counsel, as a prosecutor, by virtue of the fact the disciplinary counsel is a prosecutor, is going to want to prevail in the proceeding based upon anything that might be useful to that end. It is certainly

useful to be able to assert to the hearing officer, and later the disciplinary board and Supreme Court that the respondent lawyer is not cooperative or is acting in a non-cooperative manner. The utter danger of this is found in Justice Jerry Alexander's dissent in the disbarment of Seattle attorney John Scannell a few years ago. Justice Alexander essentially points out that Mr. Scannell, throughout the process was a tough opponent and that he had not breached any rule and that in effect, he was being disbarred because he was "irksome." *In re Disciplinary Proceeding Against Scannell*, 239 P. 3d 332 (2010), J. Alexander dissenting ("The complaint against Scannell, when it is reduced to its essence, appears to be that he was too persistent a presence, asserting multiple objections to the proceedings against him and arguing for delays and rescheduling. I have no doubt that this conduct was irksome and caused the bar to view Scannell, in plain terms, as "a pain in the neck.")

18. **System Standard of Proof.** The standard of proof in a disciplinary hearing is "clear preponderance of the evidence." ELC 10.4 (b), Yet, the Standard of Proof in the Application of the ABA Standards for imposing sanctions is "clear and convincing." Appendix at 173. The standards state that the discipline decisions are to be based upon evidence which is clear and convincing. This obvious disparity between the standard of evidence used to convict, so to speak, a respondent lawyer is of lower quality than the quality of evidence to be used to make determinations as to the lawyers sanctions.

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Signed at Spokane, Washington on March 1, 2017.

s/ Stephen Kerr Eugster

Stephen Kerr Eugster

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court Western District of Washington trial court CM/ECF system on February 28, 2017. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the trial court CM/ECF system.

I further certify that on February 28, 2017, by previous agreement of counsel, I emailed, the foregoing document, including its appendix to counsel listed below at their respective e-mail addresses:

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March1, 2017

s/ Stephen Kerr Eugster

Stephen Kerr Eugster

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APPENDIX

Table of Contents

	STANDARDS FOR IMPOSING LAWYER SANCTIONS AS APPROVED, FEBRUARY 1986 AND AS AMENDED, FEBRUARY 1992 http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/sanction_standards.authcheckdam.pdf	171

Rules for Enforcement of Lawyer Conduct (ELC)

Table of Rules

ELC 1.1
SCOPE OF RULES

These rules govern the procedure by which a lawyer may be subjected to disciplinary sanctions or actions for violation of the Rules of Professional Conduct adopted by the Washington Supreme Court.

[Adopted effective January 1, 2014.]

ELC 1.2
DISCIPLINARY AUTHORITY

Except as provided in RPC 8.5(c), any lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction and these Rules for Enforcement of Lawyer Conduct, regardless of where the lawyer's conduct occurs. A lawyer not admitted to practice in this jurisdiction is also subject to the disciplinary authority of this jurisdiction and these rules if the lawyer provides or offers to provide any legal services in this jurisdiction. Disciplinary authority exists regardless of the lawyer's residency or authority to practice law in this state. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

[Adopted effective January 1, 2014.]

ELC 1.3
DEFINITIONS

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

(a) "Association" means the Washington State Bar Association.

(b) "Association Counsel" means counsel for the Association other than disciplinary counsel.

(c) "Bar file" means the pleadings, motions, rulings, decisions, and other formal papers filed in a proceeding.

(d) "Board" when used alone means the Disciplinary Board.

(e) "Chair" when used alone means the Chair of the Disciplinary Board.

(f) "Clerk" when used alone means the Clerk to the Disciplinary Board.

(g) "Disciplinary action" means sanctions under rule 13.1 and admonitions under rule 13.5.

(h) "Final" means no review has been sought in a timely fashion or all appeals have been concluded.

(i) "Grievant" means the person or entity who files a grievance, except for a confidential source under rule 5.2.

(j) "Hearing officer" means the person assigned under rule 10.2(a).

(k) "Mental or physical incapacity" includes, but is not limited to, insanity, mental illness, senility, or debilitating use of alcohol or drugs.

(l) "Party" means disciplinary counsel or respondent, except in rules 2.3(h) and 2.6(d) "party" also includes a grievant.

(m) "Respondent" means a lawyer against whom a grievance is filed or a lawyer investigated by disciplinary counsel.

(n) "APR" means the Admission and Practice Rules.

(o) "CR" means the Superior Court Civil Rules.

(p) "RAP" means the Rules of Appellate Procedure.

(q) "RPC" means the Rules of Professional Conduct adopted by the Washington Supreme Court.

(r) Words of authority.

(1) "May" means "has discretion to," "has a right to," or "is permitted to".

(2) "Must" means "is required to".

(3) "Should" means recommended but not required, except:

(A) in rules 2.3(h) and 2.6, "should" has the meaning ascribed to it in the Code of Judicial Conduct; and

(B) in title 12, "should" has the meaning ascribed to it in the Rules of Appellate Procedure.

[Adopted effective October 1, 2002; amended effective January 1, 2014; January 1, 2015.]

ELC 1.4
NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.

[Adopted effective January 1, 2014.]

ELC 1.5
VIOLATION OF DUTIES IMPOSED BY THESE RULES

A lawyer violates RPC 8.4(l) and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

* respond to inquiries or requests about matters under investigation, rule 5.3(f) and (g);
* file an answer to a formal complaint or to an amendment to a formal complaint, rule 10.5;
* cooperate with discovery and comply with hearing orders, rules 10.11(h) and 5.5;
* attend a hearing and bring materials requested by disciplinary counsel, rule 10.13(b) and (c);
* respond to subpoenas and comply with orders enforcing subpoenas, rule 10.13(e);
* notify clients and others of inability to act, rule 14.1;
* discontinue practice, rule 14.2;
* file an affidavit of compliance, rule 14.3;
* maintain confidentiality, rule 3.2(f);
* report being disciplined or transferred to disability inactive status in another jurisdiction, rule 9.2(a);
* cooperate with an examination of books and records, rule 15.2;
* notify the Office of Disciplinary Counsel of a trust account overdraft, rule 15.4(d);

* comply with conditions of probation, rule 13.8;
* comply with conditions of a stipulation, rule 9.1;
* pay restitution, rule 13.7; or
* pay costs, rule 5.3(h) or 13.9.

[Adopted effective January 1, 2014.]

ELC 2.1
SUPREME COURT

The Washington Supreme Court has exclusive responsibility in the state to administer the lawyer discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability. Persons carrying out the functions set forth in these rules act under the Supreme Court's authority.

[Adopted effective January 1, 2014.]

ELC 2.2
BOARD OF GOVERNORS; DISCIPLINARY SELECTION PANEL

(a) Function. The Board of Governors of the Association:

(1) through the Executive Director, provides administrative and managerial support to enable the Office of Disciplinary Counsel, the Disciplinary Board, review committees, and other Association staff and appointees to perform the functions specified by these rules;

(2) makes appointments, removes those appointed, and fills vacancies as provided in these rules; and

(3) performs other functions and takes other actions provided in these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Limitation of Authority. The Board of Governors, officers of the Association, and the Executive Director of the Association have no right or responsibility to direct the investigations, prosecutions, appeals or discretionary decisions of the Office of Disciplinary Counsel under these rules, or to review hearing officer, review committee, or Disciplinary Board decisions or recommendations in specific cases.

(c) Restrictions on Discipline-System Appointments. After leaving office, Association officers and Executive Director and Board of Governors members cannot serve as hearing officers, Disciplinary Board members, or Conflicts Review Officers until three years have expired after departure from office.

(d) Restriction on Advising or Representing Respondents or Grievants. Current and former members of the Board of Governors, Executive Directors, and officers of the Association are subject to the restrictions set forth in rule 2.14.

(e) Disciplinary Selection Pane. The Disciplinary Selection Panel makes recommendations to the Board of Governors for appointment, reappointment, and removal of Disciplinary Board members, hearing officers, chief hearing officer, and Conflicts Review Officers. The Panel is appointed by the Supreme Court, upon the recommendation of the Board of Governors, shall include a Board of Governors member who serves as its chair, and should include, without limitation, one or more former Chairs of the Disciplinary Board, one or more current or former hearing officers, and one or more former nonlawyer members of the Disciplinary Board.

(f) Diversity. The Disciplinary Selection Panel and the Board of Governors considers diversity in gender, ethnicity, disability status, sexual orientation, geography, area of practice, and practice experience, when making appointments under Rules 2.2, 2.3, 2.5 2.7 and 2.9.

[Adopted effective October 1, 2002; amended effective January 1, 2014; September 1, 2015.]

ELC 2.3
DISCIPLINARY BOARD

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

(b) Membership.

(1) Composition. The Board consists of not fewer than four nonlawyer members, appointed by the Court,

and not fewer than ten lawyers, appointed by the Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel.

(2) Qualifications. A lawyer Board member must be an Active member of the Association, have been an Active or Judicial member of the Association for at least five years, and have no record of public discipline.

(3) Voting. Each member, including the Chair and the Vice Chair, whether nonlawyer or lawyer, has one vote. Recused members may not attend or participate in the Board's deliberations on a matter. Board staff may attend Board deliberations, to serve as a resource.

(4) Quorum. A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least seven members vote.

(5) Leave of Absence While Grievance Is Pending. If a grievance is filed against a lawyer member of the Board, the following procedures apply:

(A) The member initially decides whether to remain on the Board or take a leave of absence until the matter is resolved.

(B) If the member chooses to remain on the Board, the Conflicts Review Officer who is conducting the review of the grievance under rule 2.7 must promptly provide a confidential summary of the grievance to a different Conflicts Review Officer who is not conducting the review. A copy of the summary is provided to the member at the same time.

(C) The Conflicts Review Officer who is not conducting the review of the grievance should then, or at any time thereafter as deemed appropriate, determine if the member is so impaired from serving on the Disciplinary Board that the member should take, or continue to take, a leave of absence to protect the integrity of the discipline system. In making this determination, the Conflicts Review Officer should consider, among other things, the facts, circumstances, and nature of the misconduct alleged, the possible outcome, and the extent of public concern regarding the matter.

(D) The Conflict Review Officer's determination is confidential. All materials used in connection with such a determination are confidential unless released under rule 3.4(d) or (e).

(c) Terms of Office. The term of office for a Board member is three years. Newly created Board positions may be filled by appointments of less than three years, as designated by the Court, to permit as equal a number of positions as possible to be filled each year. Terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members continue to serve until replaced, except a member's term of office ends immediately if a disciplinary sanction is imposed.

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

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

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

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

(h) Disqualification.

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

(A) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

(B) the member previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the member practices law serves or has previously served as a lawyer concerning the matter, or such lawyer is or has been a material witness concerning the matter;

(C) the member knows that, individually or as a fiduciary, the member or the member's spouse or relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under section (i);

(D) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:

(i) is a party to the matter, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the matter;

(iii) is to the member's knowledge likely to be a material witness in the matter;

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

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

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

(k) Restriction on Representing or Advising Respondents or Grievants. Current and former members of the Disciplinary Board are subject to the restrictions on representing respondents in rule 2.14.

[Adopted effective January 1, 2014.]

ELC 2.4
REVIEW COMMITTEES

(a) Function. A review committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.

(b) Membership. The Chair appoints three or more review committees of three members each from among the Board members. Each review committee consists of two lawyers and one nonlawyer. The Chair may reassign members among the several committees on an interim or permanent basis. The Chair does not serve on a review committee.

(c) Review Committee Chair. The Chair of the Disciplinary Board designates one member of each review committee to act as its chair.

(d) Terms of Office. A review committee member serves as long as the member is on the Board.

(e) Distribution of Cases. The Clerk assigns matters to the several review committees under the Chair's direction, equalizing the committee's caseloads as possible.

(f) Meetings. A review committee meets at times and places determined by the review committee chair, under the general direction of the Chair of the Disciplinary Board. In the review committee chair's discretion, the committee may meet and act through electronic, telephonic, written, or other means of communication. A majority of a review committee constitutes a quorum. A review committee can only act upon at least two affirmative votes.

(g) Adjunct Review Committee Members. Notwithstanding other provisions of these rules, if deemed necessary to the efficient operation of the discipline system, the Board may authorize the Chair to appoint former Board members as adjunct review committee members for a period deemed necessary by the Chair, but those appointments terminate at the end of the term of the Chair making the appointment. The Chair may remove adjunct review committee members when deemed appropriate. The Chair may appoint adjunct review committee members to existing review committees or may create adjunct review committees. An adjunct member has the same authority as a regular review committee member and must comply with rule 2.3(b)(5) but is not otherwise a Board member.

[Adopted effective January 1, 2014.]

ELC 2.5
HEARING OFFICERS

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

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

(c) Appointment. The Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, appoints hearing officers to the hearing officer list. The list should include as many lawyers as necessary to carry out the provisions of these rules effectively and efficiently.

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

(e) Chief Hearing Officer.

(1) Appointment.

The Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel appoints a chief hearing officer for a renewable term of two years. The person appointed as chief hearing officer must meet the qualifications for hearing officers set forth in paragraph (b) above, have significant experience in the adjudication of contested matters, and have substantial administrative and managerial skills. If the chief hearing officer position is vacant or the chief hearing officer has recused or been disqualified from a particular matter, the Chair may, as necessary, perform the duties of chief hearing officer.

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

(A) hears matters,

(B) assigns cases,

(C) monitors and evaluates hearing officer performance,

(D) hears motions for hearing officer disqualification,

(E) hears prehearing motions when no hearing officer has been assigned,

(F) hears motions for protective orders under rule 3.2(e)

(G) hears motions prior to a matter being ordered to hearing, including while a grievance is being investigated,

(H) hears requests for amendment or formal complaints under rule 10.7(b),

(I) approves stipulations to discipline not involving suspension or disbarment as provided by rule 9.1(d)(2),

(J) responds to hearing officer requests for information or advice related to their duties,

(K) supervises hearing officer training in accordance with established policies, and,

(L) performs other duties as the chief hearing officer deems necessary for an efficient and effective hearing system.

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

(g) Training. Hearing officers must comply with training requirements established by the chief hearing officer.

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

[Adopted effective January 1, 2014.]

ELC 2.6
HEARING OFFICER CONDUCT

(a) Integrity of Hearing Officer System. The integrity and fairness of the disciplinary system requires that hearing officers observe high standards of conduct. The Code of Judicial Conduct is useful guidance for hearing officers. The following rules have been adapted from the Code of Judicial Conduct and the words "should" and "shall" have the meanings ascribed to them in those rules.

(b) Hearing Officer's Duty To Avoid Impropriety and the Appearance of Impropriety. Hearing officers should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Hearing officers should not allow family, social, or other relationships to influence their conduct or judgment. Hearing officers should not lend the prestige of the hearing officer position to advance the private interests of the hearing officer or others; nor should hearing officers convey or permit others to convey the impression that they are in a special position to influence them. Hearing officers should not be members of any organization practicing discrimination prohibited by law.

(c) Conduct of Those on Hearing Officer List. A person on the hearing officer list should not:

(1) testify voluntarily as a character witness in a disciplinary proceeding;

(2) serve as an expert witness related to the professional conduct of lawyers in any proceeding; or

(3) serve as special disciplinary counsel, adjunct investigative counsel, or respondent's counsel.

(d) Performing Duties Impartially and Diligently. When acting as a hearing officer, the following standards apply:

(1) Adjudicative Responsibilities.

(A) Hearing officers should be faithful to the law and maintain professional competence in it. Hearing officers should be unswayed by partisan interests, public clamor, or fear of criticism.

(B) Hearing officers should maintain order and decorum in proceedings before them.

(C) Hearing officers should be patient, dignified, and courteous to parties, witnesses, lawyers, and others with whom hearing officers deal in their official capacity, and should require similar

conduct of lawyers, and of the staff, and others subject to their direction and control.

(D) Hearing officers should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Hearing officers, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

(E) Hearing officers shall perform their duties without bias or prejudice.

(F) Hearing officers should dispose promptly of assigned matters.

(G) Hearing officers shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. The hearing officer shall require similar abstention on the part of personnel subject to the hearing officer's direction and control. This section does not prohibit hearing officers from making public statements in the course of their official duties or from explaining for public information the procedures of the discipline system.

(2) Administrative Responsibilities.

(A) Hearing officers should diligently discharge their administrative responsibilities.

(B) Hearing officers should require their staff and others subject to their direction and control to observe the standards of fidelity and diligence that apply to them.

(3) Disciplinary Responsibilities.

(A) Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules should take appropriate action. Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules that raises a substantial question as to the other hearing officer's fitness for office should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(B) Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of Lawyer Conduct should take appropriate action. Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of Lawyer Conduct that raises a substantial question as to the lawyer's fitness as a lawyer should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(4) Disqualification.

(A) Hearing officers should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(i) the hearing officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the hearing officer previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the hearing officer previously practiced law served during such association as a lawyer concerning the matter, or such lawyer has been a material witness concerning it;

(iii) the hearing officer knows that, individually or as a fiduciary, the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or is an officer, director or trustee of a party or has any other interest that could be substantially affected by the outcome of the proceeding, unless there is a remittal of disqualification;

(iv) the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director, or trustee of a party;

(b) is acting as a lawyer in the proceeding;

(c) is to the hearing officer's knowledge likely to be a material witness in the proceeding.

(B) Hearing officers should inform themselves about their personal and fiduciary economic interests, and make a reasonable effort to inform themselves about the personal economic interests of their spouse and minor children residing in their household.

(5) Remittal of Disqualification. A hearing officer disqualified by the terms of subsections (d)(4)(A)(iii) or (iv) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the hearing officer's participation, all agree in writing or on the record that the hearing officer's relationship is immaterial or that the hearing officer's economic interest is de minimis, the hearing officer is no longer disqualified and may participate in the proceeding. When a party is not immediately available, the hearing officer may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

(e) Restriction on Advising or Representing Respondents or Grievants. Appointees to the hearing officer list are subject to the restrictions set forth in rule 2.14.

[Adopted effective January 1, 2014.]

ELC 2.7
CONFLICTS REVIEW OFFICER

(a) Function. Conflicts Review Officers review grievances filed against disciplinary counsel and other lawyers employed by the Association, hearing officers, conflicts review officers and conflicts review officers pro tempore, members of the Disciplinary Board, officers and members of the Board of Governors, and staff, attorneys, and judicial officers of the Supreme Court. Conflicts Review Officers also review grievances filed against persons who have been assigned cases as adjunct disciplinary or special disciplinary counsel, or appointed in disability matters pursuant to ELC 8.2(c)(2), at the time the grievance is filed. A Conflicts Review Officer performs other functions as set forth in these rules.

(1) Authority. The Conflicts Review Officer's duties are limited to performing the initial review of grievances covered by this Rule. A Conflicts Review Officer may, under rule 5.3(b), obtain the respondent lawyer's response to the grievance, if he/she feels it necessary to do so, in his/her sole discretion. A Conflicts Review Officer may dismiss the grievance under rule 5.6(a), defer the investigation under rule 5.3(d), or assign the grievance to special disciplinary counsel for investigation under rules 2.8(b) and 5.3. If a grievant requests review of a dismissal under rule 5.7(b), the Conflicts Review Officer may either reopen the matter for investigation or refer it to a review committee under that rule.

(2) Independence. Conflicts Review Officers act independently of disciplinary counsel and the Association.

(b) Appointment and Qualifications.

(1) The Supreme Court, on the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, shall appoint three active members of the Association as Conflicts Review Officers. Each Conflicts Review Officer is appointed for a three-year term on a staggered basis, and may be recommended for reappointment at the discretion of the Board of Governors. Applications shall be solicited from those eligible to serve, and submitted to the Board of Governors, in such manner as the Association deems most appropriate under the policies and procedures then in effect for recruitment and appointment of volunteers in the discipline system.

(2) When no Conflicts Review Officer is available to handle a matter due to conflict of interest or other good cause, the Supreme Court, on the recommendation of the Board of Governors, shall appoint a Conflicts Review Officer pro tempore for the matter.

(3) To be eligible for appointment as Conflicts Review Officer or Conflicts Review Officer pro tempore, a lawyer must have prior experience as a Disciplinary Board member, disciplinary counsel, or special disciplinary counsel. Conflicts Review Officers and Conflicts Review Officers pro tempore may have no other active role in the discipline system during the term of appointment.

(c) Counsel and Clerk; Assignment of Cases. The Association shall assign matters to the Conflicts Review Officers in such a manner as to balance their caseloads insofar as it is practicable to do so. The Executive Director of the Association may appoint a suitable person or persons to act as counsel and clerk to the Conflicts Review Officers, to assist them in carrying out their functions under these rules.

(d) Access to Disciplinary Information. Conflicts Review Officers and Conflicts Review Officers pro tempore have access to any otherwise confidential disciplinary information necessary to perform the duties required by these rules. Conflicts Review Officers and Conflicts Review Officers pro tempore shall return original files to the Association promptly upon completion of the duties required by these rules and shall not retain copies.

(e) Compensation and Expenses. The Association reimburses Conflicts Review Officers and Conflicts Review Officers pro tempore for all necessary and reasonable expenses, and may provide compensation at a level established by the Board of Governors.

(f) Restriction on Representing or Advising Respondents or Grievants. Current Conflicts Review Officers are subject to the restrictions set forth in rule 2.14. Members serving as Conflicts Review Officer pro tempore are subject to the same restriction while serving in that capacity.

[Adopted effective October 1, 2002; amended effective January 12, 2010; January 1, 2014; January 1, 2015.]

ELC 2.8
DISCIPLINARY COUNSEL; SPECIAL DISCIPLINARY COUNSEL

(a) Function. Disciplinary counsel acts as counsel on all matters under these rules, and performs other duties as required by these rules or the Chief Disciplinary Counsel.

(b) Appointment. The Executive Director of the Association, under the direction of the Board of Governors, employs a suitable member of the Association as Chief Disciplinary Counsel, and in consultation with the Chief Disciplinary Counsel, selects and employs suitable members of the association as disciplinary counsel, in a number to be determined by the executive director. Special disciplinary counsel may be appointed by the Executive Director whenever necessary to conduct an individual investigation or proceeding.

[Adopted effective January 1, 2014.]

ELC 2.9
ADJUNCT DISCIPLINARY COUNSEL

(a) Function. Adjunct disciplinary counsel performs the functions set forth in these rules as directed by disciplinary counsel.

(b) Appointment and Term of Office. The Board of Governors, upon the recommendation of the Chief Disciplinary Counsel, appoints adjunct disciplinary counsel from among the active members of the Association, who have been active or judicial Association members for at least seven years and have no record of disciplinary action as defined in these rules. Each adjunct disciplinary counsel is appointed for a five year term on a staggered basis and may be reappointed.

(c) Restriction on Representation. Adjunct disciplinary counsel are subject to the restrictions of rule 2.14.

[Adopted effective January 1, 2014.]

ELC 2.10
REMOVAL OF APPOINTEES

The power granted by these rules to any person, committee, or board to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform his or her duties, or for any other cause, and to fill the resulting vacancy.

[Adopted effective January 1, 2014.]

ELC 2.11
COMPENSATION AND EXPENSES

(a) Compensation. The Association compensates the chief hearing officer to the extent authorized by the Board of Governors. The Association may compensate hearing officers and special disciplinary counsel to the extent authorized by the Board of Governors. Board members and adjunct disciplinary counsel receive no compensation for their services.

(b) Expenses. The Association pays expenses incurred by hearing officers, special disciplinary counsel, the chief hearing officer, Board members, and adjunct disciplinary counsel in connection with their duties, subject to any limitation established by resolution of the Board of Governors.

(c) Special Appointments. The Association pays the fees for counsel appointed under rules 7.7, 8.2(c)(2), or 8.3(d)(3) and costs or expenses reasonably incurred by these counsel.

[Adopted effective January 1, 2014.]

ELC 2.12
COMMUNICATIONS TO THE ASSOCIATION PRIVILEGED

Communications to the Association, Board of Governors, Disciplinary Board, review committee, hearing officer, disciplinary counsel, adjunct disciplinary counsel, Association staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness, or other person providing information.

[Adopted effective October 1, 2002; amended effective January 2, 2008; January 1, 2014; January 1, 2015.]

ELC 2.13
RESPONDENT LAWYER

(a) Right to Representation. A lawyer may be represented by counsel during any stage of an investigation or proceeding under these rules.

(b) Restriction on Charging Fee To Respond to Grievance. A respondent lawyer may not seek to charge a grievant a fee or recover costs from a grievant for responding to a grievance unless otherwise permitted by these rules.

(c) Medical and Psychological Records. A respondent must furnish written releases or authorizations to permit disciplinary counsel access to medical, psychiatric, or psychological records as may be relevant to the investigation or proceeding, subject to a motion to the chief hearing officer, or the hearing officer if one has been appointed, to limit the scope of the requested releases or authorizations for good cause shown.

[Adopted effective January 1, 2014.]

ELC 2.14
RESTRICTIONS ON REPRESENTING OR ADVISING RESPONDENTS OR GRIEVANTS

(a) Current Officeholders. Association officers and Executive Director, Board of Governors members, Disciplinary Board members, and hearing officers, while serving in that capacity, cannot knowingly advise or represent individuals regarding pending or likely disciplinary grievances or proceedings, other than advising a person of the availability of grievance procedures.

(b) Former Officeholders. After leaving office, Association officers and Executive Director, Board of Governors members, Disciplinary Board members, and hearing officers cannot represent individuals in pending disciplinary grievances or proceedings until three years have expired after departure from office.

(c) Other Volunteers. Conflicts Review Officers, Conflicts Review Officers pro tempore, adjunct disciplinary counsel, adjunct review committee members and members pro tempore of the Board are subject to the restrictions on advising and representing individuals set forth in this rule only while serving in that capacity.

(d) Appointed Disability Counsel. The prohibition in subsection (b) of this rule on representing individuals after leaving office does not prevent a lawyer from serving as appointed counsel under rule 8.3(d)(3).

[Adopted effective January 1, 2014.]

ELC 3.1
OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION

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

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

(1) the record before a review committee and the order of the review committee in any matter that a review committee has ordered to hearing or ordered an admonition be issued;

(2) the record upon distribution to a review committee or to the Supreme Court in proceedings based on a conviction of a felony, as defined in rule 7.1(a);

(3) the record upon distribution to a review committee or to the Supreme Court in proceedings under rule 7.2;

(4) a statement of concern to the extent provided under rule 3.4(f);

(5) the record and order upon approval of a stipulation for discipline imposing a sanction or admonition, and the order approving a stipulation to dismissal of a matter previously made public under these rules;

(6) the record before a hearing officer;

(7) the record and order before the Board in any matter reviewed under rule 10.9 or title 11;

(8) the bar file and any exhibits and any Board or review committee order in any matter ordered to public hearing, or that is deemed ordered to hearing under rule 13.5(a)(2), or any matter in which disciplinary action has been taken, or any proceeding under rules 7.1-7.6;

(9) in any disciplinary matter referred to the Supreme Court, the file, record, briefs, and argument in the case;

(10) a lawyer's resignation in lieu of discipline under rule 9.3;

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

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

the stipulation.

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

[Adopted effective October 1, 2002; amended effective January 1 2014; amended effective January 1, 2015.]

ELC 3.2
CONFIDENTIAL DISCIPLINARY INFORMATION

(a) Scope of Confidentiality. All disciplinary information that is not public information as defined in rule 3.1(b) is confidential, and is held by the Association under the authority of the Supreme Court, including but not limited to materials submitted to a review committee under rule 8.9 or information protected by rule 3.3(b), rule 5.4(b), rule 5.1(c)(3), a protective order under rule 3.2(e), rule 3.2(b), court order, or other applicable law (e.g., medical records, police reports, etc.).

(b) Restriction on Release of Client Information. Notwithstanding any other provision of this title, no information identified to the Association by a respondent as privileged or confidential client information under rule 5.4 may be released under rule 3.4(c)-(i) unless the client consents, including implied consent under rule 5.1(b).

(c) Investigative Confidentiality. During the course of an investigation or proceeding, the Chief Disciplinary Counsel may direct that otherwise public information be kept confidential if necessary to further the purposes of the investigation. At the conclusion of the proceeding, those materials become public information unless subject to a protective order.

(d) Discipline Under Prior Rules. Discipline imposed under prior rules of this state that was confidential when imposed remains confidential. A record of confidential discipline may be kept confidential during proceedings under these rules, or in connection with a stipulation under rule 9.1, through a protective order under section (e).

(e) Protective Orders.

(1) Authorization. To protect a compelling interest of a grievant, witness, third party, respondent lawyer, the Association, or other participant in any matter under these rules, on motion and for good cause shown, a protective order may be entered prohibiting any participant in the disciplinary process from disclosing or releasing specific information, documents, or pleadings obtained in the course of any matter under these rules, and direct that the proceedings be conducted so as to implement the order.

(2) Pending Relief. Upon filing a motion for a protective order any participant in the disciplinary matter may move for a temporary protective order prohibiting any participant in the disciplinary matter who has actual notice of the motion for temporary protective order from taking any action which would violate the requested protective order if granted. A motion for temporary protective order may only be granted upon notice and an opportunity to be heard to all affected participants in the matter unless the participant seeking the order emonstrates that immediate and irreparable harm will result to the applicant before the affected participants can be heard in opposition and the participant seeking the order certifies the efforts, if any, which have been made to give notice and the reasons supporting the claim that notice should not be required. Any temporary protective order granted without notice must set forth the irreparable harm warranting issuance of the order without notice. Any temporary protective order expires upon the filing of a decision regarding the requested protective order, or thirty days following issuance of the temporary protective order, whichever is sooner. Upon two day's notice to the party who obtained a temporary protective order, any participant in the matter may move for the dissolution or modification of a temporary protective order, which motion must be heard as expeditiously as the ends of justice require.

(3) Entry. A protective order under this rule may be entered by the following:

(A) A hearing officer when a matter is pending before that hearing officer;

(B) The Chair when a matter is pending before the Board;

(C) The chair of a review committee when the matter is pending before a review committee; or

(D) The chief hearing officer when not otherwise authorized above.

(4) Service. The Clerk serves copies of decisions and protective orders entered under this rule on all affected participants in the disciplinary process

(5) Review. The Board reviews decisions granting or denying a protective order if any party subject to the decision seeks relief from the decision by requesting a review within five days of service of the decision. The Clerk serves a copy of the request for review on all parties to the disciplinary matter. The Board considers the review under such procedure as it determines, but must allow comment from any person or party affected by the decision under review. Any participant in the disciplinary matter who has actual notice of the request for review is prohibited from taking any action which would violate the relief requested by the party seeking review if granted. On review, the Board may affirm, reverse, or modify the protective order. The Board's decision is not subject to further review.

(6) Relief from Protective Order. Any person may apply to the authority that issued a protective order for specific relief from the order upon good cause shown, provided that notice and an opportunity to respond to the requested relief must be afforded any person affected by the order.

(f) Wrongful Disclosure or Release. Disclosure or release of information made confidential by these rules, except as permitted by rule 3.4(a) or otherwise by these rules, may subject a person to an action for contempt of the Supreme Court. If the person is a lawyer, wrongful disclosure or release may also be grounds for discipline.

[Adopted effective October 1, 2002; amended effective January 1, 2014; January 1, 2015.]

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

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

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

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

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

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

(d) Diversion Contracts. Except as provided by rule 6.6, diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, despite rule 3.1(b)(1). However, a lawyer may authorize release of a diversion contract or supporting affidavit under rule 3.4(c). When a matter that has previously become public under rule 3.1(b) is diverted by a diversion contract, that contract and the supporting documents are confidential but the fact that the matter was diverted from discipline is public information and a notice of diversion will be placed in the public file. Upon the conclusion of the diversion, whether by successful completion of diversion and dismissal of the grievance, or by breach of the diversion contract, a notice of that result will be placed in the public file.

[Adopted effective October 1, 2002; amended effective January 1, 2014; January 1, 2015.]

ELC 3.4
RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

(a) Disclosure of Information. Except as prohibited by rule 3.2(e), court order, or other law, the grievant, respondent lawyer, or any witness may disclose any information in their possession regarding a disciplinary matter.

(b) Investigative Disclosure. The Association may disclose otherwise confidential information as necessary to conduct the investigation, recruit counsel, or to keep a grievant advised of the status of a matter except as prohibited by rule 5.4(b) or 5.1(c)(3), a protective order under rule 3.2(e), other court order, or other applicable law.

(c) Release Based upon Lawyer's Waiver. Upon a written waiver by a lawyer, except as prohibited by rule 3.2(e), the Association may release the status of otherwise confidential disciplinary or disability proceedings and provide otherwise confidential information to any person or entity authorized by the lawyer to receive the information.

(d) Response to Inquiry or False or Misleading Statement.

(1) Except as prohibited by rule 3.2(e), the Executive Director or Chief Disciplinary Counsel, or a designee of either of them, may release otherwise confidential information:

(A) to respond to specific inquiries about matters that are in the public domain; or

(B) if necessary to correct a false or misleading public statement.

(2) A respondent must be given notice of a decision to release information under this section unless the Executive Director or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public or compromise an ongoing investigation.

(3) A decision regarding release of information is final and is not subject to further review.

(e) Discretionary Release. The Executive Director or the Chief Disciplinary Counsel may authorize the general or limited release of any confidential information when it appears necessary to protect the interests of clients or other persons, the public, or the integrity of the disciplinary process, except as prohibited by rule 3.2(e). A respondent must be given notice of a decision to release information under this section before its release unless the Executive Director or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public, or that the delay caused by giving the respondent notice would be detrimental to the integrity of the disciplinary process. A decision regarding release of information is final and is not subject to further review.

(f) Statement of Concern.

(1) Authority. The Chief Disciplinary Counsel has discretion to file a statement of concern with the Clerk when deemed necessary to protect members of the public from a substantial threat, based on information from a pending investigation into a lawyer's apparent ongoing serious misconduct not otherwise made public by these rules. The statement may not disclose information protected by rule 3.2(e).

(2) Procedure.

(A) On or before the date it is filed, a copy of the statement of concern must be served under rule 4.1 on the lawyer about whom the statement of concern has been made. The statement of concern is not public information until 14 days after service.

(B) The lawyer may at any time appeal to the Chair to have the statement of concern withdrawn.

(C) If an appeal to the Chair is filed with the Clerk under rule 4.2(a) within 14 days of service of the statement of concern, the statement of concern is not public information unless the Chair so orders and becomes public information upon issuance of the Chair's order.

(D) The Chair's decision is not subject to further review.

(E) The Chief Disciplinary Counsel may withdraw a statement of concern at any time.

(g) Release to Judicial Officers. Any state or federal judicial officer may be advised of the status of a confidential disciplinary grievance about a lawyer appearing before the judicial officer in a representational capacity and, except as prohibited by rule 3.2(e), may be provided with requested confidential information if the grievance is relevant to the lawyer's conduct in a matter before that judicial officer. The judicial officer must maintain the confidentiality of the matter.

(h) Cooperation with Law Enforcement and Disciplinary Authorities. Except as prohibited by rule 3.2(e), information or testimony may be released to authorities in any jurisdiction authorized to investigate alleged criminal or unlawful activity, judicial or lawyer misconduct, or disability.

(i) Release to Lawyers' Fund for Client Protection. Information relating to applications pending before the Lawyers' Fund for Client Protection Board may, except as prohibited by rule 3.2(e), be released to the LFCP Board. The LFCP Board must treat such information as confidential unless this title or the Executive Director or the Chief Disciplinary Counsel authorizes release.

(j) 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.

(k) Chief Hearing Officer and Disciplinary Selection Panel. The chief hearing officer and the Disciplinary Selection Panel shall have access to any otherwise confidential disciplinary information necessary to perform their duties. The chief hearing officer shall be given notice when any grievance is filed against a hearing officer and of the disposition of that grievance. Confidential information provided under the terms of this rule shall not be further disseminated except as may be otherwise allowed under these rules.

(l) Release to Board of Governors or Officers. The Chief Disciplinary Counsel may authorize release of otherwise confidential information to the Board of Governors or officers of the Association as necessary to carry out their duties under these rules, except as prohibited by rule 3.2(e), but the Board of Governors or officers of the Association must maintain its confidentiality.

(m) Release to Practice of Law Board. Information obtained in an investigation relating to possible unauthorized practice of law may, except as prohibited by rule 3.2(e), be released to the Practice of Law Board. The Practice of Law Board must maintain the confidentiality of the information unless the Executive Director or the Chief Disciplinary Counsel authorizes release.

[Adopted effective January 1, 2014.]

ELC 3.5
NOTICE OF DISCIPLINARY ACTION, INTERIM SUSPENSION, OR TRANSFER TO DISABILITY INACTIVE STATUS

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

(1) a copy of any decision imposing a disciplinary sanction when that decision becomes final;

(2) a copy of any admonition, together with the order issuing the admonition, when the admonition is accepted or otherwise becomes final; and

(3) a copy of any transfer to disability inactive status; and

(4) a copy of any resignation in lieu of discipline.

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

(1) the lawyer discipline authority or highest court in any jurisdiction where the lawyer is believed to be admitted to practice;

(2) the chief judge of each federal district court in Washington State and the chief judge of the United States Court of Appeals for the Ninth Circuit; and

(3) the National Lawyer Regulatory Data Bank.

(c) Bar News Notice and Website Notice.

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

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

(3) Modification. A respondent lawyer who is the subject of a discipline notice may file a written request with Association counsel seeking modification of a discipline notice posted on the WSBA website. A notice may be modified only in the following circumstances:

(A) a criminal conviction, court judgment, or order relating directly to the disciplinary action imposed and referenced in the discipline notice has been subsequently expunged, vacated, or otherwise conclusively nullified;

(B) the expungement, vacation, or nullification occurred after the notice was published;

(C) there are no ongoing or pending proceedings relating to the conviction, judgment or order; and

(D) the fact of the expungement, vacation, or nullification is undisputed and can be conclusively established without an investigation.

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

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

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

[Adopted effective January 1, 2014.]

ELC 3.6
MAINTENANCE OF RECORDS

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

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

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

(d) Destruction of Random Examination Files. In any random examination matter concluded under rule 15.1 without a disciplinary grievance being ordered, the file materials relating to the matter may be destroyed three years after the matter was concluded, and must be destroyed at that time on the respondent lawyer's request unless the files are being used in an ongoing investigation or unless other good cause exists for retention. In any random examination matter that a review committee directs be made the subject of a disciplinary grievance, the materials related to the random examination will be made part of the disciplinary grievance. A docket, limited to the name of the lawyer and any law firm examined or re-examined under rule 15.1, together with the date the examination or re-examination was concluded, will be maintained for a period of seven years for the purpose of determining prior examinations under rule 15.1(b).

(e) Review. If disciplinary counsel opposes a request by a respondent for destruction of files under this rule, the Board rules on that request.

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

[Adopted effective October 1, 2002; amended effective January 1, 2014; December 8, 2015.]

ELC 4.1
SERVICE OF PAPERS

(a) Service Required. Every pleading, every paper relating to discovery, every written request or motion other than one which may be heard ex parte, and every similar paper or document issued by disciplinary counsel or the respondent lawyer under these rules must be served on the opposing party. If a hearing is pending and a hearing officer has been assigned, except for discovery, the party also must serve a copy on the hearing officer.

(b) Methods of Service.

(1) Service by Mail.

(A) Unless personal service is required or these rules specifically provide otherwise, service may be accomplished by postage prepaid mail. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.

(B) Service by mail may be by first class mail or by certified or registered mail, return receipt requested.

(C) The address for service by mail is as follows:

(i) for the respondent, or his or her attorney of record, the address in the answer, a notice of appearance, or any subsequent document filed by the respondent or his or her attorney; or, in the absence of an answer, the respondent's address on file with the Association;

(ii) for disciplinary counsel, at the address of the Association or other address that disciplinary counsel requests;

(iii) for a hearing officer assigned to a matter at the address of the hearing officer set forth on the notice of assignment of the hearing officer, or such other address as the hearing officer directs; and

(iv) for the chief hearing officer, the Chair, the Board, a review committee, Association counsel, or any other person or entity acting under the authority of these rules, addressed to that person or entity in care of the Clerk at the address of the Association.

(2) Service by Delivery. If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

(3) Personal Service. Personal service on a respondent is accomplished as follows:

(A) if the respondent is found in Washington State, by personal service in the manner required for personal service of a summons in a civil action in the superior court;

(B) if the respondent cannot be found in Washington State, service may be made either by:

(i) leaving a copy at the respondent's place of usual abode in Washington State with a person of suitable age and discretion then resident therein; or

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at his or her last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Association, or to the respondent's resident agent whose name and address are on file with the Association under APR 5(f).

(C) if the respondent is found outside of Washington State, then by the methods of service described in (A) or (B) above.

(c) Service Where Question of Mental Competence. If the Superior Court has appointed a guardian or guardian ad litem for a respondent, service under sections (a) and (b) above must also be made on the guardian or guardian ad litem.

(d) Proof of Service. If personal service is required, proof of service may be made by affidavit of service, sheriff's return of service, or a signed acknowledgment of service. In other cases, proof of service may also be made by certificate of a lawyer similar to that allowed by CR 5(b)(2)(B), which certificate must state the form of mail used. Proof of service in all cases must be filed but need not be served on the opposing party.

[Adopted effective January 1, 2014.]

ELC 4.2
FILING; ORDERS

(a) Filing Originals. Except in matters before the Supreme Court, the original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the Clerk. Filing may be made by first class mail and is deemed accomplished on the date of mailing. Filing of papers for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

(b) Filing and Service of Orders. Any written order, decision, or ruling, except an order of the Supreme Court or an informal ruling issued under rule 10.8(f), must be filed with the Clerk, and the Clerk serves it on the respondent lawyer and disciplinary counsel.

(c) Electronic Filing. Filing of documents with the Clerk under subsections (a) and (b) of this rule may be accomplished by e-mail or by facsimile, provided that a document so filed with the Clerk after 5:00 p.m. or on weekends or legal holidays shall be deemed to have been filed the next business day. A paper original of documents filed under this subsection (c) should thereafter be filed as well.

[Adopted effective January 1 2014.]

ELC 4.3
PAPERS

All pleadings or other papers must be typewritten or printed, double spaced, on good quality 81/2 by 11-inch paper. The use of letter-size copies of exhibits is encouraged if it does not impair legibility.

[Adopted effective January 1, 2014.]

ELC 4.4
COMPUTATION OF TIME

CR 6(a) and (e) govern the computation of time under these rules.

[Adopted effective January 1, 2014.]

ELC 4.5
STIPULATION TO EXTENSION OR REDUCTION OF TIME

Except for notices of appeal or matters pending before the Supreme Court, the respondent lawyer and disciplinary counsel may stipulate in any proceeding to extension or reduction of the time requirements.

[Adopted effective January 1, 2014.]

ELC 4.6
SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION

Disciplinary counsel, the chief hearing officer, or the Chair may issue a subpoena for use in lawyer discipline

or disability proceedings in another jurisdiction if the issuance of the subpoena has been authorized under the law of that jurisdiction and upon a showing of good cause. The subpoena may compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. These rules apply to service, enforcement, and challenges to subpoenas issued under this rule.

[Adopted effective January 1, 2014.]

ELC 4.7
ENFORCEMENT OF SUBPOENAS

(a) Authority. To enforce subpoenas issued under these rules, the Supreme Court delegates contempt authority to the Superior Courts as necessary for the Superior Courts to act under this rule.

(b) Procedure.

(1) If a person fails to obey a subpoena, or obeys the subpoena but refuses to testify or produce documents when requested, disciplinary counsel, the respondent lawyer or the person issuing the subpoena may petition the Superior Court of the county where the hearing is being conducted, where the subpoenaed person resides or is found, or where the subpoenaed documents are located, for enforcement of the subpoena. The petition must:

(A) be accompanied by a copy of the subpoena and proof of service;

(B) state the specific manner of the lack of compliance; and

(C) request an order compelling compliance.

(2) Upon the filing of the petition, the Superior Court enters an order directing the person to appear before it at a specified time and place to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the Superior Court's show cause order must be served on the person.

(3) At the show cause hearing, if it appears to the Superior Court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the Superior Court enters an order requiring the person to appear at a specified time and place and testify or produce the required documents. On failing to obey this order, the person is dealt with as for contempt of court.

[Adopted effective January 1, 2014.]

ELC 4.8
DECLARATIONS IN LIEU OF AFFIDAVITS

Whenever an affidavit is required by these rules, a declaration in the form authorized by GR 13 may be used.

[Adopted effective January 1, 2014.]

ELC 4.9
SERVICE AND FILING BY AN INMATE CONFINED IN AN INSTITUTION

Service and filing of papers under these rules by an inmate confined in an institution will conform to the requirements of GR 3.1.

[Adopted effective January 1, 2014.]

ELC 4.10
REDACTION OR OMISSION OF CONFIDENTIAL IDENTIFIERS

In all matters filed with a review committee, a hearing officer or the chief hearing officer, the clerk, the Board, or the Supreme Court, both disciplinary counsel and respondents must redact or omit from all exhibits, documents, and pleadings all personal identifiers as are required to be redacted or omitted by the General Rules

applicable to the Superior Court, including GR 15, 22, and 31. When it is not feasible to redact or omit a personal identifier, the filing party must seek a protective order under rule 3.2(e) to have the document filed under seal. This rule does not apply to a request for review of dismissal under rule 5.7(b) or a request for review of deferral under rule 5.3(d)(2).

[Adopted effective January 1, 2014; amended effective January 1, 2014.

ELC 5.1
GRIEVANTS

(a) Filing of Grievance. Any person or entity may file a grievance against a lawyer who is subject to the disciplinary authority of this jurisdiction.

(b) Consent to Disclosure.

(1) Subject to paragraph (2), by filing a grievance, the grievant consents to disclosure of all information submitted. This includes disclosure to the respondent lawyer or to any person under rules 3.1 - 3.4.

(2) Disclosure may be specifically restricted, such as:

(A) when a protective order is issued under rule 3.2(e); or

(B) when the grievance was filed under rule 5.2; or

(C) when necessary to protect a compelling privacy or safety interest of a grievant or other individual.

(3) By filing a grievance, the grievant also agrees that the respondent or any other lawyer contacted by the grievant may disclose to disciplinary counsel any information relevant to the investigation, unless a protective order is issued under rule 3.2(e).

(4) Consent to disclosure under this rule by submitting information to disciplinary counsel does not constitute a waiver of any privilege or restriction against disclosure in any other forum.

(c) Grievant Rights. A grievant has the following rights:

(1) to be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;

(2) to have a reasonable opportunity to communicate with the person assigned to the grievance, by telephone, in person, or in writing, about the substance of the grievance or its status;

(3) to receive a copy of any response submitted by the respondent, subject to the following:

(A) Withholding Response. Disciplinary counsel may withhold all or a portion of the response from the grievant when:

(i) the response refers to information protected by RPC 1.6 or RPC 1.9 to which the grievant is not privy; or

(ii) the response contains information of a personal and private nature about the respondent or others; or

(iii) the interests of justice would be better served by not releasing the response;

(B) Challenge to Disclosure Decision. Either the grievant or the respondent may file a challenge to disciplinary counsel's decision to withhold or not withhold all or a portion of a grievance or response within 20 days of the date of mailing of the decision. The challenge shall be resolved by a review committee, unless the matter has previously been dismissed under rule 5.6 or the time period for submitting a request for review of a dismissal has expired under rule 5.7(b)

(4) to attend any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e), except that if the grievant is also a witness, the hearing officer may order the grievant excluded during the testimony of any other witness whose testimony might affect the grievant's testimony;

(5) to provide relevant testimony at any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e);

(6) to be notified of any proposed decision to refer the respondent to diversion and to be given a reasonable opportunity to submit to disciplinary counsel a written comment thereon;

(7) to be advised of the disposition of the grievance; and

(8) to request reconsideration of a dismissal of the grievance as provided in rule 5.7(b).

(d) Duties. A grievant should do the following:

(1) give the person assigned to the grievance documents or other evidence in his or her possession, and witnesses' names and addresses;

(2) assist in securing relevant evidence; and

(3) appear and testify at any hearing resulting from the grievance.

(e) Vexatious grievants.

(1) The Chair of the Disciplinary Board may enter an order declaring an individual or entity a vexatious grievant and restraining that individual from filing grievances or pursuing other rights under this rule, pursuant to the procedures set out in this subsection. A "vexatious grievant" is a person or entity who has engaged in a frivolous or harassing course of conduct that so departs from a reasonable standard of conduct as to render the grievant's conduct abusive to the disciplinary system or participants in the disciplinary system.

(2) Either disciplinary counsel or a lawyer who has been the subject of a grievance may file a motion to declare the grievant vexatious.

(3) The motion must set forth with particularity (A) the facts establishing that the grievant's conduct is vexatious and (B) the restrictions on the grievant's conduct that are sought.

(4) The moving party must serve a copy of the motion on the grievant. If the motion is filed by a respondent lawyer, the motion must also be served on disciplinary counsel. Service may be made by first class mail.

(5) The grievant, disciplinary counsel, and the respondent lawyer shall have 20 days to file a written response.

(6) If the Chair finds that the person is a vexatious grievant, the Chair shall enter an order setting out with particularity (A) the factual basis for such finding, (B) the restrictions imposed on the grievant's conduct, and (C) the basis for imposing such restrictions. The restrictions must be no broader than necessary to prevent the harassment and abuse found.

(7) The moving party, the grievant, and the disciplinary counsel may seek review of the Chair's order by a petition for discretionary review under rule 12.4. No other appeal of the order shall be allowed.

(8) The fact that a person or entity has been determined to be a vexatious grievant and the scope of any restrictions imposed shall be public information. All other proceedings and documents related to a motion under this subsection are confidential.

[Adopted effective October 1, 2002; amended effective January 1, 2014; January 1, 2015.]

ELC 5.2
CONFIDENTIAL SOURCES

If a person files a grievance or provides information to disciplinary counsel about a lawyer's possible misconduct or disability, and asks to be treated as a confidential source, an investigation may be conducted in the name of the Office of Disciplinary Counsel. The confidential source has neither the rights nor the duties of a grievant. Unless otherwise ordered, the person's identity may not be disclosed, either during the investigation or in subsequent formal proceedings. If the respondent lawyer requests disclosure of the person's identity, the Chair, the chair of a review committee, or a hearing officer before whom a matter is pending examines disciplinary counsel and any requested documents or file materials in camera without the presence of the respondent or respondent's counsel and may order disciplinary counsel to reveal the identity to the respondent if doing so appears necessary for the respondent to conduct a proper defense in the proceeding.

[Adopted effective January 1 2014.]

ELC 5.3
INVESTIGATION OF GRIEVANCE

(a) Review and Investigation. Disciplinary counsel must review and may investigate any alleged or apparent misconduct by a lawyer and any alleged or apparent incapacity of a lawyer to practice law, whether disciplinary counsel learns of the misconduct by grievance or otherwise. If there is no grievant, disciplinary counsel may open a grievance in the name of the Office of Disciplinary Counsel.

(b) Preliminary Request for Response. Following review of a matter under section (a), disciplinary counsel may request a preliminary written response from a respondent lawyer. If a request for information (1) requests only the respondent lawyer's preliminary written response, and (2) neither includes any other request for specific information nor requests that the respondent lawyer furnish or permit inspection of specific records, files, and accounts, the request is not subject to objection under section (i).

(c) Adjunct Disciplinary Counsel. Disciplinary counsel may assign a case to adjunct disciplinary counsel for investigation. Disciplinary counsel assists in those investigations and monitors the performance of adjunct disciplinary counsel. On receiving a report of an investigation by an adjunct disciplinary counsel, disciplinary counsel may, as appears appropriate, request or conduct additional investigation or take any action under these rules.

(d) Deferral by Disciplinary Counsel.

(1) Disciplinary counsel may defer an investigation into alleged acts of misconduct by a lawyer:

(A) if it appears that the allegations are related to pending civil or criminal litigation;

(B) if it appears that the respondent lawyer is physically or mentally unable to respond to the investigation; or

(C) if a hearing has been ordered under rule 8.2(a) or supplemental proceedings have been ordered under rule 8.3(a); or

(D) for other good cause, if it appears that the deferral will not endanger the public.

(2) Disciplinary counsel must inform the grievant and respondent of a decision to defer or a denial of a request to defer and of the procedure for requesting review. A grievant or respondent may request review of a decision on deferral. If review is requested, disciplinary counsel refers the matter to a review committee for reconsideration of the decision on deferral. To request review, the grievant or respondent must deliver or deposit in the mail a request for review to disciplinary counsel no later than 45 days after disciplinary counsel mails the notice regarding deferral.

(e) Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance: the unwillingness of a grievant to continue the grievance, the withdrawal of the grievance, a compromise between the grievant and the respondent, or restitution by the respondent.

(f) Duty To Furnish Prompt Response. Any lawyer must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation.

(g) Investigative Inquiries. Upon inquiry or request, any lawyer must:

(1) furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

(2) permit inspection and copying of the lawyer's business records, files, and accounts;

(3) furnish copies of requested records, files, and accounts;

(4) furnish written releases or authorizations if needed to obtain documents or information from third parties; and

(5) comply with investigatory subpoenas under rule 5.5.

(h) Failure To Cooperate.

(1) Noncooperation Deposition. If a lawyer has not complied with any request made under this rule or rule 2.13(c) for more than 30 days, disciplinary counsel may notify the lawyer that failure to comply within ten days may result in the lawyer's deposition or subject the lawyer to interim suspension under rule 7.2. Ten days after this notice, disciplinary counsel may serve the lawyer with a subpoena for a deposition. Any deposition conducted after the ten-day period and necessitated by the lawyer's continued failure to cooperate may be conducted at any place in Washington State.

(2) Costs and Expenses.

(A) Regardless of the underlying grievance's ultimate disposition, a lawyer who has been served with a subpoena under this rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, and the cost of transcribing the deposition, if ordered by disciplinary counsel. In addition, a lawyer who has been served with a subpoena for a deposition under this rule is liable for a reasonable attorney fee of $500.

(B) The procedure for assessing costs and expenses is as follows:

(i) Disciplinary counsel applies to a review committee by itemizing the cost and expenses and stating the reasons for the deposition.

(ii) The lawyer has ten days to respond to disciplinary counsel's application.

(iii) The review committee by order assesses appropriate costs and expenses.

(iv) Rule 13.9(f) governs Board review of the review committee order.

(3) Grounds for Discipline. A lawyer's failure to cooperate fully and promptly with an investigation as required by this rule or rule 2.13(c) is also grounds for discipline.

(i) Objections. A lawyer who receives an investigative inquiry under section (g) of this rule may object as provided in rule 5.6.

[Adopted effective October 1, 2002; amended effective; January 1, 2014; January 1, 2015.]

ELC 5.4
PRIVILEGES

(a) Privilege Against Self-Incrimination. A lawyer's duty to cooperate is subject to the lawyer's privilege against self-incrimination, where applicable.

(b) Attorney-Client Privilege.

(1) Assertion in Response to Investigative Inquiries. In response to an investigative inquiry made under rule 5.3(g), or an investigatory subpoena under rule 5.5, unless a lawyer makes an objection under rule 5.6, a lawyer may not assert the attorney-client privilege or other prohibitions on revealing information relating to the representation of a client as a basis for refusing to provide information.

(2) Duties of Disciplinary Counsel. Disciplinary counsel receives, reviews and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court's authority to

regulate the practice of law. Disclosure of information to disciplinary counsel is not prohibited by RPC 1.6 or RPC 1.9 and such disclosure does not waive any attorney-client privilege. If the lawyer identifies the specific information that is privileged or confidential and requests that it be treated as confidential, the Association must, absent authorization under rule 5.6, maintain the confidentiality of information provided by a lawyer in response to an inquiry or request under these rules.

(3) Non-Disclosure. No information identified as confidential under this rule may be disclosed or released under Title 3 of these rules unless the client or former client consents, which includes consent under rule 5.1(b). Nothing in these rules waives or requires waiver of any lawyer's own privilege or other protection as a client against the disclosure of confidences or secrets.

[Adopted effective October 1, 2002; amended effective January 1, 2014; January 1, 2015.]

ELC 5.5
INVESTIGATORY SUBPOENAS

(a) Procedure. Before filing a formal complaint, disciplinary counsel may issue a subpoena for a deposition or to obtain documents without a deposition. To the extent possible, CR 30 or 31 applies to depositions under this rule, however the respondent need not be given notice of a subpoena.

(b) Subpoenas. Disciplinary counsel may issue subpoenas to compel the respondent's or a witness's attendance, and/or the production of books, documents, or other evidence, at a deposition or without a deposition. CR 45 governs subpoenas under this rule, but the notice required by CR 45(b)(2) need not be given. Subpoenas may be enforced under rule 4.7.

(c) Challenges. Challenges by non-lawyers to subpoenas under this rule may be made to the chief hearing officer, who may issue a protective order under rule 3.2(e).

(d) Cooperation. Every lawyer must promptly respond to subpoenas and requests and inquiries from disciplinary counsel, subject to the provisions of rule 5.3 and rule 5.4.

(e) Objections by Lawyers.

(1) To protect confidential client information, or for other good cause shown, a lawyer may object under rule 5.6 to an investigative subpoena issued pursuant to this rule.

(2) A timely objection suspends any duty to respond as to the subpoena until a ruling has been made.

[Adopted effective October 1, 2002; amended effective January 1, 2014; January 1, 2015.]

ELC 5.6
REVIEW OF OBJECTIONS TO INQUIRIES AND MOTIONS TO DISCLOSE

(a) Review Authorized. On motion, the chief hearing officer, or a hearing officer designated by the chief hearing officer, may hear the following matters:

(1) When a lawyer has objected under rule 5.3(i) to an investigative inquiry;

(2) When a lawyer has objected under rule 5.5(e) to an investigatory subpoena; and

(3) When disciplinary counsel seeks authorization under rule 5.4(b) to disclose confidential information.

(b) Procedure.

(1) An objection must clearly and specifically set out the challenged inquiry or request and the basis for the objection.

(2) A motion to authorize use in an investigation of confidential information must clearly state the information which has been identified as confidential and the investigatory use for which disciplinary counsel seeks authorization.

(3) When deemed necessary by the chief or other hearing officer considering the matter, that hearing officer may conduct an in camera review of confidential client information.

(4) In considering an objection under this rule, the chief or other hearing officer should consider factors including:

(A) the relevance and necessity of the information to the investigation;

(B) whether the information requested by the inquiry is likely to lead to information relevant to the investigation;

(C) the availability of the information from other sources;

(D) the sensitivity of the information and potential impact on the client including the client's

right to effective assistance of counsel;

(E) the expressed desires of the client;

(F) whether the objection was made before the due date of the request or inquiry; and

(G) whether the burden of producing the requested information outweighs the likely utility of the information to the investigation.

(5) In considering a motion to authorize disciplinary counsel to disclose information identified as confidential client information under this rule, the chief or other hearing officer should consider factors including:

(A) the relevance and necessity of the disclosure of the information to the investigation;

(B) whether the investigative disclosure is likely to lead to information relevant to the investigation;

(C) the sensitivity of the information and potential impact on the client of the investigative disclosure, including the client's right to effective assistance of counsel;

(D) the expressed desires of the client; and

(E) whether the above factors outweigh the likely utility of the information to the investigation.

(c) Ruling. In ruling on an objection, the chief or other hearing officer may deny the objection, or sustain the objection in whole or in part, and may establish terms or conditions under which specific information may be withheld, provided, maintained, or used. In ruling on a motion to authorize disclosure, the chief or other hearing officer may grant or deny the motion in whole or in part, and may establish terms or conditions for the investigative use of specific information. When appropriate, a ruling may take the form of, or may accompany a protective order under rule 3.2(e)

(d) Review. Any ruling by the chief or other hearing officer under this rule shall be subject to review as an interim ruling under rule 10.9.

[Adopted effective January 1, 2014; amended effective January 1, 2015.]

ELC 5.7
DISPOSITION OF GRIEVANCE

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

(b) Review of Dismissal. A grievant may request review of dismissal of the grievance by delivering or depositing in the mail a request for review to disciplinary counsel no later than 45 days after disciplinary counsel mails the notice of dismissal. Mailing requires postage prepaid first class mail. If review is requested, disciplinary counsel may either reopen the matter for investigation or refer it to a review committee. If no timely request for review is made, the dismissal is final and may not be reviewed. Disputes regarding timeliness may be submitted to a review committee. A grievant may withdraw in writing a request for review, but thereafter the request may not be revived.

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

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

(1) dismiss the grievance;

(2) affirm the dismissal;

(3) dismiss the grievance and issue an advisory letter under rule 5.8;

(4) issue an admonition under rule 13.5;

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

(6) order further investigation as may appear appropriate.

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

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

[Adopted effective January 1, 2014.]

ELC 5.8
ADVISORY LETTER

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

(1) a respondent lawyer's conduct constitutes a violation, but does not warrant an admonition or sanction, but it appears appropriate to caution a respondent lawyer concerning his or her conduct; or

(2) a respondent lawyer's conduct does not constitute a violation but the lawyer should be cautioned.

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

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

[Adopted effective January 1, 2014.]

ELC 6.1
REFERRAL TO DIVERSION

In a matter involving less serious misconduct as defined in rule 6.2, within 60 days of service of a formal complaint, disciplinary counsel may refer a respondent lawyer to diversion. Diversion may include

* fee arbitration;
* arbitration;
* mediation;
* law office management assistance;
* lawyer assistance programs;
* psychological and behavioral counseling;
* monitoring;
* restitution;
* continuing legal education programs; or
* any other program or corrective course of action agreed to by disciplinary counsel and respondent to address respondent's misconduct.

Disciplinary counsel may negotiate and execute diversion contracts, monitor and determine compliance with the terms of diversion contracts, and determine fulfillment or any material breach of diversion contracts, subject to review under rule 6.9.

[Adopted effective January 1, 2014.]

ELC 6.2
LESS SERIOUS MISCONDUCT

Less serious misconduct is conduct not warranting a sanction restricting the respondent lawyer's license to practice law. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

(A) the misconduct involves the misappropriation of funds;

(B) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;

(C) the respondent has been sanctioned in the last three years;

(D) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned or admonished in the last five years;

(E) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

(F) the misconduct constitutes a "felony" as defined in rule 7.1(a); or

(G) the misconduct is part of a pattern of similar misconduct.

[Adopted effective January 1, 2014.]

ELC 6.3
FACTORS FOR DIVERSION

Disciplinary counsel considers the following factors in determining whether to refer a respondent lawyer to diversion:

(A) whether the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions for the violations raised by the grievance or grievances is likely to be no more severe than reprimand or admonition;

(B) whether participation in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of lawyer discipline;

(C) whether aggravating or mitigating factors exist; and

(D) whether diversion was already tried.

[Adopted effective January 1, 2014.]

ELC 6.4
NOTICE TO GRIEVANT

As provided in rule 5.1(c)(7), disciplinary counsel must notify the grievant, if any, of the proposed decision to refer the respondent lawyer to diversion, and must give the grievant a reasonable opportunity to submit written comments. The grievant must be notified when the grievance is diverted and when the grievance is dismissed on completion of diversion. Such decisions to divert or dismiss are not appealable.

[Adopted effective January 1, 2014.]

ELC 6.5
DIVERSION CONTRACT

(a) Negotiation. Disciplinary counsel and the respondent lawyer negotiate a diversion contract, the terms of which are tailored to the individual circumstances.

(b) Required Terms. A diversion contract must:

(1) be signed by the respondent and disciplinary counsel;

(2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a practice monitor and/or a recovery monitor and the monitor's responsibilities. If a recovery monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the recovery monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;

(3) include a statement in substantially the following form: "This diversion contract is a compromise and settlement of one or more disputes. Except as specifically authorized by the Rules for Enforcement of Lawyer Conduct, it is not admissible in any court, administrative, or other proceedings. It may not be used as a basis for establishing liability to any person who is not a party to this contract";

(4) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel;

(5) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the grievances to be deferred; and

(6) include a specific acknowledgment that a material violation of a term of the contract renders the respondent's participation in diversion voidable by disciplinary counsel.

(c) Limitations. A diversion contract does not create any enforceable rights, duties, or liabilities in any person not a party to the diversion contract or create any such rights, duties or liabilities outside of those stated in the diversion contract or provided by Title 6 of these rules.

(d) Amendment. The contract may be amended on agreement of the respondent and disciplinary counsel.

[Adopted effective January 1, 2014.]

ELC 6.6
AFFIDAVIT SUPPORTING DIVERSION

A diversion contract must be supported by the respondent lawyer's affidavit or declaration as approved by disciplinary counsel setting forth the respondent's misconduct related to the grievance or grievances to be deferred under this title. If the diversion contract is terminated due to a material breach, the affidavit or declaration is admissible into evidence in any ensuing disciplinary proceeding. Unless so admitted, or unless release is authorized by the respondent under rule 3.4(c), the affidavit or declaration is confidential and must not be provided to the grievant or any other individual outside the Office of Disciplinary Counsel, but may be provided to a review committee or the Board considering the grievance.

[Adopted effective October 1, 2002; amended effective January 1, 2015.]

ELC 6.7
EFFECT OF NON-PARTICIPATION IN DIVERSION

The respondent lawyer has the right to decline disciplinary counsel's offer to participate in diversion. If the respondent chooses not to participate, the matter proceeds as though no referral to diversion had been made.

[Adopted effective January 1, 2014.]

ELC 6.8
STATUS OF GRIEVANCE

After a diversion contract is executed by the respondent lawyer and disciplinary counsel, the disciplinary grievance is deferred pending successful completion of the contract.

[Adopted effective January 1, 2014.]

ELC 6.9
TERMINATION OF DIVERSION

Termination. Respondent may provide disciplinary counsel an affidavit or declaration demonstrating fulfillment of the terms of the contract. Upon receipt of such an affidavit or declaration, or upon expiration of the diversion period, disciplinary counsel may take any of the following actions:

(1) Upon disciplinary counsel's determination that the contract has been completed, dismiss any grievances that were deferred pending the completion of the diversion.

(2) Amend the diversion contract under rule 6.5(d).

(3) Declare a material breach of the diversion contract under the provisions of subsection (b) of this rule.

(b) Material Breach. A material breach of the contract is cause for termination of the diversion. After a material breach, disciplinary counsel must notify the respondent of termination from diversion and disciplinary proceedings may be instituted, resumed, or reinstated.

(c) Review by the Chair. The Chair may review disputes about fulfillment or material breach of the terms of the contract on the request of the respondent or disciplinary counsel. The request must be filed with the Board within 15 days of notice to the respondent of the determination for which review is sought. Determinations by the Chair under this section are not subject to further review and are not reviewable in any proceeding.

(d) Effect of Completion. The grievant cannot appeal a dismissal under this rule. Completion of the diversion is a bar to any further disciplinary proceedings based on the same allegations.

[Adopted effective January 1, 2014.]

ELC 7.1
INTERIM SUSPENSION FOR 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) "Felony" includes any crime denominated as a felony in the jurisdiction in which it is committed.

(b) Reporting of Conviction. When a lawyer is convicted of a felony, 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, the review committee may consider 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. 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:

(1) The Court must enter an order immediately suspending the respondent from the practice of law.

(2) Upon suspension, the respondent must comply with title 14.

(3) 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 final. 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 Court to terminate an interim suspension. Disciplinary counsel may file a response to the petition.

(2) Court Action. The Court determines the procedure for its consideration of a petition to terminate a suspension.

[Adopted October 1, 2002; amended effective January 1, 2014; January 1, 2015.]

ELC 7.2
INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

(a) Types of Interim Suspension.

(1) Risk to Public. Disciplinary counsel may petition the Supreme Court for an order suspending the respondent lawyer during the pendency of any proceeding under these rules if:

(A) it appears that a respondent's continued practice of law poses a substantial threat of serious harm to the public and a review committee recommends an interim suspension; or

(B) a review committee orders a hearing on the capacity of a lawyer to practice law under rule 8.2(d)(1); or

(C) when a hearing officer or the chief hearing officer orders supplemental proceedings on a respondent lawyer's capacity to defend a disciplinary proceeding under rule 8.3.

A suspension under this subsection shall terminate when the underlying proceeding is final or upon order of the court.

(2) Board Recommendation for Disbarment. When the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. 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. If the Board's decision is not appealed and becomes final, the petition need not be filed, or if filed may be withdrawn.

(3) Failure To Cooperate with Investigation. When any lawyer fails without good cause to comply with a request under rule 5.3(g) or rule 15.2(a) for information or documents, or with a subpoena issued under rule 5.3(h) or rule 15.2(b), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the lawyer pending compliance with the request or subpoena. A petition may not be filed if the request or subpoena is the subject of a timely objection under rule 5.5(e) and the hearing officer has not yet ruled on that objection. If a lawyer has been suspended for failure to cooperate and thereafter complies with the request or subpoena, the lawyer may petition the Court to terminate the suspension on terms the Court deems appropriate.

(b) Procedure.

(1) Petition. A petition to the Court under this rule must set forth the acts of the lawyer constituting grounds for suspension, and if filed under subsection (a)(2) must include a copy of the Board's decision. The petition may be supported by documents or affidavits. The Association must serve the petition by mail on the day of filing. In addition, a copy of the petition must be personally served on the lawyer no later than the date of service of the show cause order.

(2) Show Cause Order. Upon filing of the petition, the Chief Justice orders the lawyer to appear before the Court on a date set by the Chief Justice, and to show cause why the petition for suspension should not be granted. Disciplinary counsel must have a copy of the order to show cause personally served on the lawyer at least ten days before the scheduled show cause hearing. Subsection (b)(5) notification requirements must be included in the show cause order.

(3) Answer to Petition. The lawyer may answer the petition. An answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the show cause hearing.

(4) Filing of Answer. A copy of any answer must be filed with both the Court and disciplinary counsel by the date specified in the show cause order, which will be at least five days before the scheduled show cause hearing.

(5) Notification. The lawyer must inform the court no less than 7 days prior to the show cause hearing whether the lawyer will appear for the show cause hearing, or the hearing will be stricken and the Court will decide the matter without oral argument.

(6) Application of Other Rules. If the Court enters an order suspending the lawyer, the rules relating to suspended lawyers, including title 14, apply.

[Adopted effective October 1, 2002; amended effective January 3, 2006; January 1, 2014; December 8, 2015.]

ELC 7.3
AUTOMATIC SUSPENSION WHEN RESPONDENT ASSERTING INCAPACITY

When a respondent lawyer asserts incapacity to conduct a proper defense to disciplinary proceedings, upon receipt of appropriate documentation of the assertion, the respondent must be suspended on an interim basis by the Supreme Court pending the conclusion of the disability proceedings. However, if the hearing officer in the supplemental proceeding files a decision that the respondent is not incapacitated, on petition of either party, the Court may terminate the interim suspension.

[Adopted effective January 1, 2014.]

ELC 7.4
STIPULATION TO INTERIM SUSPENSION

At any time a respondent lawyer and disciplinary counsel may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a felony, a substantial threat of serious harm to the public, or incapacity to practice law. A stipulation must state the factual basis for the stipulation and be submitted directly to the Supreme Court for expedited consideration. When the stipulation is based on the lawyer's mental incapacity to practice law, the lawyer must be represented by counsel, and if counsel does not otherwise appear, the Association will appoint counsel. Stipulations under this rule are public upon filing with the Court, but the Court may order that supporting materials are confidential. Either party may petition the Court to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Court may terminate the suspension.

[Originally effective October 1, 2002; amended effective January 1, 2014; January 1, 2015.]

ELC 7.5
INTERIM SUSPENSIONS EXPEDITED

(a) Expedited Review. Petitions seeking interim suspension under this title receive an expedited hearing, ordinarily no later than 14 days from issuance of an order to show cause.

(b) Procedure During Court Recess. When a petition seeking interim suspension under this title is filed during a recess of the Supreme Court, the Chief Justice, the Acting Chief Justice, or the senior Justice under SAR 10, subject to review by the full Court on motion for reconsideration, may rule on the petition for interim suspension.

[Adopted effective October 1, 2002; January 1, 2015.]

ELC 7.6
EFFECTIVE DATE OF INTERIM SUSPENSIONS

Interim suspensions become effective on the date of the Supreme Court's order unless the order provides otherwise.

[Adopted effective January 1, 2014.]

ELC 7.7
APPOINTMENT OF CUSTODIAN TO PROTECT CLIENTS' INTERESTS

(a) Custodians Allowed. The Chair, on motion by disciplinary counsel or any other interested person, may appoint one or more lawyers or Association counsel as a custodian to act as counsel for the limited purpose of protecting clients' interests. A custodian may be appointed whenever a lawyer (1) has been transferred to disability inactive status, suspended, or disbarred, and fails to carry out the obligations of title 14 or fails to protect the clients' interests, or (2) disappears, dies, abandons practice, or is otherwise incapable of meeting the lawyer's obligations to clients. A custodian should not be appointed if a partner, personal representative, or other responsible person appears to be properly protecting the clients' interests. The Chair may enter orders to carry out the provisions and purposes of this rule.

(b) Duties. The custodian takes possession of the necessary files and records and takes action as seems indicated to protect the clients' interests or required by the Chair's orders or these rules. Such action may include but is not limited to assuming control of trust accounts or other financial affairs. Any bank or other person honoring the authority of the custodian is exonerated from any resulting liability. In determining ownership of funds in the trust account, including by subrogation or indemnification, the custodian should act as a reasonably prudent lawyer maintaining a client trust account. The custodian may rely on a certification of ownership issued by a person who conducts audits for the Association under rule 15.1. If the client trust account does not contain sufficient funds to meet known client balances, the custodian may disburse funds on a pro rata basis.

(c) Discharge. On motion by disciplinary counsel or any interested person, the Chair may discharge the custodian from further duties. The Chair may also order destruction of files and records as appropriate.

(d) Fees and Costs. Payment of any fees and costs incurred by the Association under this rule may be a condition of reinstatement of a disbarred or suspended lawyer or a lawyer transferred to disability inactive status, ordered as restitution in a disciplinary proceeding for failure to comply with rule 14.1 or claimed against the estate of a deceased or adjudicated incapacitated lawyer.

(e) Records. The Bar Association maintains record of the custodianship permanently. The custodian maintains files and papers obtained as custodian until otherwise ordered by the Chair.

[Adopted effective January 1, 2014.]

ELC 8.1
ACTION ON ADJUDICATION OF INCOMPETENCY OR INCAPACITY

(a) Grounds. The Association must automatically transfer a lawyer from active to disability inactive membership status upon receipt of a certified copy of the judgment, order, or other appropriate document demonstrating that the lawyer:

(1) was found to be incapable of assisting in his or her own defense in a criminal action;

(2) was acquitted of a crime based on insanity;

(3) had a guardian (but not a limited guardian) appointed for his or her person or estate on a judicial finding of incapacity;

(4) was involuntarily committed to a mental health facility for more than 14 days under Ch. 71.05 RCW; or

(5) was found to be mentally incapable of conducting the practice of law in any other jurisdiction.

(b) Notice to Lawyer. The Association must forthwith notify the disabled lawyer and his or her guardian or guardian ad litem, if any, of the transfer to disability inactive status. The Association must also notify the Supreme Court of the transfer and provide a copy of the judgment, order, or other appropriate document on which the transfer was based.

[Adopted effective January 1, 2014.]

ELC 8.2
DETERMINATION OF INCAPACITY TO PRACTICE LAW

(a) Review Committee May Order Hearing. Disciplinary counsel reports to a review committee on investigations into an active, suspended, or inactive respondent lawyer's mental or physical capacity to practice law. Subject to rule 5.2, the respondent lawyer and his or her guardian or guardian ad litem, if any, shall be provided with a complete copy of disciplinary counsel's report and shall be afforded a reasonable opportunity to respond prior to the review committee taking action on the report. The committee orders a hearing if it appears there is reasonable cause to believe that the respondent does not have the mental or physical capacity to practice law. In other cases, the committee may direct further investigation as appears appropriate or dismiss the matter.

(b) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(c) Procedure.

(1) Applicable Rules and Case Caption. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings except that the respondent lawyer's initials are to be used in the case caption rather than the lawyer's full name.

(2) Appointment of Counsel. If counsel for the respondent does not appear within the time for filing an answer, the Chair must appoint an active member of the Association as counsel for the respondent under rule 8.10.

(3) Health Records. After a review committee orders a hearing under this rule, disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the inquiry, subject to a motion to the hearing officer, or if no hearing officer has been appointed, to the chief hearing officer, to limit the scope of the requested releases or authorizations for good cause.

(4) Examination. Upon motion, the hearing officer, or if no hearing officer has been appointed, the chief hearing officer, may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in determining the respondent's capacity to practice law. Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(5) Hearing Officer Recommendation. If the hearing officer finds that the respondent does not have the mental or physical capacity to practice law, the hearing officer must recommend that the respondent be transferred to disability inactive status.

(6) Appeal Procedure. Either respondent or disciplinary counsel may appeal from a final determination of the hearing officer as to the respondent's capacity to practice law. The procedures for appeal and review of suspension recommendations apply to such appeals.

(7) Transfer Following Board Review. If, after review of the decision of the hearing officer, the Board finds that the respondent does not have the mental or physical capacity to practice law, it must enter an order immediately transferring the respondent to disability inactive status. The transfer is effective upon service of the order under rule 4.1.

(d) Interim Suspension.

(1) When a review committee orders a hearing on the capacity of a respondent to practice law, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a) unless the respondent is already suspended on an interim basis.

(2) Even if the Court previously denied a petition for interim suspension under subsection (d)(1), disciplinary counsel may petition the Court for the interim suspension of a respondent under rule 7.2(a)(3) if the respondent fails:

(A) to appear for an independent examination under this rule;

(B) to waive health care provider-patient privilege as required by this rule; or

(C) to appear at a hearing under this rule.

(e) Termination of Interim Suspension. If the hearing officer files a decision recommending that a respondent placed on interim suspension under this rule not be transferred to disability inactive status, upon either party's petition the Court may terminate the interim suspension.

[Adopted effective January 1, 2014.]

ELC 8.3
DISABILITY PROCEEDINGS DURING THE COURSE OF DISCIPLINARY PROCEEDINGS

(a) Supplemental Proceedings on Capacity To Defend. A hearing officer, or chief hearing officer if no hearing officer has been appointed, must order a supplemental proceeding on the respondent lawyer's capacity to defend the disciplinary proceedings if the respondent asserts, or there is reasonable cause to believe, that the respondent is incapable of properly defending the disciplinary proceeding because of mental or physical incapacity. A different hearing officer shall be appointed for the supplemental proceeding.

(b) Purpose of Supplemental Proceedings. In a supplemental proceeding, the hearing officer determines if the respondent:

(1) is incapable of defending himself or herself in the disciplinary proceedings because of mental or physical incapacity;

(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or

(3) is currently unable to practice law because of mental or physical incapacity.

(c) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(d) Procedure for Supplemental Proceedings.

(1) Applicable Rules and Case Caption. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings except that the respondent lawyer's initials are to be used in the case caption rather than the lawyer's full name.

(2) Effect on Pending Disciplinary Matters. Pending the outcome of the supplemental proceedings, the hearing officer, or the chief hearing officer if no hearing officer has been appointed, must order any disciplinary proceedings pending against the respondent stayed. Disciplinary counsel may defer any pending disciplinary investigation in accordance with the provisions of rule 5.3(d).

(3) Appointment of Counsel. If counsel for the respondent does not appear within 20 days of notice to the respondent of the issues to be considered in a supplemental proceeding under this rule, or within the time for filing an answer, the Chair must appoint an active member of the Association as counsel for the respondent in the supplemental proceedings under rule 8.10.

(4) Health Records. Disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the determination under section (b), subject to a motion to the hearing officer to limit the scope of the requested releases or authorizations for good cause. If the respondent asserted incapacity, there is a rebuttable presumption that good cause does not exist.

(5) Examination. Upon motion, the hearing officer may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in the determinations to be made under section (b). Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(6) Failure To Appear or Cooperate. If the respondent fails to appear for an independent examination, fails to waive health care provider-patient privilege as required in these rules, or fails to appear at the hearing, unless the procedure under rule 8.10(d) is followed the following procedures apply the following procedures apply:

(A) If the Association has the burden of proof, the hearing officer must hold a hearing and, if presented with sufficient evidence to determine incapacity, order the respondent transferred to disability inactive status. If there is insufficient evidence to determine incapacity, the hearing officer must enter an order terminating the supplemental proceedings and reinstating the disciplinary proceedings. A respondent who does not appear at the hearing may move to vacate the order of transfer under rule 10.6(c).

(B) If the respondent has the burden of proof, the hearing officer must enter an order terminating the supplemental proceedings and resuming the disciplinary proceedings.

(7) Hearing Officer Decision.

(A) Capacity To Defend and Practice Law. If the hearing officer finds that the respondent is capable of defending himself or herself and has the mental and physical capacity to practice law, the disciplinary proceedings resume.

(B) Capacity To Defend with Counsel. Regardless of the hearing officer's determination as to mental or physical capacity to practice law, if the hearing officer finds that the respondent is not capable of defending himself or herself in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint an active member of the Association as counsel for the respondent in the disciplinary proceeding.

(C) Finding of Incapacity. If the hearing officer finds that the respondent either does not have the

mental or physical capacity to practice law, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer must recommend that the respondent be transferred to disability inactive status. The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(D) Review and Appeals. Either respondent or disciplinary counsel may appeal from a final determination of the hearing officer as to the respondent's capacity to practice law or respondent's capacity to defend a disciplinary proceeding. The procedures for appeal and review of suspension recommendations shall apply.

(8) Transfer Following Board Review.

(A) The Board must enter an order immediately transferring the respondent to disability inactive status if after review of a hearing officer's recommendation of transfer to disability inactive status, the Board finds that the respondent:

(i) does not have the mental or physical capacity to practice law; or

(ii) is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity.

(B) The transfer is effective upon service of the order on the respondent under rule 4.1.

(e) Interim Suspension. When supplemental proceedings have been ordered, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a)(1) or seek automatic suspension under rule 7.3 unless the respondent is already suspended on an interim basis.

[Adopted effective January 1, 2014.]

ELC 8.4
APPEAL OF DISABILITY DETERMINATIONS

The respondent lawyer and disciplinary counsel may appeal Board decision under rules 8.2 or 8.3. The procedures of title 12 apply to such appeals. The Board's order as to transfer to disability inactive status remains in effect, regardless of the pendency of an appeal, unless and until reversed by the Supreme Court.

[Adopted effective January 1, 2014.]

ELC 8.5
STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS

(a) Requirements. At any time a respondent lawyer respondent's counsel, and disciplinary counsel may stipulate to the transfer of the respondent to disability inactive status under this title. The respondent, respondent's counsel, and disciplinary counsel must all sign the stipulation.

(b) Form. The stipulation must:

(1) state with particularity the nature of the respondent's incapacity to practice law and the nature of any pending disciplinary proceedings that will be stayed and any disciplinary investigation that will be deferred as a result of the respondent's transfer to disability inactive status;

(2) state that it is not binding on the Association as a statement of all existing facts relating to the professional conduct of the respondent and that any additional existing facts may be proved in a subsequent disciplinary proceeding; and

(3) fix the amount of costs and expenses to be paid by the respondent.

(c) Respondent Must be Represented by Counsel. Respondent must be represented by counsel at the time of entering into the stipulation. If the respondent has not retained counsel, the Chair must appoint an active member of the Association as counsel for the respondent pursuant to rule 8.10. Any counsel appointed for purposes of entering into a stipulation shall be deemed automatically discharged when the Board approves or rejects the stipulation.

(d) Approval. The stipulation must be presented to the Board. The Board reviews the stipulation based solely on the record agreed to by the respondent, respondent's counsel, and disciplinary counsel. The Board may either approve the stipulation or reject it. Upon approval, the transfer to disability inactive status is not subject to further review.

(e) Stipulation Not Approved. If the stipulation is rejected by the Board, the stipulation has no force or effect and neither it nor the fact of its execution is admissible in any pending or subsequent disciplinary proceeding or in any civil or criminal action.

[Adopted effective January 1, 2014.]

ELC 8.6
COSTS IN DISABILITY PROCEEDINGS

When reviewing a matter under this title, the Board may authorize disciplinary counsel to seek assessment of the costs and expenses against the respondent lawyer. If the Board authorizes, disciplinary counsel may file a statement of costs within 20 days of service of the Board's order. Rule 13.9 governs assessment of these costs and expenses. The respondent is not required to pay the costs and expenses until 90 days after reinstatement to active status.

[Adopted effective January 1, 2014.]

ELC 8.7
BURDEN AND STANDARD OF PROOF

In proceedings under rules 8.2 or 8.3, the party asserting or alleging the incapacity has the burden of proof. If the issue of incapacity is raised by a hearing officer, the Association has the burden of proof. A respondent lawyer establishes incapacity by a preponderance of the evidence. The Association establishes incapacity by a clear preponderance of the evidence.

[Amended effective January 1, 2014.]

ELC 8.8
REINSTATEMENT TO ACTIVE STATUS

(a) Right of Petition and Burden. A respondent lawyer transferred to disability inactive status may resume active status only by Board or Supreme Court order. Any respondent transferred to disability inactive status may petition the Board for transfer to active status. The respondent has the burden of showing that the disability has been removed.

(b) Petition. The petition for reinstatement must:

(1) state facts demonstrating that the disability has been removed;

(2) include the name and address of each psychiatrist, psychologist, physician, or other person and each hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status; and

(3) be filed with the Clerk and served on disciplinary counsel.

(c) Waiver of Privilege. The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status waives any privilege as to treatment of any medical, psychological, or psychiatric condition during the period of disability. The respondent must furnish, if requested by the Board or disciplinary counsel, written consent to each treatment provider to divulge information and records relating to the disability.

(d) Initial Review by Chair. The Chair reviews the petition and any response by disciplinary counsel and directs appropriate action to determine whether the disability has been removed, including investigation by disciplinary counsel or any other person or an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition.

(e) Board Review.

(1) The respondent must have a reasonable opportunity to review any reports of investigations or examinations ordered by the Chair and submit additional materials before the matter is submitted to the Board.

(2) On submission, the Board reviews the petition and any reports as expeditiously as possible and takes one or more of the following actions:

(A) grants the petition;

(B) directs additional action as the Board deems necessary to determine whether the disability has been removed;

(C) orders that a hearing be held before a hearing officer under the procedural rules for disciplinary proceedings;

(D) directs the respondent to establish proof of competence and learning in the law, which may include certification by the bar examiners of successful completion of an examination for admission to practice;

(E) denies the petition;

(F) directs the respondent to pay the costs of the reinstatement proceedings; or

(G) approves or rejects a stipulation to reinstatement between the respondent and the Association.

(3) The petition may be denied without the respondent having an opportunity for a hearing before a hearing officer only if the Board determines that a hearing is not necessary because:

(A) the respondent fails to state a prima facie case for reinstatement in the petition; or

(B) the petition does not indicate a material change of circumstance since a previous denial of a petition for reinstatement.

(f) Petition Granted. If the petition for reinstatement is granted, the Association restores the respondent to the respondent's prior status and notifies the Supreme Court of the transfer, unless disciplinary counsel files a notice of appeal under subsection (g) of this rule, in which case respondent will not be returned to the respondent's prior status until that appeal is final. If a disciplinary proceeding has been stayed, or a disciplinary investigation has been deferred because of the disability transfer, the proceeding or investigation resumes upon reinstatement.

(g) Review by Supreme Court. Either the respondent or disciplinary counsel may appeal the Board's decision to the Supreme Court, by filing a notice of appeal with the Clerk within 30 days of service of the Board's decision on the respondent. Title 12 applies to review under this section.

[Adopted effective January 1, 2014.]

ELC 8.9
PETITION FOR LIMITED GUARDIANSHIP

(a) Request for Authorization to Initiate Guardianship Proceedings. A hearing officer, the Chair, Association counsel, the respondent, or respondent's counsel may request that a review committee authorize the filing of a petition for a limited guardianship of a respondent.

(b) Notice. The person requesting authority to file the guardianship petition must give notice to the parties at the time of the request. The party not making the request shall be given a reasonable opportunity, under the facts and circumstances of the case, to respond before the Review Committee renders its decision. The Association and the respondent may submit declarations or affidavits relevant to the Review Committee's decision.

(c) Review Committee Determination. The review committee may authorize the filing of a petition for the appointment of a limited guardian when the review committee reasonably believes that grounds for such an appointment exist under RCW 11.88.010(2). The review committee may require the respondent to submit to any necessary examinations or evaluations and may retain independent counsel to assist in the investigation and the filing of any petition.

(d) Action for Limited Guardianship.

(1) Upon authorization of a review committee, the petitioning party may file a petition in any Superior Court seeking a limited guardian to act regarding the respondent's license or any disciplinary or disability investigation or proceeding.

(2) Notwithstanding any other statutory qualifications, any guardian or guardian ad litem appointed pursuant to a petition filed under this rule must be a lawyer qualified to maintain and protect the information protected by RPC 1.6 or RPC 1.9 of the respondent's clients.

(3) Upon application to the Superior Court, the respondent may have the matter moved to the county where the respondent is domiciled or maintains an office or another county as authorized by law.

(4) The guardianship proceedings must be sealed to the extent necessary to protect information protected by RPC 1.6 or RPC 1.9 of the respondent's clients or on any other basis found by the Superior Court.

(5) The costs of any guardianship proceeding are paid out of the guardianship estate, except if the guardianship estate is indigent, the Association pays the costs.

[Adopted effective January 1, 2014.]

ELC 8.10
APPOINTMENT OF COUNSEL FOR RESPONDENT

(a) Appointment of Counsel for Respondent. If counsel for the respondent does not appear within the time for filing an answer, or as may otherwise be required, under Title 8 of these rules, or upon an order of further proceedings or a hearing under rule 9.2(e)(3), the Chair must appoint an active member of the Association as counsel for the respondent.

(b) Counsel's Rule. Counsel appointed for respondent shall act as an advocate for their client and shall not substitute counsel's own judgment for that of the client.

(c) Withdrawal of Appointed Counsel. Counsel appointed under this rule may withdraw only upon authorization from the Chair, upon a showing of good cause.

(d) Action Upon Withdrawal of Appointed Counsel. Upon authorizing appointed counsel to withdraw, the Chair will determine whether to appoint other counsel to represent the respondent, or, upon a finding that there is no reasonable chance that other counsel will be able to represent the respondent and that appointment of counsel would be futile, may recommend to the Board that the respondent be transferred to disability inactive status. The Board will review any order of the Chair recommending transfer to disability inactive status because appointment of counsel would be futile and may either affirm such order or direct that substitute counsel be appointed for the respondent. An unrepresented respondent may not participate in this review by the Board unless specifically authorized by the Chair to participate. The respondent may seek review under rule 12.3 of an order of the Board recommending transfer to disability inactive status under this rule but must be represented by counsel for purposes of such motion unless specifically authorized to proceed without representation by the Chair.

[Adopted effective January 1, 2014.]

ELC 9.1
STIPULATIONS

(a) Requirements. Any disciplinary matter or proceeding may be resolved by a stipulation at any time. The stipulation must be signed by the respondent lawyer and approved by disciplinary counsel. The stipulation may impose terms and conditions of probation and contain any other appropriate provisions.

(b) Form. A stipulation must:

(1) provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Board or hearing officer to form an opinion as to the propriety of the proposed resolution, and, if approved, to make the stipulation useful in any subsequent disciplinary proceeding against the respondent;

(2) set forth the respondent's prior disciplinary record or its absence;

(3) state that the stipulation is not binding on disciplinary counsel as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding; and

(4) fix the amount of costs and expenses to be paid by the respondent.

(c) Stipulation to alleged facts. A respondent lawyer and disciplinary counsel may agree to stipulate to alleged facts in lieu of admissions to particular acts or omissions. The stipulation must also include an agreement that the facts and misconduct will be deemed proved in any subsequent disciplinary proceeding in any jurisdiction.

(d) Approval.

(1) Standards. The chief hearing officer, a hearing officer, or the Board must approve a stipulation unless the stipulation results in a manifest injustice.

(2) Approval by Chief Hearing Officer. Subject to a subsection (1), the chief hearing officer may approve of a stipulation disposing of any matter that is not then pending before an assigned hearing officer, the Board, or the Supreme Court. Approval may be granted at any point, during an investigation or otherwise, prior to entry of final decision under rule 10.16(d). The chief hearing officer may not approve of a stipulation that requires the respondent's suspension or disbarment.

(3) Approval By Hearing Officer. Subject to subsection (1), a hearing officer may approve a stipulation disposing of a matter pending before the officer, unless the stipulation requires the respondent's suspension or disbarment. This approval constitutes a final decision and is not subject to further review.

(4) Approval By Board. All other stipulations must be presented to the Board. The Board reviews a stipulation based solely on the record agreed to by the respondent lawyer and disciplinary counsel. The parties may jointly ask the Chair to permit them to address the Board regarding a stipulation. Such presentations are at the Chair's discretion. Subject to subsection (1), the Board may approve, conditionally approve, or reject a stipulation. Regardless of the provisions of rule 3.3(a), the Board may direct that information or documents considered in reviewing a stipulation be kept confidential.

(5) Approval by Supreme Court.

(A) Suspension and Disbarment. All stipulations agreeing to suspension or disbarment approved by the Board, together with all materials that were submitted to the Board, must be submitted to the Court. Following review, the Court issues an order regarding the stipulation.

(B) Matters Pending Before the Supreme Court. At any time a matter is pending before the Court, the parties may submit to the Court for its consideration a stipulation of the parties to resolve the matter. The Court will resolve the matter under such procedure as the Court deems appropriate.

(e) Conditional Approval.

(1) By Hearing Officer. Subject to subsection (d) (1), a hearing officer may condition the approval of a stipulation on the agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the hearing officer deems necessary to accomplish the purposes of lawyer discipline, provided the terms do not involve suspension or disbarment. If the hearing officer conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the hearing officer, both parties serve on the hearing officer written consent to the conditional terms in the order of the hearing officer or chief hearing officer. For purposes of this subsection, "hearing officer" includes the chief hearing officer.

(2) By Board. Subject to subsection (d)(1), the Board may condition its approval of a stipulation on the

agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the Board deems necessary to accomplish the purposes of lawyer discipline. If the Board conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the Chair, both parties serve on the Clerk written consent to the conditional terms in the Board's order.

(f) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, the parties may serve on the Clerk a joint motion for reconsideration. If the conditional approval was made by a hearing officer or chief hearing officer, the motion shall also be served on that officer. The parties may ask to address the Board or officer on the motion.

(g) Stipulation Rejected. An order rejecting a stipulation must state the reasons for the rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any disciplinary, civil, or criminal proceeding.

(h) Review. When a hearing officer or chief hearing officer rejects a stipulation, by agreement the parties may present the stipulation to the Board for consideration.

(i) Costs. A final order approving a stipulation is deemed a final assessment of the costs and expenses agreed to in the stipulation for the purposes of rule 13.9, and is not subject to further review.

(j) Failure to Comply. A respondent's failure to comply with the terms of an approved stipulation may be grounds for discipline.

[Adopted effective January 1, 2014.]

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

(a) Duty To Self-Report Discipline or Transfer to Disability Inactive Status. Within 30 days of being publicly disciplined, or being transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the discipline or transfer.

(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 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), upon receipt of a 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 60 days of service why it should not impose the identical discipline or disability inactive status. Disciplinary counsel must personally serve this order, and a copy of the order from the other jurisdiction, on the respondent under rule 4.1(b)(3).

(d) Deferral. If the other jurisdiction has stayed the discipline or transfer, any reciprocal discipline or transfer in this state is deferred until the stay expires.

(e) Discipline or Transfer To Be Imposed.

(1) Sixty days after service of the order under section (c), the Supreme Court imposes the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or the Court finds, that it clearly appears on the face of the record on which the discipline or disability transfer is based, that:

(A) the procedure so lacked notice or opportunity to be heard that it denied due process;

(B) the proof of misconduct or disability was so infirm that the Court is clearly convinced that it cannot, consistent with its duty, accept the finding of misconduct or disability;

(C) the imposition of the same discipline would result in grave injustice;

(D) the established misconduct warrants substantially different discipline in this state;

(E) the reason for the original transfer to disability inactive status no longer exists; or

(F) appropriate discipline has already been imposed in this jurisdiction for the misconduct.

(2) If the Court determines that any of the factors in subsection (1) exist, it enters an appropriate order. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that imposing the same discipline is not appropriate.

(3) If the Court orders further proceedings or a hearing to determine if respondent should be transferred to disability inactive status, the provisions of rule 8.10 as to appointment of counsel will apply.

(f) Conclusive Effect. Except as this rule otherwise provides, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct or should be transferred to disability inactive status conclusively establishes the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

(g) Prior Matter in Washington. No action will be taken against a lawyer under this rule when the lawyer has already been the subject of discipline, disability transfer, or other final disposition of a grievance, disciplinary proceeding, or disability proceeding in Washington arising out of the same circumstances that are the basis for discipline, resignation, or disability transfer in another jurisdiction.

[Adopted effective January 1, 2014.]

ELC 9.3
RESIGNATION IN LIEU OF DISCIPLINE

(a) Grounds. A respondent lawyer who desires not to contest or defend against allegations of misconduct may, at any time before the answer in any disciplinary proceeding is due, or thereafter with disciplinary counsel's consent, resign his or her membership in the Association in lieu of further disciplinary proceedings.

(b) Process. The respondent first notifies disciplinary counsel that the respondent intends to submit a resignation and asks disciplinary counsel to prepare a statement of alleged misconduct and to provide a declaration of costs and a proposed resignation form. After receiving the statement and the declaration of costs, if any, the respondent may resign by signing and submitting to disciplinary counsel, the resignation form prepared by disciplinary counsel, sworn to or affirmed under oath and notarized, which must include the following:

(1) Disciplinary counsel's statement of the misconduct alleged in the matters then pending.

(2) Respondent's statement that he or she is aware of the alleged misconduct stated in disciplinary counsel's statement and that rather than defend against the allegations, he or she wishes to permanently resign from membership in the Association.

(3) Respondent's affirmative acknowledgment that the resignation is permanent including the statement:

"I understand that my resignation is permanent and that any future application by me for reinstatement as a member of the Washington State Bar Association is currently barred. If the Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by one who has been disbarred for ethical misconduct, and that, if I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this resignation was based."

(4) Respondent's agreement:

(A) to notify all other jurisdictions in which the respondent is or has been admitted to practice law of the resignation in lieu of discipline;

(B) to seek to resign permanently from the practice of law in any other jurisdiction in which the respondent is admitted;

(C) to provide disciplinary counsel with copies of any of these notifications and any responses; and

(D) acknowledging that the resignation could be treated as a disbarment by all other jurisdictions.

(5) Respondent's agreement to:

(A) notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license that is predicated on the respondent's admission to practice law of the resignation in lieu of discipline;

(B) seek to resign permanently from any such license; and

(C) provide disciplinary counsel with copies of any of these notifications and any responses.

(6) Respondent's agreement that when applying for any employment or license the respondent agrees to disclose the resignation in lieu of discipline in response to any question regarding disciplinary action or the status of the respondent's license to practice law;

(7) Respondent's agreement to pay any restitution or additional costs and expenses ordered by a review committee, and attaches payment for costs as described in section (f) below, or states that the respondent will execute a confession of judgment or deed of trust as described in section (f).

(8) Respondent's agreement that when the resignation becomes effective, the respondent will be subject to all restrictions that apply to a disbarred lawyer.

(c) Public Filing. Upon receipt of a resignation meeting the requirements set forth above, and the costs and expenses and any executed confession of judgment or deed of trust required under section (f), disciplinary counsel will endorse the resignation and promptly causes it to be filed with the Clerk as a public and permanent record of the Association.

(d) Effect. A resignation under this rule is effective upon its filing with the Clerk. All disciplinary proceedings against the respondent terminate except disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances to create a record of the respondent's actions. The Association immediately notifies the Supreme Court of a resignation under this rule and the respondent's name is forthwith stricken from the roll of lawyers. Upon filing of the resignation, the resigned respondent must comply with the same duties as a disbarred lawyer under title 14 and comply with all restrictions that apply to a disbarred lawyer. Notice is given of the resignation in lieu of discipline under rule 3.5.

(e) Resignation is Permanent. Resignation under this rule is permanent. A respondent who has resigned under this rule will never be eligible to apply and will not be considered for admission or reinstatement to the practice of law nor will the respondent be eligible for admission for any limited practice of law.

(f) Costs and Expenses. If a respondent resigns under this rule, the expenses under rule 13.9(c) are $1,000. With the resignation, the respondent must pay this $1,000 expense, plus all actual costs as defined by rule 13.9(b).

If the respondent demonstrates inability to pay these costs and expenses, instead of paying this amount, the respondent must execute, in disciplinary counsel's discretion, a confession of judgment or a deed of trust for that amount. Disciplinary counsel may file a claim under section (g) for costs not covered by the payment, confession of judgment, or deed of trust.

(g) Review of Costs, Expenses, and Restitution. Any claims for restitution or for costs and expenses not resolved by agreement between disciplinary counsel and the respondent may be submitted at any time, including after the resignation, to a review committee in writing for the determination of appropriate restitution or costs and expenses. The Lawyers' Fund for Client Protection may request review including a determination by the review committee of whether any funds were obtained by the respondent by dishonesty of, or failure to account for money or property entrusted to, the respondent in connection with the respondent's practice of law or while acting as a fiduciary in a matter related to the respondent's practice of law. The review committee's order is not subject to further review and is the final assessment of restitution or costs and expenses for the purposes of rule 13.9 and may be enforced as any other order for restitution or costs and expenses. The record before the review committee and the review committee's order is public information under rule 3.1(b).

[Adopted effective January 1, 2014.]

ELC 9.4
RECIPROCAL RESIGNATION IN LIEU OF DISCIPLINE

(a) Duty To Self-Report Resignation In Lieu of Discipline. Within 30 days of resigning in lieu of discipline from another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the resignation in lieu of discipline.

(b) Obtaining Order. Upon notification from any source that a lawyer admitted to practice in this state has resigned in lieu of discipline in another jurisdiction, disciplinary counsel must obtain a copy of the resignation in lieu of discipline and any order approving the resignation and file it with the Supreme Court, except in circumstances set forth in subsection (e).

(c) Supreme Court Action. Except in circumstances set forth in subsection (e), upon receipt of a copy of a resignation in lieu of discipline and any order approving the resignation the Supreme Court orders the respondent lawyer to show cause within 60 days of service why the lawyer should not be disbarred in this jurisdiction. The Association must personally serve this order and a copy of the resignation in lieu of discipline and any order from the other jurisdiction approving the resignation, on the respondent under rule 4.1(b)(3).

(d) Discipline To Be Imposed.

(1) Sixty days after service of the order under section (c), the Supreme Court enters an order disbarring the respondent lawyer unless the lawyer demonstrates that disbarment would result in grave injustice.

(2) The burden is on the respondent to establish that continuing to remain admitted to practice in this jurisdiction will not place the public at risk.

(3) If the Supreme Court determines that disbarment would result in a grave injustice, the Court may enter an appropriate order.

(e) Prior Matter In Washington. No action will be taken against a lawyer under this rule when the lawyer has already been the subject of disciplinary action or other final disposition of a grievance or disciplinary proceeding in Washington arising out of the same circumstances that are the basis for discipline or a resignation in another jurisdiction.

[Adopted effective January 1, 2014.]

ELC 10.1
GENERAL PROCEDURE

(a) Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated, apply directly. A party may not move for summary judgment, but either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding. Motions for judgment on the pleadings and motions to dismiss based upon the pleadings are available only to the extent permitted in rule 10.10.

(b) Meaning of Terms in Civil Rules. In applying the civil rules to proceedings under these rules, terms have the following meanings:

(1) "Court" or "judge" means the hearing officer; and

(2) "Parties" means the respondent lawyer and disciplinary counsel.

(c) Hearing Officer Authority. In addition to the powers specifically provided in these rules, the hearing officer may make any ruling that appears necessary and appropriate to insure a fair and orderly proceeding.

[Adopted effective January 1, 2014.]

ELC 10.2
HEARING OFFICER ASSIGNMENT

(a) Assignment. The chief hearing officer assigns a hearing officer, from those eligible under rule 2.5.

(b) Disqualification and Removal.

(1) Removal Without Cause. Either party is entitled to have an assigned hearing officer removed, without establishing cause for the removal, by filing a written request with the Clerk within ten days after service on the respondent of that officer's assignment. A party may only once request removal without cause in any proceeding.

(2) Disqualification for Cause. Either party may move to disqualify any assigned hearing officer for good cause. A motion under this subsection must be filed promptly after the party knows, or in the exercise of due diligence should have known, of the basis for the disqualification.

(3) Notice to Chief Hearing Officer. The Clerk must promptly provide copies of requests or motions for removal or for disqualification to the chief hearing officer.

(4) Decision. The chief hearing officer decides all requests for removal and disqualification motions, except the Chair decides a request to remove or disqualify the chief hearing officer. The decision of the chief hearing officer or Chair on a request for removal or a motion to disqualify is not subject to interim review. After removal or disqualification of the assigned hearing officer, the chief hearing officer assigns a replacement.

[Adopted effective January 1, 2014.]

ELC 10.3
COMMENCEMENT OF PROCEEDINGS

(a) Formal Complaint.

(1) Filing. After a matter is ordered to hearing, disciplinary counsel files a formal complaint with the Clerk.

(2) Service. After the formal complaint is filed, it must be personally served on the respondent lawyer, with a notice to answer.

(3) Content. The formal complaint must state the respondent's acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct. Disciplinary counsel must sign the formal complaint, but it need not be verified.

(4) Prior Discipline. Prior disciplinary action against the respondent may be described in a separate count of the formal complaint if the respondent is charged with conduct demonstrating unfitness to practice law.

(b) Filing Commences Proceedings. A disciplinary proceeding commences when the formal complaint is filed.

(c) Consolidation and Joinder. A review committee ordering a hearing on alleged misconduct, or the chief hearing officer after consultation with any assigned hearing officer, has discretion to consolidate for hearing two or more matters against the same respondent, or to join matters against two or more respondents. A consolidation or joinder ordered under this provision serves as authorization to combine multiple matters in one formal complaint or to amend the formal complaint to the extent necessary to implement the joinder or consolidation.

(d) Severance. On motion of a party, thje hearing officer, in furtherance of convenience or to avoid prejudice, or when severance will promote a fair determination of the issues, may order a severance and separate hearing of any matter joined or consolidated for hearing under section (c) of this rule.

[Adopted effective January 1, 2014.]

ELC 10.4
NOTICE TO ANSWER

(a) Content. The notice to answer must be substantially in the following form:

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION

In re) NOTICE TO ANSWER;
) NOTICE OF HEARING OFFICER;

_____,) NOTICE OF DEFAULT PROCEDURE
Lawyer.)

To: The above named lawyer:

A formal complaint has been filed against you, a copy of which is served on you with this notice. You are notified that you must file your answer to the complaint within 20 days of the date of service on you, by filing the original of your answer with the Clerk to the Disciplinary Board of the Washington State Bar Association, [insert address] and by serving one copy on the hearing officer if one has been assigned and one copy on disciplinary counsel at the address[es] given below. Failure to file an answer may result in the imposition of a disciplinary sanction against you and the entry of an order of default under rule 10.6 of the Rules for Enforcement of Lawyer Conduct.

Notice of default procedure: Your default may be entered for failure to file a written answer to this formal complaint within 20 days of service as required by rule 10.6 of the Rules for Enforcement of Lawyer Conduct. THE ENTRY OF AN ORDER OF DEFAULT WILL RESULT IN THE ALLEGATIONS AND VIOLATIONS IN THE FORMAL COMPLAINT BEING ADMITTED AND ESTABLISHED AND discipline being imposed or recommended based on the admitted charges of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of default is vacated on motion timely made under rule 10.6(c) of the Rules for Enforcement of Lawyer Conduct. The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by rule 10.6(b)(2).

The [hearing officer] assigned to this proceeding is: [insert name, address, and telephone number of hearing officer].

Dated this _____ day of _____, 20___.

_____
Disciplinary Counsel, Bar No.

Address: _____

Telephone: _____

(b) Notice When Hearing Officer Not Assigned. If no hearing officer has been assigned when a formal complaint is served, disciplinary counsel serves the formal complaint and a notice to answer as in section (a), but without reference to the hearing officer.

[Adopted effective January 1, 2014.]

ELC 10.5
ANSWER

(a) Time to Answer. Within 20 days of service of the formal complaint and notice to answer, the respondent lawyer must file and serve an answer. Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6. The filing of a motion to dismiss for failure to state a claim stays the time for filing an answer during the pendency of the motion.

(b) Content. The answer must contain:

(1) a specific denial or admission of each fact or claim asserted in the formal complaint in accordance with CR 8(b);

(2) a statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition; and

(3) an address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.

(c) Filing and Service. The answer must be filed and served under rules 4.1 and 4.2.

[Adopted effective January 1, 2014.]

ELC 10.6
DEFAULT PROCEEDINGS

(a) Entry of Default.

(1) Timing. If a respondent lawyer, after being served with a notice to answer as provided in rule 10.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, disciplinary counsel may serve the respondent with a written motion for an order of default.

(2) Motion. Disciplinary counsel must serve the respondent with a written motion for an order of default

and a copy of this rule at least five days before entry of the order of default. The motion for an order of default must include the following:

(A) the dates of filing and service of the notice to answer, formal complaint, and any amendments to the complaint; and

(B) disciplinary counsel's statement that the respondent has not timely filed an answer as required by rule 10.5 and that disciplinary counsel seeks an order of default under this rule; and

(C) notice that a default will result in the allegations and violations in the formal complaint being admitted and established.

(3) Entry of Order of Default. If the respondent fails to file a written answer with the Clerk within five days of service of the motion for entry of an order of default, the hearing officer, or if no hearing officer has been assigned, the chief hearing officer, on proof of proper service of the motion, enters an order finding the respondent in default.

(4) Effect of Order of Default. Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the respondent may not participate further in the proceedings unless the order of default is vacated under this rule.

(b) Proceedings After Entry of an Order of Default.

(1) Service. The Clerk serves the order of default and a copy of this rule under rule 4.2(b).

(2) No Further Notices. Notwithstandng any other provision of these rules, after entry of an order of default, no further notices, motions, documents, papers, or transcripts need be served on the respondent except for copies of the decisions of the hearing officer, the Board, and the Court.

(3) Disciplinary Proceeding. Within 60 days of the filing of the order of default, the hearing officer must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. Disciplinary counsel may present additional evidence including, but not limited to, requests for admission under rule 10.11 (b), and depositions, affidavits, and declarations regardless of the witness's availability.

(c) Setting Aside Default.

(1) Motion To Vacate Order of Default. A respondent may move to vacate the order of default and any decision of the hearing officer or Board arising from the default on the following grounds:

(A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;

(B) erroneous proceedings against a respondent who was, at the time of the default, incapable of conducting a defense;

(C) newly discovered evidence that by due diligence could not have been previously discovered;

(D) fraud, misrepresentation, or other misconduct of an adverse party;

(E) the order of default is void;

(F) unavoidable casualty or misfortune preventing the respondent from defending; or

(G) any other reason justifying relief from the operation of the default.

(2) Time. The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the respondent's motion is based on allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

(3) Burden of Proof. The respondent bears the burden of proving the grounds for setting aside the default. If the respondent proves that the default was entered as a result of a disability which made the respondent incapable of conducting a defense, the default must be set aside.

(4) Service and Contents of Motion. The motion must be filed and served under rules 4.1 and 4.2 and be accompanied by a copy of respondent's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the respondent's asserted defenses and any facts that respondent asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

(A) the date on which the respondent first learned of the entry of the order of default;

(B) the grounds for setting aside the order of default; and

(C) an offer of proof of the facts that the respondent expects to establish if the order of default is vacated.

(5) Response to Motion. Within ten days of filing and service of the motion to vacate, disciplinary counsel may file and serve a written response.

(6) Decision. The hearing officer decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chief hearing officer assigns a hearing officer to decide the motion. Pending a ruling on the motion, the hearing officer may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer has discretion to order appropriate conditions.

(7) Appeal of Denial of Motion. A respondent may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer decision. The respondent must file the notice of appeal within ten days of service on the respondent of the order denying the motion. The appeal is decided on the written record without

oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

(8) Decision To Vacate Is Not Subject to Interim Review. An order setting aside an order of default is not subject to interim review.

(d) Order of Default Not Authorized in Certain Proceedings. The default procedure in this rule does not apply to a proceeding to inquire into a lawyer's capacity to practice law under title 8 except as provided in that title.

[Adopted effective January 1, 2014.]

ELC 10.7
AMENDMENT OF FORMAL COMPLAINT

(a) Amendments Adding Related Facts or Charges. Disciplinary counsel may amend a formal complaint at any time to add facts or charges that relate to matters in the formal complaint or to the respondent lawyer's conduct regarding the pending proceedings. The respondent may, within ten days of service of the amendment, object to the amendment by a motion to the hearing officer. The hearing officer will consider the motion under the procedure provided by rule 10.8.

(b) Other Amendments. Disciplinary counsel must obtain authorization from the chief hearing officer for amendments other than those under section (a) or rule 10.3(c). Disciplinary counsel must give respondent notice of a request for authorization to amend. A request to amend will be considered under the procedure provided by rule 10.8. The chief hearing officer, after consultation with any assigned hearing officer, may authorize the amendment, may require that the additional facts or charges be the subject of a separate formal complaint, or may direct disciplinary counsel to report the matter to a review committee under rule 5.7(c).

(c) Decision. In ruling on a motion under section (a) or (b), a hearing officer or the chief hearing officer may grant or deny the motion in whole or part. Authorization to amend should be freely given when justice so requires.

(d) Service and Answer. Disciplinary counsel serves an amendment to a formal complaint on the respondent as provided in rule 4.1 but need not serve a Notice to Answer with the amendment. Rule 10.5 governs the answer to an amendment except that any part of a previous answer may be incorporated by reference.

[Adopted effective January 1, 2014.]

ELC 10.8
MOTIONS

(a) Filing and Service. Motions to the hearing officer, except motions which may be made ex parte or motions at hearing, must be in writing and filed and served as required by rules 4.1 and 4.2.

(b) Response. The opposing party has ten days from service of a motion to respond, unless the time is altered by the hearing officer for good cause.

(c) Reply. The moving party has seven days from service of the response to reply unless the time for reply is altered by the hearing officer for good cause.

(d) Consideration of Motion. Upon expiration of the time for reply, the hearing officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by conference telephone call.

(d) Ruling. A ruling on a written motion must be in writing and filed with the Clerk.

(e) Minor Matters. Alternatively, motions on minor matters may be made by letter to the hearing officer, with a copy to the opposing party and to the Clerk. The provisions of sections (b) and (c) apply to these motions. A ruling on such motion may also be by letter to each party with a copy to the Clerk.

(f) Chief Hearing Officer Authority. Before the assignment of a hearing officer, the chief hearing officer may rule on any prehearing motion.

[Adopted effective January 1, 2014.]

ELC 10.9
INTERIM REVIEW

Unless these rules provide otherwise, the Board may review any interim ruling on request for review by either party, if the Chair determines that review is necessary and appropriate and will serve the ends of justice.

[Adopted effective January 1, 2014.]

ELC 10.10
PREHEARING DISPOSITIVE MOTIONS

(a) Respondent Motion. A respondent lawyer may move for dismissal of all or any portion of one or more counts of a formal complaint for failure to state a claim upon which relief can be granted.

(b) Disciplinary Counsel Motion. Disciplinary counsel may move for an order finding misconduct based on the pleadings. In ruling on this motion, the hearing officer may find that all or some of the misconduct as alleged in the formal complaint is established, but will determine the sanction after a hearing.

(c) Time for Motion. A motion under section (a) of this rule must be filed within the time for filing of the answer to a formal complaint or amended formal complaint, and may be filed in lieu of filing an answer. If the motion does not result in the dismissal of the entire formal complaint or amended formal complaint, the respondent must file and serve an answer to the remaining allegations within ten days of service of the ruling on the motion. A motion under section (b) of this rule must be filed within 30 days of the filing of the answer to a formal complaint or amended formal complaint.

(d) Procedure. Rule 10.8 and CR 12 apply to motions under this rule. No factual materials outside the answer and complaint may be presented. If the motion results in dismissal of part but not all of a formal complaint, the Board must hear an interlocutory appeal of the order by either party. The appeal must be filed within 15 days of service of the order.

[Adopted effective January 1, 2014.]

ELC 10.11
DISCOVERY AND PREHEARING PROCEDURES

(a) General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.

(b) Requests for Admission. After a formal complaint is filed, the parties may request admissions under CR 36. Under appropriate circumstances, the hearing officer may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(c) Other Discovery. After a formal complaint is filed, the parties have the right to other discovery under the Superior Court Civil Rules, including under CR 27-31 and 33 -35, only on motion and under terms and limitations the hearing officer deems just or on the parties' stipulation.

(d) Limitations on Discovery. The hearing officer may exercise discretion in imposing terms or limitations on the exercise of discovery to assure an expeditious, economical, and fair proceeding, considering all relevant factors including necessity and unavailability by other means, the nature and complexity of the case, seriousness of charges, the formal and informal discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise.

(e) Subpoenas. Subpoenas may be issued under CR 45. Subpoenas may be enforced under rule 4.7.

(f) Commissions. For a deposition outside Washington State, a commission need not issue, but a copy of the order of the chief hearing officer or hearing officer, certified by the officer, is sufficient to authorize the eposition.

(g) CR 16 Orders. The hearing officer may enter orders under CR 16.

(h) Duty to Cooperate. A respondent lawyer who has been served with a formal complaint must respond to discovery requests and comply with all lawful orders made by the hearing officer. The hearing officer may draw adverse inferences as appear warranted by the failure of either the Association or the respondent to respond to discovery.

[Adopted effective January 1, 2014.]

ELC 10.12
SCHEDULING OF HEARING

(a) Where Held. Absent agreement of all parties, all disciplinary hearings must be held in Washington State.

(b) Scheduling of Conference. Following the filing of respondent's answer, the hearing officer must convene a scheduling conference of the parties, by conference call or in person.

(c) Scheduling Order. The hearing officer must enter an order setting the date and place of the hearing. This order may include any prehearing deadlines the hearing officer deems required by the complexity of the case, as well as a determination regarding a settlement conference under section (h). The Scheduling Order may be in the following form with the following timelines:

SCHEDULING CONFERENCE DETERMINATION:

[ ] The hearing officer finds that this case may benefit from a settlement conference, and a settlement officer should be appointed.

IT IS ORDERED that the hearing is set and the parties must comply with prehearing deadlines as follows:

1. Witnesses. A preliminary list of intended witnesses, including addresses and phone numbers, and a designation of whether the witness is a fact witness, character witness, or expert witness, must be filed and served by [Hearing Date (H)-12 weeks].

2. Discovery. Discovery cut-off is [H-6 weeks].

3. Motions. Prehearing motions, other than motions to bifurcate, must be served by [H-4 weeks]. An exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing officer unless the motion concerns the exhibit's admissibility. The hearing officer will advise counsel whether oral argument is necessary, and, if so, the date and time, and whether it will be heard by telephone. (Rule 10.15 provides the deadline for a motion to bifurcate.)

4. Exhibits. Lists of proposed exhibits must be exchanged by [H-3 weeks].

5. Service of Exhibits/Final Witness List. Copies of proposed exhibits and a final witness list, including a summary of the expected testimony of each witness must be exchanged by [H-2 weeks]. A copy of the final witness list, excluding the summary of expected testimony, must be filed and served by [H-2 weeks].

6. Objections. Objections to proposed exhibits, including grounds other than relevancy, must be exchanged by [H-1 week].

7. Briefs. Any hearing brief must be filed and served by [H-1 week]. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the hearing officer before the hearing.

8. Hearing. The hearing is set for [H] and each day thereafter until recessed by the hearing officer, at [location].

(d) Failure to Comply With Scheduling Order. Upon a party failing to comply with a provision of the scheduling order, the hearing officer may exclude witnesses, testimony, exhibits or other evidence, and take such other action as may be appropriate.

(e) Motion for Hearing Within 120 Days. A respondent's motion under section (b) for a hearing within 120 days must be granted, unless disciplinary counsel shows good cause for setting the hearing at a later date.

(f) Notice. Service of a copy of an order or ruling of the hearing officer setting a date, time, and place for the hearing constitutes notice of the hearing. The respondent must be given at least ten days notice of the hearing absent consent.

(g) Continuance. Either party may move for a continuance of the hearing date. The hearing officer has discretion to grant the motion for good cause shown.

(h) Settlement Conference.

(1) Procedure. The hearing officer determines whether a settlement conference should be ordered whenever:

(A) the hearing officer issues a scheduling order under section (c); or

(B) a party requests a settlement conference in writing.

(2) Timing. Unless agreed to by the parties a settlement conference may not be scheduled later than 30 days prior to the hearing date specified in the scheduling order.

(3) Factors Considered. When making a determination about whether to order a settlement conference, the hearing officer shall consider whether such a conference would be helpful in light of the complexity of the issues, the extent to which the relevant facts or charged violations are disputed, or any other relevant factor.

(4) Appointment. The chief hearing officer will determine whether to appoint the assigned hearing officer or another hearing officer to conduct the settlement conference. Following a settlement conference, the hearing officer who conducted the settlement conference may not conduct the disciplinary hearing without the consent of all parties.

(5) Confidentiality. Settlement conference proceedings are confidential and not admissible in any discipline proceeding.

[Adopted effective January 1, 2014.]

ELC 10.13
DISCIPLINARY HEARING

(a) Representation. The respondent lawyer may be represented by counsel.

(b) Respondent Must Attend. A respondent given notice of a hearing must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. If, after proper notice, the respondent fails to attend the hearing, the hearing may proceed, and the hearing officer:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and

(2) must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:

(A) the facts stated are within the witness's personal knowledge;

(B) the facts are set forth with particularity; and

(C) it shows affirmatively that the witness could testify competently to the stated facts.

(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things previously requested in accordance with these rules. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

(d) Witnesses. Except as provided in subsection (b)(2), witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by CR 32. If ordered by the hearing officer, testimony may be taken by telephone, television, video connection, or other contemporaneous electronic means. Testimony must be recorded by a court reporter or, if allowed by the hearing officer, by tape or electronic recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(e) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this rule and with all lawful orders made by the hearing officer under this rule. Subpoenas may be enforced under rule 4.7. The hearing officer may additionally draw adverse inferences as appear warranted by the respondent's failure to respond.

(f) Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the hearing officer files a recommendation.

[Adopted effective January 1, 2014.]

ELC 10.14
EVIDENCE AND BURDEN OF PROOF

(a) Proceedings Not Civil or Criminal. Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis hearings to determine if a lawyer's conduct should have an impact on his or her license to practice law.

(b) Burden of Proof. Disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a formal complaint charges a respondent lawyer with an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.

(d) Rules of Evidence. Consistent with section (a) of this rule, the following rules of evidence apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if in the hearing officer's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(2) if not inconsistent with subsection (1), the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings;

(3) documents may be admitted in the form of copies or excerpts, or by incorporation by reference;

(4) Official Notice.

(A) official notice may be taken of:

(i) any judicially cognizable facts;

(ii) technical or scientific facts within the hearing officer's or panel's specialized knowledge; and

(iii) codes or standards adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association.

(B) the parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material noticed and the sources thereof, including any staff memoranda and data, and they shall have an opportunity to contest the facts and material noticed. A party proposing that

official notice be taken may be required to produce a copy of the material to be noticed.

(e) APA as Guidance. The evidence standards in this rule are based on the evidence provisions of the Washington Administrative Procedures Act, which, when not inconsistent with these standards, should be looked to for guidance. "Shall" has the meaning in this rule ascribed to it in the APA.

[Adopted effective January 1, 2014.]

ELC 10.15
BIFURCATED HEARINGS

(a) When Allowed. Upon written motion filed no later than 60 days before the scheduled hearing, either party may request that the disciplinary proceeding be bifurcated. The hearing officer must weigh the reasons for bifurcation against any increased cost and delay, inconvenience to participants, duplication of evidence, and any other factors, and may grant the motion only if it appears necessary to insure a fair and orderly hearing because the respondent has a record of prior disciplinary sanction or because either party would suffer significant prejudice or harm.

(b) Procedure.

(1) Violation Hearing.

(A) A bifurcated proceeding begins with an initial hearing to make factual determinations and legal conclusions as to the violations charged, including the mental state necessary for the violations. During this stage of the proceedings, evidence of a prior disciplinary record is not admissible to prove the respondent's character or to impeach the respondent's credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) At the conclusion of that hearing, the hearing officer files findings and conclusions.

(i) If no violation is found, the proceedings are concluded, the findings and conclusions are the decision of the hearing officer, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under rule 10.16(c), or after ruling on that motion, the findings and conclusions as to those violations are not subject to reconsideration by the hearing officer.

(2) Sanction Hearing. If any violation is found, a second hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings and conclusions as to the violations. At the conclusion of the sanction hearing, the hearing officer files findings and conclusions as to a sanction recommendation, that, together with the previously filed findings and conclusions, is the decision of the hearing officer.

(3) Timing. If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing officer must set a date and place for the sanction hearing. Absent extraordinary circumstances, the sanction hearing should be held no later than 45 days after the anticipated last day of the violation hearing.

[Adopted effective January 1, 2014.]

ELC 10.16
DECISION OF HEARING OFFICER

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

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

(c) Amendment.

(1) Timing of Motion. Either party may move to modify, amend, or correct the decision as follows:

(A) In a proceeding not bifurcated, within 15 days of service of the decision on the respondent lawyer;

(B) In a bifurcated proceeding, within 15 days of service of:

(i) the violation findings of fact and conclusions of law; or

(ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings or conclusions.

(2) Procedure. Rule 10.8 governs this motion. The hearing officer should rule on the motion within 15 days after the filing of a timely reply or after the period to file a reply under rule 10.8(c) has expired. The ruling may deny the motion or may amend, modify, or correct the decision.

(3) Effect of Failure To Move. Failure to move for modification, correction, or amendment does not affect any appeal to the Board or review by the Supreme Court.

(d) When Final. If a hearing officer recommends reprimand or an admonition, or recommends dismissal of the charges, the recommendation becomes the final decision if neither party files an appeal and the Chair does not refer the matter to the Board for sua sponte review under rule 11.13(b). If the Chair refers a matter for sua sponte review under rule 11.3(b) and the Board declines review, the hearing officer's recommendation becomes the final decision upon entry of the Board's order declining review. If a hearing officer recommends disbarment or suspension, the recommendation becomes the final decision only upon entry of an order by the Supreme Court under rule 11.12(g) or final action on an appeal or petition for discretionary review under Title 12.

[Adopted effective October 1, 2002; amended effective January 1, 2014; January 1, 2015.]

ELC 11.1
SCOPE OF TITLE

This title provides the procedure for Board review following a hearing officer's findings of fact, conclusions of law, and recommendation, or dismissal of all claims under rule 10.10(a). It does not apply to Board review of interim rulings under rule 10.9.

[Adopted effective January 1, 2014.]

ELC 11.2
DECISIONS SUBJECT TO BOARD REVIEW

(a) Decision. For purposes of this title, "Decision" means:

(1) the hearing officer's findings of fact, conclusions of law, and recommendation, provided that if either party properly files a motion to amend under rule 10.16(c), the "Decision" includes the ruling on the motion, and becomes subject to Board review only upon the ruling on the motion; or

(2) the hearing officer's decision under rule 10.10(a) dismissing all claims.

(b) Review of Decisions. The Board reviews a Decision if:

(1) either party files a notice of appeal within 30 days of service of the Decision on the respondent; or

(2) the Board orders sua sponte review under rule 11.3.

(c) Cross Appeal. If a party files a timely notice of appeal under subsection (b)(1) of this rule and the other party wants relief from the Decision, the other party must file a notice of appeal with the Clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) within the time set forth in subsection (b) for filing a notice of appeal.

[Adopted effective October 1, 2002; amended effective January 1, 2014; amended again effective January 1, 2014.]

ELC 11.3
SUA SPONTE REVIEW

(a) Sua Sponte Review of Recommendations for Disbarment and Suspension. If neither the Respondent nor Disciplinary Counsel files a timely notice of appeal from a Decision recommending suspension or disbarment, the Decision shall be distributed to the Board members for consideration of whether to order sua sponte review and the matter shall be scheduled for consideration by the Board. The Decision shall be distributed to the Board within 30 days after the last day to file a notice of appeal. An order for sua sponte review shall set forth the issues to be reviewed. If the Board declines to order sua sponte review, the Board shall issue an order declining sua sponte review and adopting the Decision of the hearing officer.

(b) Sua Sponte Review of Other Recommendations. The Chair may file a notice of referral for sua sponte consideration of a Decision other than one recommending disbarment or suspension under rule 11.2(b)(2). The notice shall be filed within 30 days after the last day to file a notice of this appeal. Upon this filing, the Chair causes a copy to be served on the parties and schedules the matter for consideration by the Board. On consideration, the Board either issues an order for sua sponte review setting forth the issues to be reviewed

or an order declining sua sponte review.

(c) Procedure. If the Board issues an order for sua sponte review, the Board's order must designate the appellant for purposes of rules 11.6 and 11.9, but either party may raise any issue for Board review. Board review is conducted as described in rule 11.12.

(d) Standards for Ordering Sua Sponte. The Board should order sua sponte review only in extraordinary circumstances to prevent substantial injustice or to correct a clear error.

[Adopted effective January 1, 2014.]

ELC 11.4
TRANSCRIPT OF HEARING

(a) Ordering Transcript. A hearing transcript or partial transcript may be ordered at any time by the hearing officer, respondent lawyer, disciplinary counsel, or the Board. If a notice of appeal is filed under rule 11.2(b)(1) disciplinary counsel must order the entire transcript unless the parties agree that no transcript or only a partial transcript is necessary for review. For sua sponte review, the Chair determines the extent of the transcript necessary for review. If the Chair orders a partial transcript, either party may request additional portions of the transcript.

(b) Filing and Service. The original of the transcript is filed with the Clerk. Disciplinary counsel must cause a copy of the transcript to be served on the respondent except if the respondent ordered the transcript.

(c) Proposed Corrections. Within ten days of service of a copy of the transcript on the respondent, or within ten days of filing the transcript if the respondent ordered the transcript, each party may file any proposed corrections to the transcript. Each party has five days after service of the opposing party's proposed corrections to file objections to those proposed corrections.

(d) Settlement of Transcript. If either party files objections to any proposed correction under section (c), the hearing officer, upon review of the proposed corrections and objections, enters an order settling the transcript. Otherwise, the transcript is deemed settled and any proposed corrections deemed incorporated in the transcript.

[Adopted effective January 1, 2014.]

ELC 11.5
RECORD ON REVIEW

(a) Generally. The record on review consists of:

(1) any hearing transcript or partial transcript; and

(2) bar file documents and exhibits designated by the parties.

(b) References to the Record. Briefs filed under rule 11.9 must specifically refer to the record if available, using the designations TR for transcript of hearing, EX for exhibits, and BF for bar file documents.

(c) Avoid Duplication. Material appearing in one part of the record on review should not be duplicated in another part of the record on review.

(d) No Additional Evidence. Evidence not presented to the hearing officer or panel must not be presented to the Board.

[Adopted effective January 1, 2014.]

ELC 11.6
DESIGNATION OF BAR FILE DOCUMENTS AND EXHIBITS

(a) RAP 9.6 Controls. The parties designate bar file documents and exhibits for Board consideration under the procedure of RAP 9.6, except as provided by this rule.

(b) Bar File Documents. The bar file documents are considered the clerk's papers.

(c) Disciplinary Board and Clerk. The Disciplinary Board is considered the appellate court and the Clerk to the Disciplinary Board is considered the trial court clerk.

(d) Responsibility and Time for Designation. When a party appeals to the Board, that party must file and serve that party's designation of bar file documents and exhibits within 15 days of filing the notice of appeal. In all other reviews, the party identified as appellant by the Board's order is responsible for designating bar

file documents and exhibits.

(e) Hearing Officer Recommendation. The bar file documents must include the hearing officer recommendation.

[Adopted effective January 1, 2014.]

ELC 11.7
PREPARATION OF BAR FILE DOCUMENTS AND EXHIBITS

(a) Preparation. The Clerk prepares the bar file documents and exhibits in the format required by RAP 9.7(a) & (b), and distributes them to the Board. The Clerk provides the parties with a copy of the index of the bar file documents and the cover sheet listing the exhibits.

(b) Costs. Costs for preparing bar file documents and exhibits may be assessed as costs under rule 13.9(b)(9).

[Adopted effective January 1, 2014.]

ELC 11.8
DELETED

[Deleted effective January 1, 2014.]

ELC 11.9
BRIEFS

(a) Caption of Briefs. The parties should caption briefs as follows:

[Name of Party] Opening Brief
[Name of Party] Response
[Name of Party] Reply

(b) Opening Brief.

(1) The party seeking review must file an opening brief within 45 days of the later of:

(A) service on the respondent lawyer of a copy of the transcript, unless the parties have agreed that no transcript is necessary; or

(B) filing of the notice of appeal.

(2) Failure to file an opening brief within the required period constitutes an abandonment of the appeal.

(c) Response. The opposing party has 30 days from service of the opening brief to file a brief responding to the issues raised on appeal.

(d) Reply. The party seeking review may file a reply to the response within 30 days of service of the response.

(e) Procedure when Both Parties Seek Review or the Board Orders Sua Sponte Review. When both parties file notices of appeal the party filing first is considered the party seeking review. When the Board initiates sua sponte review, the order must designate the party seeking review. In these cases, the responding party may raise any issue for Board review, and the designated party seeking review has an additional five days to file the reply permitted by section (d).

[Adopted effective January 1, 2014.]

ELC 11.10
SUPPLEMENTING RECORD ON REVIEW

The record on review may be supplemented under the procedures of RAP 9.6 except that leave to supplement is freely granted. The Board may direct that the record be supplemented with any portion of the record before the hearing officer, including any bar file documents and exhibits.

[Adopted effective January 1, 2014.]

ELC 11.11
REQUEST FOR ADDITIONAL PROCEEDINGS

In any brief permitted in rule 11.9, either party may request that an additional hearing be held before the hearing officer to take additional evidence based on newly discovered evidence. A request for an additional hearing must be supported by affidavit describing in detail the additional evidence sought to be admitted and any reasons why it was not presented at the previous hearing. The Board may grant or deny the request in its discretion.

[Adopted effective January 1, 2014.]

ELC 11.12
DECISION OF BOARD

(a) Basis for Review. Board review is based on the hearing officer's Decision, the parties' briefs filed under rule 11.9, and the record on review.

(b) Standards of Review. The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer cannot be considered by the Board.

(c) Oral Argument. The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to file his or her last brief, including a response or reply, under rule 11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the time, place, and terms for oral argument.

(d) Action by Board. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer. The Board may also direct that the hearing officer or panel hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) Order or Opinion. The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. Regardless of whether or not a dissenting member files a written dissent, the Board order or opinion must set forth the result favored by each dissenting member. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. A copy of the complete decision is served by the Clerk on the parties.

(f) Procedure to Amend, Modify, or Reverse if No Appeal.

(1) If the Board intends to amend, modify, or reverse the hearing officer's recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.

(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.

(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.

(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request for reconsideration, the Board issues an order or opinion after reconsideration under section (e).

(g) Decision Final Unless Appealed. The Board's decision is final if neither party files a notice of appeal or a petition for review within the time permitted by title 12 or upon the Supreme Court's denial of a petition for discretionary review. When a Board decision recommending suspension or disbarment becomes final because neither party has filed a notice of appeal or petition for discretionary review, the Clerk transmits to the Supreme Court a copy of the Board's decision together with the findings, conclusions and recommendation of the hearing officer for entry of an appropriate order.

[Adopted effective January 1, 2014.]

ELC 11.13

CHAIR MAY MODIFY REQUIREMENTS

Upon written motion filed with the Clerk by either party, for good cause shown, the Chair may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review. However, the time period for filing a notice of appeal in rule 11.2(b) may not be extended or altered.

[Adopted effective January 1, 2014.]

ELC 11.14
MOTIONS

(a) Content of Motion. A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for the relief sought, with supporting argument.

(b) Filing and Service. Motions on matters pending before the Board must be in writing and filed with the Clerk. The motion and any response or reply must be served as required by rule 4.1.

(c) Response. The opposing party may submit a written response to the motion. A response must be served and filed within ten days of service of the motion, unless the time is shortened by the Chair for good cause.

(d) Reply. The moving party may submit a reply to a response. A reply must be served and filed within seven days of service of the response, unless the time for reply is shortened by the Chair for good cause.

(e) Length of Motion, Response, and Reply. A motion and response must not exceed ten pages, not including supporting papers. A reply must not exceed five pages, not including supporting papers. For good cause, the Chair may grant a motion to file an over-length motion, response, or reply.

(f) Consideration of Motion. Upon expiration of the time for reply the Chair must promptly rule on the motion or refer the motion to the full Board for decision. A motion will be decided without oral argument, unless the Chair directs otherwise.

(g) Ruling. A motion is decided by written order filed with and served by the Clerk under rule 4.2(b).

(h) Minor Matters. Motions on minor matters may be made by letter to the Chair, with a copy served on the opposing party and filed with the Clerk. The provisions of sections (c), (d), and (f) of this rule apply to such motions. A ruling on such a motion is decided by written order filed with and served by the Clerk under rule 4.2(b).

[Adopted effective January 1, 2014.]

ELC 12.1
APPLICABILITY OF RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure serve as guidance for review under this title except as to matters specifically dealt with in these rules.

[Adopted effective January 1 2014.]

ELC 12.2
METHODS OF SEEKING REVIEW

(a) Two Methods for Seeking Review of Board Decisions. The methods for seeking Supreme Court review of Board decisions entered under rule 11.12(e) are: review as a matter of right, called "appeal", and review with Court permission, called "discretionary review". Both "appeal" and "discretionary review" are called "review".

(b) Power of Court Not Affected. This rule does not affect the Court's power to review any Board decision recommending suspension or disbarment and to exercise its inherent and exclusive jurisdiction over the lawyer discipline and disability system. The Court notifies the respondent lawyer and disciplinary counsel of the Court's intent to exercise sua sponte review within 90 days of the Court receiving notice of the decision under rule 3.5(a), or otherwise.

[Adopted effective January 1 2014.]

ELC 12.3
APPEAL

(a) Right to Appeal. The respondent lawyer or disciplinary counsel has the right to appeal a Board decision recommending suspension or disbarment. There is no other right of appeal.

(b) Notice of Appeal. The appealing party must file a notice of appeal with the Clerk within 30 days of service of the Board's decision on that party.

(c) Susequent Notice by the Other Party. When a timely notice of appeal has been filed by a party, if the other party wants relief from the Board's decision, that party must file a notice of appeal with the Clerk within 14 days after service of the notice filed by the other party.

(d) Filing Fee. The first party to file a notice of appeal must, at the time the notice is filed, either pay the statutory filing fee to the Clerk of the Disciplinary Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(e) Service. A party filing any notice of appeal must serve the other party.

[Adopted effective January 1, 2014.]

ELC 12.4
DISCRETIONARY REVIEW

(a) Decisions Subject to Discretionary Review. Respondent or disciplinary counsel may seek discretionary review of Board decisions under rule 11.12(e) not subject to appeal under rule 12.3. The Court accepts discretionary review only if:

(1) the Board's decision is in conflict with a Supreme Court decision;

(2) a significant question of law is involved;

(3) there is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or

(4) the petition involves an issue of substantial public interest that the Court should determine.

(b) Petition for Review. Respondent or disciplinary counsel may seek discretionary review by filing a petition for review with the Clerk within 30 days of service of the Board's decision on respondent.

(c) Content of Petition; Answer; Service; Decision. A petition for review should be substantially in the form prescribed by RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in that rule to the Court of Appeals are considered references to the Board. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4(d) - (h) governs answers and replies to petitions for review and related matters including service and decision by the Court.

(d) Subsequent Petition By Other Parties. If a timely petition for discretionary review is filed by the Respondent or disciplinary counsel, and the other party wants relief from the Board's decision, he or she must file a petition for discretionary review with the Clerk within the later of:

(1) 14 days after service of the petition filed by the other party, or

(2) the time for filing a petition under subsection (b) of this rule.

(e) Filing Fee. The first party to file a petition for discretionary review must, at the time the petition is filed, either pay the statutory filing fee to the Clerk of the Disciplinary Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(f) Acceptance of Review. The Court accepts discretionary review of a Board decision by granting a petition for review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

[Adopted effective January 1, 2014.]

ELC 12.5
RECORD TO SUPREME COURT

(a) Transmittal. The Clerk should transmit the record, including the filing fee, to the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the

transcript of oral argument before the Board, if any. Notwithstanding these deadlines, the Clerk should not transmit the record to the Supreme Court prior to payment of the filing fee or receipt of proof that the Supreme Court has waived the filing fee.

(b) Content. The record transmitted to the Court consists of:

(1) the notice of appeal, if any;

(2) the Board's decision;

(3) the record before the Board;

(4) the transcript of any oral argument before the Board; and

(5) any other portions of the record before the hearing officer, including any bar file documents or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within ten days of entry of an order assessing costs under rule 13.9(e), the Clerk should transmit it to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under rule 13.9(d).

(e) Additions to Record. Either party may request that the Clerk transmit additional portions of the record to the Court prior to or with the filing of the party's last brief. Thereafter, either party may move the Court for an order directing the transmittal of additional portions of the record to the Court.

[Adopted effective January 1, 2014.]

ELC 12.6
BRIEFS

(a) Brief Required. The party seeking review must file a brief stating his or her objections to the Board's decision.

(b) Time for Filing. The brief of the party seeking review should be filed with the Supreme Court within 30 days of service under rule 12.5(c) of the list of portions of the record transmitted to the Court.

(c) Answering Brief. The answering brief of the other party should be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. A reply brief of a party seeking review should be filed with the Court within the sooner of 20 days after service of the answering brief or 14 days before oral argument. A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.

(e) Briefs When Both Parties Seek Review. When both the respondent lawyer and disciplinary counsel seek review of a Board decision, the respondent is deemed the party seeking review for the purposes of this rule. In that case, disciplinary counsel may file a brief in reply to any response the respondent has made to the issues presented by disciplinary counsel, to be filed with the Court the sooner of 20 days after service of the respondent's reply brief or 14 days before oral argument.

(f) Form of Briefs. Briefs filed under this rule must conform as nearly as possible to the requirements of RAP 10.3 and 10.4. Bar file documents should be abbreviated BF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Clerk. The Supreme Court clerk reproduces and distributes briefs as provided in RAP 10.5.

[Adopted effective January 1, 2014.]

ELC 12.7
ARGUMENT

(a) Rules Applicable. Oral argument before the Supreme Court is conducted under title 11 of the Rules of Appellate Procedure, unless the Court directs otherwise.

(b) Priority. Disciplinary proceedings have priority and are set upon compliance with the above rules.

[Adopted effective January 1, 2014.]

ELC 12.8
MOTION FOR RECONSIDERATION

A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment or delay the effective date of a suspension or disbarment unless the Court enters a stay.

[Adopted effective January 1, 2014.]

ELC 12.9
VIOLATION OF RULES

Sanctions for violation of these rules may be imposed on a party under RAP 18.9. Upon dismissal under that rule of a review sought by a respondent lawyer and expiration of the period to file objections under RAP 17.7, or upon dismissal of review by the Court if timely objections are filed, the Board's decision is final.

[Adopted effective January 1, 2014.]

ELC 13.1
SANCTIONS AND REMEDIES

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

(a) Sanctions.

(1) Disbarment;

(2) Suspension under rule 13.3; or

(3) Reprimand.

(b) Admonition. An admonition under rule 13.5.

(c) Remedies.

(1) Restitution;

(2) Probation;

(3) Limitation on practice;

(4) Requirement that the lawyer attend continuing legal education courses;

(5) Assessment of costs; or

(6) Other requirements consistent with the purposes of lawyer discipline.

[Adopted effective January 1, 2014.]

ELC 13.2
EFFECTIVE DATE OF SUSPENSIONS AND DISBARMENTS

Suspensions and disbarments are effective on the date set by the Supreme Court's order or opinion, which will ordinarily be seven days after the date of the order or opinion. If no date is set, the suspension or disbarment is effective seven days after the date of the Court's order or opinion.

[Adopted effective January 1, 2014.]

ELC 13.3
SUSPENSION

(a) Term of Suspension. A suspension must be for a fixed period of time not exceeding three years.

(b) Reinstatement.

(1) After the period of suspension, the Association administratively returns the suspended respondent lawyer to the respondent's status before the suspension without further order by the Court upon:

(A) the respondent's compliance with all current licensing requirements; and

(B) disciplinary counsel's certification that the respondent has complied with any specific conditions ordered, and has paid any costs or restitution ordered or is current with any costs or restitution payment plan.

(2) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the Chair may modify the terms of the payment plan if warranted. The Chair determines the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

[Adopted effective January 1, 2014.]

ELC 13.4
REPRIMAND

(a) Notice of Reprimand. When an order imposing a reprimand is final, Association Counsel prepares a notice of reprimand consisting of the order imposing the reprimand together with the hearing officer's findings, conclusions and recommendation, any opinion or order of the Board or the Court, stipulation to discipline, or other final document that forms the basis for the order imposing a reprimand, together with a cover notation. The notice of reprimand is filed with the Clerk and served on the respondent lawyer as an order under rule 4.2(b).

(b) Form of Notice. The notice of reprimand must be in substantially the following form:

Notice of Reprimand

Lawyer_____, WSBA No. _____, has been ordered Reprimanded by the following attached documents:

[Title and date of the attached documents.]

[Adopted effective January 1, 2014.]

ELC 13.5
ADMONITION

(a) By a Review Committee.

(1) A review committee may issue an admonition when investigation of a grievance shows misconduct.

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

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

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

(d) Effect. An admonition is a permanent discipline record and is admissible in subsequent disciplinary or disability proceedings involving the respondent.

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

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

[Adopted effective January 1, 2014.]

ELC 13.6
DISCIPLINE FOR CUMULATIVE ADMONITIONS

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

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

[Adopted effective January 1, 2014.]

ELC 13.7
RESTITUTION

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

(b) Payment of Restitution.

(1) A respondent ordered to make restitution must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) A respondent ordered to make restitution to the Lawyers' Fund for Client Protection must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a period payment plan with the Lawyers' Fund for Client Protection Board.

(3) Disciplinary counsel or the Lawyers' Fund for Client Protection Board may enter into an agreement with a respondent for a reasonable periodic payment plan if:

(A) the respondent demonstrates in writing present inability to pay restitution and

(B) disciplinary counsel consults with the persons owed restitution.

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

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

[Adopted effective October r1, 2002; amended effective January 1, 2014; January 1, 2015.]

ELC 13.8
PROBATION

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

(1) Conditions of probation may include, but are not limited to requiring:

(A) alcohol or drug treatment;

(B) medical care;

(C) psychological or psychiatric care;

(D) professional office practice or management counseling; or

(E) periodic audits or reports.

(2) Upon disciplinary counsel's request, the Chair may appoint a suitable person to supervise the probation. Cooperation with a person so appointed is a condition of the probation.

(b) Failure To Comply. Failure to comply with a condition of probation may be grounds for discipline and any

sanction imposed must take into account the misconduct leading to the probation.

[Adopted effective January 1, 2014.]

ELC 13.9
COSTS AND EXPENSES

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

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

(1) court reporter charges for attending and transcribing depositions or hearings;

(2) process server charges;

(3) necessary travel expenses of hearing officers, disciplinary counsel, adjunct investigative counsel, or witnesses;

(4) expert witness charges;

(5) costs of conducting an examination of books and records or an audit under title 15;

(6) costs incurred in supervising probation imposed under rule 13.8;

(7) telephone toll charges;

(8) fees, costs, and expenses of a lawyer appointed under rule 8.2 or rule 8.3;

(9) costs of copying materials for submission to a review committee, a hearing officer, or the Board; and

(10) compensation provided to hearing officers under rule 2.11.

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

(1) for an admonition that is accepted under rule 13.5(a), $750;

(2) for a matter that becomes final without review by the Board, $1,500;

(3) for a matter that becomes final upon a reciprocal discipline order under rule 9.2 or rule 9.3, in a matter requiring briefing at the Supreme Court, $1,500;

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

(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) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of $3,000.

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

(1) Timing. Disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:

(A) an admonition is accepted;

(B) the decision of a hearing officer or the Board imposing an admonition or a sanction becomes final;

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

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

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

(2) Content. A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. Disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.

(3) Service. The Clerk serves a copy of the statement on the respondent.

(4) Exceptions. The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.

(5) Reply. Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

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

(f) Review of Chair's Decision.

(1) Matters Reviewed by Court. In matters reviewed by the Supreme Court under title 12, the Chair's decision is subject to review only by the Court.

(2) All Other Matters. In all other matters, the following procedures apply:

(A) Request for Review by Board. Within 20 days of service on the respondent of the order assessing costs and expenses, either party may file a request for Board review of the order.

(B) Board Action. Upon the timely filing of a request, the Board reviews the order assessing costs and expenses, based on the Association's statement of costs and expenses and any exceptions or reply, the decision of the hearing officer or of the Board, and any written statement submitted by either party within the time directed by the Chair. The Board may approve or modify the order assessing costs and expenses. The Board's decision is final when filed and not subject to further review.

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

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

(i) Payment of Costs and Expenses.

(1) A respondent ordered to pay costs and expenses must do so within 30 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) The respondent must pay interest on any amount not paid within 30 days of the date the assessment is final at the maximum rate permitted under RCW 19.52.020.

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

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

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

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

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

(l) Money Judgment for Costs and Expenses. After the assessment of costs and expenses is final, upon application by the Association, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and expenses if the respondent has failed to pay the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

[Adopted effective January 1, 2014.]

ELC 14.1
NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY

(a) Providing Client Property. A lawyer who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or has been transferred to disability inactive status must provide each client or the client's substituted counsel upon request with the client's assets, files, and other documents in the lawyer's possession, regardless of any possible claim of lien under RCW 60.40.

(b) Notice if Suspended for 60 Days or Less. A lawyer who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client involved in litigation or administrative proceedings, and counsel for each adverse party (or the adverse party directly if not represented by counsel), of the suspension, that the suspension is a disciplinary suspension, and of the lawyer's consequent inability to act as a lawyer after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another lawyer. If the client does not substitute counsel within ten days of this notice, the lawyer must advise the court or agency of the lawyer's inability to act; and

(2) notify all other clients of the suspension and consequent inability to act during the suspension. The notice must advise the client to seek legal advice elsewhere if needed during the suspension.

(c) Notice if Otherwise Suspended, Disbarred, or Resigned in Lieu of Discipline. A lawyer who has been disbarred, has resigned in lieu of discipline, or has been suspended for more than 60 days, for nonpayment of dues, or under title 7 or APR 11, APR 17, or APR 26, must within ten days of the effective date of the disbarment, suspension, or resignation:

(1) notify every client of the lawyer's suspension, disbarment, or resignation in lieu of discipline, whether a suspension is a disciplinary suspension, an interim suspension, or an administrative suspension, and of the lawyer's consequent inability to act as the client's lawyer, and advise the client to seek legal advice elsewhere;

(2) advise every client involved in litigation or administrative proceedings to seek the prompt substitution of another lawyer. If the client does not substitute counsel within ten days of being notified of the lawyer's inability to act, the lawyer must advise the court or agency of the lawyer's inability to act; and

(3) notify counsel for each adverse party in pending litigation or administrative proceedings, or the adverse party directly if not represented by counsel, of the lawyer's suspension, disbarment, or resignation in lieu of discipline, and the lawyer's inability to act further on the client's behalf.

(d) Notice if Transferred to Disability Inactive Status. A lawyer transferred to disability inactive status, or his or her guardian if one has been appointed, must give all notices required by section (c), except that while the notices need not refer to the specifics of the disability, the notice must advise that the lawyer has been transferred to disability inactive status.

(e) Address of Client. All notices to lawyers, adverse parties, courts, or agencies as required by sections (b), (c), or (d) must contain the client's name and last known address, unless doing so would disclose a confidence or secret of the client. If the name and address are omitted, the client must be advised that so long as his or her address remains undisclosed and no new lawyer is substituted, the client may be served by leaving papers with the clerk of the court under CR 5(b)(1) in pending superior court actions, and that comparable provisions may allow similar service in other court proceedings or administrative actions.

[Adopted effective January 1, 2014.]

ELC 14.2
LAWYER TO DISCONTINUE PRACTICE

(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 status, or disbarment. The lawyer must provide this information on request and without charge.

[Adopted effective January 1, 2014.]

ELC 14.3
AFFIDAVIT OF COMPLIANCE

Within 25 days of the effective date of a lawyer's disbarment, suspension, or transfer to disability inactive status, the lawyer must serve on disciplinary counsel an affidavit stating that the lawyer has fully complied with the provisions of this title. The affidavit must also provide a mailing address where communications to the lawyer may thereafter be directed. The lawyer must attach to the affidavit copies of the form letters of notification sent to the lawyer's clients and opposing counsel or parties and copies of letters to any court, together with a list of names and addresses of all clients and opposing counsel or parties to whom notices were sent. The affidavit is a confidential document except the lawyer's mailing address is treated as a change of mailing address under APR 13(b).

[Adopted effective January 1, 2014.]

ELC 14.4
LAWYER TO KEEP RECORDS OF COMPLIANCE

A lawyer who has been disbarred, suspended, or transferred to disability inactive status must maintain written records of the various steps taken by him or her under this title, so that proof of compliance will be available in any subsequent proceeding.

[Adopted effective January 1, 2014.]

ELC 15.1
RANDOM EXAMINATION OF BOOKS AND RECORDS

(a) Authorization. The Office of Disciplinary Counsel is authorized to examine the books and records of any lawyer or law firm selected at random to determine whether the lawyer or law firm is complying with RPC 1.15A, 1.15B, and other Rules of Professional Conduct referencing RPC 1.15A or RPC 1.15B. As used in this Title, the term law firm has the same meaning as prescribed in RPC 1.0(c).

(b) Selection.

(1) Method. The selection of the lawyers or law firms to be examined will be limited to lawyers on active status and will utilize the principle of random selection by Bar Number of all active status lawyers.

(2) Law firms. If the number drawn is that of a lawyer who is an employee or member of a law firm, the entire law firm will be examined. If the lawyer or law firm has been randomly examined under this rule within seven years preceding the drawing, the lawyer or law firm will not be subject to random examination.

(3) Exclusions. If the number drawn is that of a lawyer employed by the Association, a hearing officer, a conflicts review officer or conflicts review officer pro tem, a member of the Disciplinary Board, a staff attorney or judicial officer of the Supreme Court, or a lawyer who has been assigned a case as an adjunct disciplinary counsel, special disciplinary counsel, or appointed counsel in a disability matter pursuant to rule 8.2(c)(2), the lawyer will not be subject to random examination.

(c) Examination and Re-examination. An examination denotes the initial review following a lawyer or law firm being selected at random. A re-examination denotes a further examination as may be ordered by a review committee under section (e) of this rule. Examinations and re-examinations under this rule will entail a review and testing of the internal controls and procedures used by the lawyer or law firm to receive, hold, disburse and account for money or property as required by RPC 1.15A, and a review of the records of the lawyer or law firm required by RPC 1.15B. A lawyer or law firm is required to cooperate with the examination or re-examination as set forth in rule 15.2.

(d) Conclusion. At the conclusion of an examination or re-examination, the Office of Disciplinary Counsel may:

(1) Conclude the examination by issuing a report to the lawyer and/or law firm summarizing the Office of Disciplinary Counsel's findings and taking no further action;

(2) Issue a report to the lawyer and/or law firm summarizing the Office of Disciplinary Counsel's findings and either:

(A) report the matter to a review committee with a recommendation to order corrective action by the lawyer and/or law firm and a re-examination of the books and records of the lawyer and/or law firm to commence within one year; or

(B) report the matter to a review committee with a recommendation to order a disciplinary grievance be opened under rule 5.3.

(e) Review Committee Action. In reviewing matters under this rule, a review committee has the following authority:

(1) In reviewing reports of the Office of Disciplinary Counsel under section (d) of this rule, including any response by a lawyer examined or re-examined under this rule, a review committee may:

(A) dismiss the matter;

(B) order corrective action and a re-examination to commence within one year; or

(C) order that the Office of Disciplinary Counsel open a disciplinary grievance under rule 5.3 regarding this matter.

(2) A review committee may review a challenge to the selection of a lawyer or law firm in section (b) of this rule if review is requested by a lawyer or law firm within 30 days of mailing of the notice of selection.

(3) The action of a review committee under this rule is not reviewable.

[Adopted effective October 1, 2002; amended effective September 1, 2006; January 1, 2014; December 8, 2015.]

ELC 15.2
COOPERATION OF LAWYER AND LAW FIRM

(a) Cooperation Required. Any lawyer or law firm who is subject to examination or re-examination under rule 15.1, and any lawyer employed by or a member of such a law firm, must cooperate with the person conducting the examination or re-examination, subject only to the proper exercise of any privilege against self-incrimination, by:

(1) producing forthwith all evidence, books, records, and papers requested for the examination or re-examination;

(2) furnishing forthwith any explanations required for the examination or re-examination; and

(3) producing written authorization, directed to any bank or depository, for the person to examine or re-examine trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the lawyer or law firm in the bank or depository.

(b) Failure To Cooperate.

(1) Noncooperation Deposition. If a lawyer has not complied with any request made under this rule for more than 30 days, the Office of Disciplinary Counsel may notify the lawyer that failure to comply within ten days may result in the lawyer's deposition or subject the lawyer to interim suspension under rule 7.2. Ten days after this notice, disciplinary counsel may serve the lawyer with a subpoena for a deposition. Any deposition conducted after the ten day period and necessitated by the lawyer's continued failure to cooperate may be conducted at any place in Washington State.

(2) Costs and Expenses.

(A) Regardless of the underlying matter's ultimate disposition, a lawyer who has been served with a subpoena under this rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, and the cost of transcribing the deposition, if ordered by disciplinary counsel. In addition, a lawyer who has been served with a subpoena for a deposition under this rule is liable for a reasonable attorney fee of $500.

(B) The procedure for assessing costs and expenses is as follows:

(i) The Office of Disciplinary Counsel applies to a review committee by itemizing the cost and expenses and stating the reasons for the deposition.

(ii) The lawyer has ten days to respond to the Office of Disciplinary Counsel's application.

(iii) The review committee by order assesses appropriate costs and expenses.

(iv) Rule 13.9(f) governs Board review of the review committee order.

(3) Grounds for Discipline. A lawyer's failure to cooperate fully and promptly with an examination as required by this rule is also grounds for discipline.

[Adopted effective October 1, 2002; amended effective January 1, 2014; December 8, 2015.]

ELC 15.3
CONFIDENTIALITY

(a) Maintaining Client Confidentiality. In the course of conducting examinations and re-examinations under this Title, the Office of Disciplinary Counsel receives, reviews and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court's authority to regulate the practice of law. Disclosure of information to the Office of Disciplinary Counsel is not prohibited by RPC 1.6 or RPC 1.9, and such disclosure does not waive any attorney-client privilege. Notwithstanding any other provision of these rules, if the lawyer identifies specific client information that is privileged or confidential and requests that it be treated as confidential, the Office of Disciplinary Counsel must maintain the confidentiality of the information unless the client consents to disclosure.

(b) Disclosure. All information related to an examination or re-examination under rule 15.1, including any docket maintained under rule 3.6(d), is confidential and is held by the Office of Disciplinary Counsel under the

authority of the Supreme Court. Information under rule 15.1 is only available to the Office of Disciplinary Counsel, the lawyer or law firm examined or re-examined, and the Board or any review committee considering the matter under this Title. When a disciplinary grievance is opened under rule 15.1, the disclosure provisions of Title 3 apply to all information related to the examination and/or re-examination that relates to the disciplinary grievance. Nothing in these rules waives or requires waiver of any lawyer's own privilege or other protection as a client against the disclosure of confidences or secrets.

[Adopted effective October 1, 2002; amended effective January 1, 2014; December 8, 2015.]

ELC 15.4
TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) Overdraft Notification Agreement Required. To be authorized as a depository for lawyer trust accounts referred to in RPC 1.15A(i), limited license legal technician (LLLT) trust accounts referred to in LLLT RPC 1.15A(i) or limited practice officer (LPO) trust accounts referred to in LPO RPC 1.12A(i), a financial institution, bank, credit union, savings bank, or savings and loan association must file with the Legal Foundation of Washington an agreement, in a form provided by the Washington State Bar Association, to report to the Washington State Bar Association if any properly payable instrument is presented against a lawyer, LLLT, LPO or closing firm trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institution and cannot be canceled except on 30 days' notice in writing to the Legal Foundation of Washington. The Legal Foundation of Washington must provide copies of signed agreements and notices of cancellation to the Washington State Bar Association.

(b) Overdraft Reports.

(1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:

(A) the identity of the financial institution;

(B) the identity of the (1) the lawyer, LLLT, or law firm, or (2) the limited practice officer or closing firm;

(C) the account number; and

(D) either:

(i) the amount of overdraft and date created; or

(ii) the amount of the returned instrument(s) and the date returned.

(2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

(c) Costs. Nothing in these rules precludes a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule, but those charges may not be a transaction cost charged against funds payable to the Legal Foundation of Washington under RPC 1.15A(i)(1) and ELC 15.7(e).

(d) Notification by Lawyer. Every lawyer who receives notification that any instrument presented against his or her trust account was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Office of Disciplinary Counsel of the information required by section (b). The lawyer must include a full explanation of the cause of the overdraft.

[Adopted effective October 1, 2002; amended effective September 1, 2006; January 1, 2009; December 1, 2009; January 1, 2014; April 28, 2015; December 8, 2015.]

ELC 15.5
DECLARATION

(a) Declaration. Annually each active lawyer must provide the Association with such written declaration or other information as the Association determines is needed to assure that the lawyer is complying with RPC 1.15A. Each active lawyer must complete, execute, and deliver this to the Association by the date specified by the Association.

(b) Noncompliance. Any lawyer admitted to the active practice of law who fails to comply with this rule by the date specified in section (a) may be ordered suspended from the practice of law by the Supreme Court until such time as the lawyer complies.

[Adopted effective January 1, 2014.]

ELC 15.6
RESERVED

ELC 15.7
TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

(a) Legal Foundation of Washington. The Legal Foundation of Washington (Legal Foundation) was established by Order of the Supreme Court of Washington to administer distribution of Interest on Lawyer's Trust Account (IOLTA) funds to civil legal aid programs.

(1) Administrative Responsibilities. The Legal Foundation is responsible for assessing the products and services offered by financial institutions operating in the state of Washington and determining whether such institutions meet the requirements of this rule, ELC 15.4, and ELPOC 15.4. The Legal Foundation must maintain a list of financial institutions authorized to establish client trust accounts and publish the list on a website maintained by the Legal Foundation for public information. The Legal Foundation must provide a copy of the list to any person upon request.

(2) Annual Report. The Legal Foundation must prepare an annual report to the Supreme Court of Washington that summarizes the Foundation's income, grants and operating expenses, implementation of its corporate purposes, and any problems arising in the administration of the IOLTA program.

(b) Definitions. The following definitions apply to this rule:

(1) United States Government Securities. United States Government Securities are defined as direct obligations of the United States Government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States Government-Sponsored Enterprises.

(2) Daily Financial Institution Repurchase Agreement. A daily financial institution repurchase agreement must be fully collateralized by United States Government Securities and may be established only with an authorized financial institution that is deemed to be "well capitalized" under applicable regulations of the Federal Deposit Insurance Corporation and the National Credit Union Association.

(3) Money Market Funds. A money market fund is an investment company registered under the Investment Company Act of 1940, as amended, that is regulated as a money market funder under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act, and at the time of the investment, has total assets of at least five hundred million dollars ($500,000,000). A money market fund must be comprised solely of United States Government Securities or investments fully collateralized by United States Government Securities.

4. IOLTA. As used in these rules, the term IOLTA means interest on lawyer's trust accounts, interest on LLLT's trust accounts, and interest on LPO's trust accounts, as set forth in RPC 1.15A, LLLT RPC 1.15A, and LPORPC 1.12A, respectively, and Title 15 of these rules and ELPOC Title 15.

(c) Authorized Financial Institutions. Any bank, savings bank, credit union, savings and loan association, or other financial institution that meets the following criteria is eligible to become an authorized financial institution under this rule:

(1) is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration;

(2) is authorized by law to do business in Washington;

(3) complies with all requirements set forth in section (d) of this rule and in ELC 15.4; and

(4) if offering IOLTA accounts, complies with all requirements set forth in section (e) of this rule.

The Legal Foundation determines whether a financial institution is an authorized financial institution under this section. Upon a determination of compliance with all requirements of this rule and ELC 15.4, the Legal Foundation must list a financial institution as an authorized financial institution under section (a)(1). At any time, the Legal Foundation may request that a listed financial institution establish or certify compliance with the requirements of this rule or ELC 15.4. The Legal Foundation may remove a financial institution from the list of authorized financial institutions upon a determination that the financial institution is not in compliance.

(d) Requirements of All Trust Accounts. All trust accounts established pursuant to RPC 1.15A(i) LLLT RPC 1.15A(i) or LPORPC 1.12A(h) must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not beplaced in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments.

(e) IOLTA Accounts. To qualify for Legal Foundation approval as an authorized financial institution offering IOLTA accounts, in addition to meeting all other requirements set forth in this Rule, a financial institution must comply with the requirements set forth in this section.

(1) Interest Comparability. For accounts established pursuant to RPC 1.15A, or LLLT RPC 1.15A, authorized financial institutions must pay the highest interest rate generally available from the institutions to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available to its non-IOLTA customers, authorized financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. An authorized financial institution may satisfy these comparability requirements by selecting one of the following options:

(i) Establish the IOLTA account as the comparable interest-paying product; or

(ii) Pay the comparable interest rate on the IOLTA checking account in lieu of actually establishing the comparable interest-paying product; or

(iii) Pay a rate on IOLTA equal to 75% of the Federal Funds Targeted Rate as of the first business day of the month or IOLTA remitting period, or .75%, whichever is higher, and which rate is deemed to be already net of allowable reasonable service charges or fees.

(2) Remit Interest to Legal Foundation of Washington. Authorized financial institutions must remit the interest accruing on all IOLTA accounts, net of reasonable account fees, to the Legal Foundation monthly, on a report form prescribed by the Legal Foundation. At a minimum, the report must show details about the account, including but not limited to the name of the lawyer, law firm, LLLT, LPO, or Closing Firm for whom the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the balance used to compute the interest. Interest must be calculated on the average monthly balance in the account, or as otherwise computed in accordance with applicable state and federal regulations and the institution's standard accounting practice for non-IOLTA customers. The financial institution must notify each lawyer, law firm, LLLT, LPO, or Closing Firm of the amount of interest remitted to the Legal Foundation on a monthly basis on the account statement or other written report.

(3) Reasonable account fees. Reasonable account fees may only include per deposit charges, per check charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administration fee. No service charges or fees other than the allowable, reasonable fees may be assessed against the interest or dividends on an IOLTA account. Any service charges or fees other than allowable reasonable fees must be the sole responsibility of, and may be charged to, the lawyer, law firm, LLLT, LPO, or Closing Firm maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account must not be ded ucted from interest or dividends earned on any other account or from the principal.

(4) Comparable Accounts. Subject to the requirements set forth in sections (d) and (e), an IOLTA account may be established as:

(i) A business checking account with an automated investment feature, such as a daily bank repurchase agreement or a money market fund; or

(ii) A checking account paying preferred interest rates, such as a money market or indexed rates; or

(iii) A government interest-bearing checking account such as an account used for municipal deposits; or

(iv) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, business checking account with interest; or

(v) Any other suitable interest-bearing product offered by the authorized financial institution to its non-IOLTA customers.

(5) Nothing in this rule precludes an authorized financial institution from paying an interest rate higher than described above or electing to waive any service charges or fees on IOLTA accounts.

[Adopted effective January 1, 2014; amended effective April 28, 2015.]

ELC 16.1
EFFECT ON PENDING PROCEEDINGS

These rules and any subsequent amendments will apply in their entirety, on the effective date as ordered by the Supreme Court, to any pending matter or investigation that has not yet been ordered to hearing. They will apply to other pending matters except as would not be feasible or would work an injustice. The hearing officer assigned to hear a matter, or the Chair in a matter pending before the Board, may rule on the appropriate procedure with a view to insuring a fair and orderly proceeding.

[Adopted effective January 1, 2014.]

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this act and such attorneys shall be employed on a salary basis, such salaries to be fixed by the director of efficiency, subject to the approval of the administrative board.

Salaries and expenses.

SEC. 9. The salaries, traveling and other necessary expenses of attorneys, deputies and employees appointed by the director of efficiency and the supervisor to do the actual work of liquidating insolvent savings and loan associations under the provisions of this act shall be included in the expenses of liquidation.

Effective immediately.

SEC. 10. This act is necessary for the immediate support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 7, 1933.
Passed the Senate March 6, 1933.
Approved by the Governor March 11, 1933.

CHAPTER 94.

[H. B. 239.]

CREATING WASHINGTON STATE BAR ASSOCIATION.

AN ACT to create an association to be known as the "Washington State Bar Association;" to provide for its organization, government, membership and powers; to regulate the practice of law and to provide penalties for the violation of said act and repealing all acts or parts of acts in conflict therewith.

Be it enacted by the Legislature of the State of Washington:

Title.

SECTION 1. *Title of Act.* This act may be known and cited as the state bar act.

Washington State Bar Association.

SEC. 2. *Objects and Powers.* There is hereby created as an agency of the state, for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association, hereinafter designated as the state bar,

which association shall have a common seal and may sue and be sued, and which may, for the purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.

Purpose.

Members.

SEC. 3. *First Members.* The first members of the Washington State Bar Association shall be all persons now entitled to practice law in this state.

New members.

SEC. 4. *New Members.* After the organization of the state bar, as herein provided, all persons who are admitted to practice in accordance with the provisions of this act, except judges of courts of record, shall become by that fact active members of the state bar.

Board of governors:

SEC. 5. *Board of Governors.* There is hereby constituted a board of governors of the state bar, which shall consist of the president of the state bar, as an ex-officio member, and of one member elected by secret ballot by mail by the active members residing in each congressional district now or hereafter existing in the state. The members of the board of governors shall hold office for three (3) years and until their successors are elected and qualified: *Provided, however,* That the members of the board of governors elected to constitute the first board shall, at their first meeting so classify themselves by lot that two members thereof shall hold office for one year only and two others for two years only and until their successors are elected and qualified. Vacancies in said board of governors shall be filled by the continuing members of the board until the next district election, held in accordance with the rules hereinafter provided for.

Elected,

Classification of,

To govern,

SEC. 6. *State Bar Governed by Board of Governors.* The state bar shall be governed by the board of governors which shall be charged with the

executive functions of the state bar and the enforcement of the provisions of this act and all rules adopted in pursuance thereof. The members of the board of governors shall receive no salary by virtue of their office.

Powers of.

SEC. 7. *Powers of Governors.* The said board of governors shall have power, in its discretion, from time to time to adopt rules

(a) Concerning membership and the classification thereof into active, inactive and honorary members; and

(b) Concerning the enrollment and privileges of membership; and

(c) Defining the other officers of the state bar, the time, place and method of their selection, and their respective powers, duties, terms of office and compensation; and

(d) Concerning annual and special meetings; and

(e) Concerning the collection, the deposit and the disbursement of the membership and admission fees, penalties, and all other funds; and

(f) Providing for the organization and government of district and/or other local subdivisions of the state bar; and

(g) Providing for all other matters, whether similar to the foregoing or not, affecting in any way whatsoever, the organization and functioning of the state bar. Any such rule may be modified, or rescinded, or a new rule adopted, by a vote of the active members under rules to be prescribed by the board of governors.

Admission to practice law.

SEC. 8. *Admission and Disbarment.* The said board of governors shall likewise have power, in its discretion, from time to time to adopt rules, subject to the approval of the supreme court, fixing the qualifications, requirements and procedure for admission to the practice of law; and, with such

approval, to establish from time to time and enforce rules of professional conduct for all members of the state bar; and, with such approval, to appoint boards or committees to examine applicants for admission; and, to investigate, prosecute and hear all causes involving discipline, disbarment, suspension or reinstatement, and make recommendations thereon to the supreme court; and, with such approval, to prescribe rules establishing the procedure for the investigation and hearing of such matters, and establishing county or district agencies to assist therein to the extent provided by such rules: *Provided, however,* That no person who shall have participated in the investigation or prosecution of any such cause shall sit as a member of any board or committee hearing the same.

Disbarment.

Fees, active members.

SEC. 9. *Active Members' Fees.* The annual membership fee for active members shall be the sum of five dollars ($5.00) payable on or before February first of each year: *Provided,* That the membership fee for the year 1933 shall be payable not later than ninety days after the effective date of this act. The board of governors shall have power before January first of any year to increase such fee to a sum not exceeding ten dollars ($10.00).

For 1933.

Fees, inactive members.

SEC. 10. *Inactive Members' Fees.* The annual membership fee for inactive members shall be the sum of two dollars ($2.00), payable on or before the first day of February of each year: *Provided,* That the membership fee for the year 1933 shall be payable not later than ninety days after the effective date of this act.

For 1933.

Fees, admission.

SEC. 11. *Admission Fees.* Applicants for admission to the bar upon accredited certificates or upon examination, not having been admitted to the bar in another state or territory, shall pay a fee of twenty-five dollars ($25.00) and all other appli-

cants a fee of fifty dollars ($50.00). Said admission fees shall be used to pay the expenses incurred in connection with examining and admitting applicants to the bar, including salaries of examiners, and any balance remaining at the close of each biennium shall be paid to the state treasurer and be by him credited to the general fund.

Non-payment of fees.

SEC. 12. *Suspension for Non-payment of Fees.* Any member failing to pay any fees after the same become due, and after two months' written notice of his delinquency, must be suspended from membership in the state bar, but may be reinstated upon payment of accrued fees and such penalties as may be imposed by the board of governors, not exceeding double the amount of the delinquent fee.

Only active members to practice.

SEC. 13. *Only Active Members May Practice Law.* No person shall practice law in this state subsequent to the first meeting of the state bar unless he shall be an active member thereof as hereinbefore defined: *Provided,* That a member of the bar in good standing in any other state or jurisdiction shall be entitled to appear in the courts of this state under such rules as the board of governors may prescribe.

Attorneys from other states.

Violation.

SEC. 14. *Unlawful Practice a Misdemeanor.* Any person who, not being an active member of the state bar, or who after he has been disbarred or while suspended from membership in the state bar, as by this act provided, shall practice law, or hold himself out as entitled to practice law, shall be guilty of a misdemeanor: *Provided, however,* Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive relief or to punish as for contempt.

Authority of courts.

SEC. 15. *State Bar Commission.* Five members of the bar qualified for active membership in the state bar, shall within ten days after the effec-

Commission:

tive date of this act, be appointed by the chief justice of the supreme court to constitute a commission which shall within ninety days thereafter organize the state bar, and take such steps and adopt such rules and regulations for the time being, as it may deem necessary to complete the organization thereof as herein provided, after which organization, the said commission shall be deemed abolished.

To organize and make temporary rules and regulations.

Conflicting laws.

SEC. 16. *Repeal.* All acts and parts of acts in conflict with this act, or with any rule adopted hereunder, are from the effective date of this act or of any such rule, hereby repealed.

Partial invalidity.

SEC. 17. *Legislative Intent.* If any section, subsection, sentence, clause or phrase of this act or of any rule adopted hereunder, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act nor of any other rule adopted hereunder. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Passed the House February 13, 1933.

Passed the Senate March 1, 1933.

Approved by the Governor March 13, 1933.

Chapter 2.48 RCW

STATE BAR ACT

Chapter Listing | RCW Dispositions

Sections

NOTES:

Rules of court: *See Rules of Professional Responsibility, Rules for Lawyer Discipline, also Admission to Practice Rules.*

School district hearings, hearing officers as members of state bar association: RCW ***28A.405.310****.*

Statute law committee, membership on: RCW ***1.08.001****.*

2.48.010
Objects and powers.

There is hereby created as an agency of the state, for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association, hereinafter designated as the state bar, which association shall have a common seal and may sue and be sued, and which may, for the purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.

[**1933 c 94 § 2;** RRS § 138-2.]

NOTES:

Severability—1933 c 94: "If any section, subsection, sentence, clause or phrase of this act or any rule adopted thereunder, is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act nor of any other rule adopted hereunder. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional." [**1933 c 94 § 17.**]

Short title—1933 c 94: "This act may be known and cited as the State Bar Act." [**1933 c 94 § 1.**]

2.48.020
First members.

The first members of the Washington State Bar Association shall be all persons now [on June 7, 1933] entitled to practice law in this state.

[**1933 c 94 § 3;** RRS § 138-3. FORMER PART OF SECTION: **1933 c 94 § 4;** RRS § 138-4 now codified as RCW **2.48.021**.]

2.48.021
New members.

After the organization of the state bar, as herein provided, all persons who are admitted to practice in accordance with the provisions of RCW **2.48.010** through **2.48.180**, except judges of courts of record, shall become by that fact active members of the state bar.

[**1933 c 94 § 4;** RRS § 138-4. Formerly RCW **2.48.020**, part.]

2.48.030
Board of governors.

There is hereby constituted a board of governors of the state bar which shall consist of not more than fifteen members, to include: The president of the state bar elected as provided by the bylaws of the association, one member from each congressional district now or hereafter existing in the state elected by secret ballot by mail by the active members residing therein, and such additional members elected as provided by the bylaws of the association. The members of the board of governors shall hold office for three years and until their successors are elected and qualified. Any vacancies in the board of governors shall be filled by the continuing members of the board until the next election, held in accordance with the bylaws of the association.

The board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts.

[1982 1st ex.s. c 30 § 1; 1972 ex.s. c 66 § 1; 1933 c 94 § 5; RRS § 138-5.]

2.48.035
Board of governors—Membership—Effect of creation of new congressional districts or boundaries.

The terms of office of members of the board of governors of the state bar who are elected from the various congressional districts shall not be affected by the creation of either new boundaries for congressional districts or additional districts. In such an event, each board member so elected may continue to serve in office for the balance of the term for which he or she was elected or appointed: PROVIDED, That the board member continues to reside within the boundaries of the congressional district as they existed at the time of his or her election or appointment. Vacancies which occur in a board member position during the balance of any such term shall be filled pursuant to RCW **2.48.030**, as now or hereafter amended, by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was elected as they existed at the time of his or her election. At the election immediately preceding expiration of the term of office of each board member provided for in this section following the creation of either new boundaries for congressional districts or additional districts, and thereafter, a successor shall be elected from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed or elected.

[1982 1st ex.s. c 30 § 2.]

2.48.040
State bar governed by board of governors.

The state bar shall be governed by the board of governors which shall be charged with the executive functions of the state bar and the enforcement of the provisions of RCW **2.48.010** through **2.48.180** and all rules adopted in pursuance thereof. The members of the board of governors shall receive no salary by virtue of their office.

[**1933 c 94 § 6;** RRS § 138-6.]

2.48.050
Powers of governors.

The said board of governors shall have power, in its discretion, from time to time to adopt rules

(1) concerning membership and the classification thereof into active, inactive and honorary members; and

(2) concerning the enrollment and privileges of membership; and

(3) defining the other officers of the state bar, the time, place and method of their selection, and their respective powers, duties, terms of office and compensation; and

(4) concerning annual and special meetings; and

(5) concerning the collection, the deposit and the disbursement of the membership and admission fees, penalties, and all other funds; and

(6) providing for the organization and government of district and/or other local subdivisions of the state bar; and

(7) providing for all other matters, whether similar to the foregoing or not, affecting in any way whatsoever, the organization and functioning of the state bar. Any such rule may be modified, or rescinded, or a new rule adopted, by a vote of the active members under rules to be prescribed by the board of governors.

[**1933 c 94 § 7;** RRS § 138-7.]

2.48.060
Admission and disbarment.

The said board of governors shall likewise have power, in its discretion, from time to time to adopt rules, subject to the approval of the supreme court, fixing the qualifications, requirements and procedure for admission to the practice of law; and, with such approval, to establish from time to time and enforce rules of professional conduct for all members of the state bar; and, with such approval, to appoint boards or committees to examine applicants for admission; and, to investigate, prosecute and hear all causes involving discipline, disbarment, suspension or reinstatement, and make recommendations thereon to the supreme court; and,

with such approval, to prescribe rules establishing the procedure for the investigation and hearing of such matters, and establishing county or district agencies to assist therein to the extent provided by such rules: PROVIDED, HOWEVER, That no person who shall have participated in the investigation or prosecution of any such cause shall sit as a member of any board or committee hearing the same.

[**1933 c 94 § 8;** RRS § 138-8.]

NOTES:

es of court: *See Rules for Lawyer Discipline, also Admission to Practice Rules.*

2.48.070
Admission of veterans.

Any person who shall have graduated from any accredited law school and after such graduation shall have served in the armed forces of the United States of America between December 7, 1941, and the termination of the present World War, may be admitted to the practice of law in the state of Washington and to membership in the Washington State Bar Association, upon motion made before the supreme court of the state of Washington, provided the following is made to appear:

(1) That the applicant is a person of good moral character over the age of twenty-one years;

(2) That the applicant, at the time of entering the armed forces of the United States, was a legal resident of the state of Washington;

(3) That the applicant's service in the armed forces of the United States is or was satisfactory and honorable.

[**1945 c 181 § 1;** Rem. Supp. 1945 § 138-7A.]

NOTES:

alifications for admission to practice as prescribed by ***Rules of court:*** *Admission to Practice Rules.*

2.48.080
Admission of veterans—Establishment of requirements if in service.

If an applicant under RCW **2.48.070** through **2.48.110** is, at the time he or she applies for admission to practice law in the state of Washington, still in the armed forces of the United States, he or she may establish the requirements of the proviso in RCW **2.48.070** by a letter or certificate from his or her commanding officer and by the certificates of at least two active members of the Washington state bar association.

[**2011 c 336 § 63; 1945 c 181 § 2;** Rem. Supp. 1945 § 138-7B.]

2.48.090
Admission of veterans—Establishment of requirements if discharged.

If an applicant under RCW **2.48.070** through **2.48.110** is, at the time he or she applies for admission to practice law in the state of Washington, no longer in the armed forces of the United States, he or she may establish the requirements of the proviso in RCW **2.48.070** as follows:

(1) If he or she shall have been an enlisted person, by producing an honorable discharge, and by the certificates of at least two active members of the Washington state bar association.

(2) If he or she shall have been an officer, by an affidavit showing that he or she has been relieved from active duty under circumstances other than dishonorable, and by the certificates of at least two active members of the Washington state bar association.

[**2011 c 336 § 64; 1945 c 181 § 3;** Rem. Supp. 1945 § 138-7C.]

2.48.100
Admission of veterans—Effect of disability discharge.

A physical disability discharge shall be considered an honorable discharge unless it be coupled with a dishonorable discharge.

[**1945 c 181 § 4;** Rem. Supp. 1945 § 138-7D.]

2.48.110
Admission of veterans—Fees of veterans.

An applicant applying for admission to practice law under the provisions of RCW **2.48.070** through **2.48.090**, shall pay the same fees as are required of residents of the state of Washington seeking admission to practice law by examination.

[**1945 c 181 § 5;** Rem. Supp. 1945 § 138-7E.]

2.48.130
Membership fee—Active.

The annual membership fees for active members shall be payable on or before February 1st of each year. The board of governors may establish the amount of such annual membership fee to be effective each year: PROVIDED, That written notice of any proposed increase in membership fee shall be sent to active members not less than sixty days prior to the effective date of such increase: PROVIDED FURTHER, That the board of governors may establish the fee at a reduced rate for those who have been active members for less than five years in this state or elsewhere.

[**1957 c 138 § 1; 1953 c 256 § 1; 1933 c 94 § 9;** RRS § 138-9.]

2.48.140
Membership fee—Inactive.

The annual membership fee for inactive members shall be the sum of two dollars, payable on or before the first day of February of each year.

[**1955 c 34 § 1; 1933 c 94 § 10;** RRS § 138-10.]

2.48.150
Admission fees.

Applicants for admission to the bar upon accredited certificates or upon examination, not having been admitted to the bar in another state or territory, shall pay a fee of twenty-five dollars and all other applicants a fee of fifty dollars. Said admission fees shall be used to pay the expenses incurred in connection with examining and admitting applicants to the bar, including salaries of examiners, and any balance remaining at the close of each biennium shall be paid to the state treasurer and be by him or her credited to the general fund.

[**2011 c 336 § 65; 1933 c 94 § 11;** RRS § 138-11.]

NOTES:

es of court: *Admission—APR 3(d).*

2.48.160
Suspension for nonpayment of fees.

Any member failing to pay any fees after the same become due, and after two months' written notice of his or her delinquency, must be suspended from membership in the state bar, but may be reinstated upon payment of accrued fees and such penalties as may be imposed by the board of governors, not exceeding double the amount of the delinquent fee.

[**2011 c 336 § 66; 1933 c 94 § 12;** RRS § 138-12.]

2.48.165
Disbarment or license suspension—Nonpayment or default on educational loan or scholarship.

The Washington state supreme court may provide by court rule that nonpayment or default on a federally or state-guaranteed educational loan shall result in disbarment or license suspension of the license of any person who has been certified by a lending agency and reported to the court for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The supreme court may reinstate the person when provided with a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency.

[**1996 c 293 § 1.**]

NOTES:

Severability—1996 c 293: See note following RCW **18.04.420**.

2.48.166
Admission to or suspension from practice—Noncompliance with support order—Rules.

The Washington state supreme court may provide by rule that no person who has been certified by the department of social and health services as a person who is in noncompliance with a support order or a *residential or visitation order as provided in RCW **74.20A.320** may be admitted to the practice of law in this state, and that any member of the Washington state bar association who has been certified by the department of social and health services as a person who is in noncompliance with a support order or a residential or visitation order as provided in RCW **74.20A.320** shall be immediately suspended from membership. The court's rules may provide for review of an application for admission or reinstatement of membership after the department of social and health services has issued a release stating that the person is in compliance with the order.

[**1997 c 58 § 810.**]

NOTES:

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible

parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW **74.20A.320**.

Intent—1997 c 58: "The legislature intends that the license suspension program established in chapter **74.20A** RCW be implemented fairly to ensure that child support obligations are met and that parents comply with residential and visitation orders. However, being mindful of the separations of powers and responsibilities among the branches of government, the legislature strongly encourages the state supreme court to adopt rules providing for suspension and denial of licenses related to the practice of law to those individuals who are in noncompliance with a support order or a residential or visitation order." [**1997 c 58 § 809.**]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW **74.08A.900** through **74.08A.904**.

Effective dates—Intent—1997 c 58: See notes following RCW **74.20A.320**.

2.48.170
Only active members may practice law.

No person shall practice law in this state subsequent to the first meeting of the state bar unless he or she shall be an active member thereof as hereinbefore defined: PROVIDED, That a member of the bar in good standing in any other state or jurisdiction shall be entitled to appear in the courts of this state under such rules as the board of governors may prescribe.

[**2011 c 336 § 67; 1933 c 94 § 13;** RRS § 138-13.]

NOTES:

es of court: *Admission—APR 5.*

2.48.180
Definitions—Unlawful practice a crime—Cause for discipline—Unprofessional conduct—Defense—Injunction—Remedies—Costs—Attorneys' fees—Time limit for action.

(1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a

person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

(a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3)(a) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor.

(b) Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter **9A.20** RCW.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW **18.130.180**.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred.

[**2003 c 53 § 2; 2001 c 310 § 2.** Prior: **1995 c 285 § 26; 1989 c 117 § 13; 1933 c 94 § 14;** RRS § 138-14.]

NOTES:

es of court: *RLD 1.1(h).*

Intent—2003 c 53: "The legislature intends by this act to reorganize criminal provisions throughout the Revised Code of Washington to clarify and simplify the identification and referencing of crimes. It is not intended that this act effectuate any substantive change to any criminal provision in the Revised Code of Washington." [**2003 c 53 § 1.**]

Effective date—2003 c 53: "This act takes effect July 1, 2004." [**2003 c 53 § 423.**]

Purpose—2001 c 310: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlawful practice of law, enacted as sections 26 and 27, chapter 285, Laws of 1995." [**2001 c 310 § 1.**]

Effective date—2001 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2001]." [**2001 c 310 § 5.**]

Effective date—1995 c 285: See RCW **48.30A.900**.

cticing law with disbarred attorney: RCW ***2.48.220(9).***

2.48.190
Qualifications on admission to practice.

No person shall be permitted to practice as an attorney or counselor at law or to do work of a legal nature for compensation, or to represent himself or herself as an attorney or counselor at law or qualified to do work of a legal nature, unless he or she is a citizen of the United States and a bona fide resident of this state and has been admitted to practice law in this state: PROVIDED, That any person may appear and conduct his or her own case in any action or proceeding brought by or against him or her, or may appear in his or her own behalf in the small claims department of the district court: AND PROVIDED FURTHER, That an attorney of another state may appear as counselor in a court of this state without admission, upon satisfying the court that his or her state grants the same right to attorneys of this state.

[**1987 c 202 § 107; 1921 c 126 § 4;** RRS § 139-4. Prior: **1919 c 100 § 1; 1917 c 115 § 1.**]

NOTES:

es of court: *Admission—APR 5.*

Reviser's note: Last proviso, see later enactment, RCW **2.48.170**.

Intent—1987 c 202: See note following RCW **2.04.190**.

2.48.200
Restrictions on practice by certain officers.

No person shall practice law who holds a commission as judge in any court of record, or as sheriff or coroner; nor shall the clerk of the supreme court, the court of appeals, or of the superior court or any deputy thereof practice in the court of which he or she is clerk or deputy clerk: PROVIDED, It shall be unlawful for a deputy prosecuting attorney, or for the employee, partner, or agent of a prosecuting attorney, or for an attorney occupying offices with a prosecuting attorney, to appear for an adverse interest in any proceeding in which a prosecuting attorney is appearing, or to appear in any suit, action or proceeding in which a prosecuting attorney is prohibited by law from appearing, but nothing herein shall prohibit a prosecuting attorney or a deputy prosecuting attorney from appearing in any action or proceeding for an interest divergent from that represented in the same action or proceeding by another attorney or special attorney in or for the same office, so long as such appearances are pursuant to the duties of prosecuting attorneys as set out in RCW **36.27.020** and such appearances are consistent with the code of professional responsibility or other code of ethics adopted by the Washington state supreme court, but nothing herein shall preclude a judge or justice of a court of this state from finishing any business undertaken in a court of the United States prior to him or her becoming a judge or justice.

[1992 c 225 § 1; 1975 1st ex.s. c 19 § 3; 1971 c 81 § 13; 1921 c 126 § 5; RRS § 139-5.]

NOTES:

es of court: *Judicial ethics—CJC.*

*ninistrator for the courts, assistant not to practice law: RCW **2.56.020**.*

*rney general, deputies, assistants—Private practice of law prohibited: RCW **43.10.115**, **43.10.120**, **43.10.125**; but see RCW **43.10.130**.*

*rk not to practice law: RCW **2.32.090**.*

*oner not to practice law: RCW **36.24.170**.*

*ges may not practice law: State Constitution Art. 4 § 19 and RCW **2.06.090**, **35.20.170**; but see RCW **2.28.040**.*

*secuting and deputy prosecuting attorneys—Private practice prohibited in certain counties: RCW **36.27.060**.*

*istrar, deputy registrar of titles not to practice law: RCW **65.12.050**.*

*riff not to practice law: RCW **36.28.110**.*

2.48.210
Oath on admission.

Every person before being admitted to practice law in this state shall take and subscribe the following oath:

I do solemnly swear:

I am a citizen of the United States and owe my allegiance thereto;

I will support the Constitution of the United States and the Constitution of the state of Washington;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his or her business except from him or her or with his or her knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.

[**2013 c 23 § 1; 1921 c 126 § 12;** RRS § 139-12. Prior: **1917 c 115 § 14.**]

NOTES:

es of court: *Admission—APR 5(c) and (d).*

2.48.220
Grounds of disbarment or suspension.

An attorney or counselor may be disbarred or suspended for any of the following causes arising after his or her admission to practice:

(1) His or her conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence.

(2) Willful disobedience or violation of an order of the court requiring him or her to do or forbear an act connected with, or in the course of, his or her profession, which he or she ought in good faith to do or forbear.

(3) Violation of his or her oath as an attorney, or of his or her duties as an attorney and counselor.

(4) Corruptly or willfully, and without authority, appearing as attorney for a party to an action or proceeding.

(5) Lending his or her name to be used as attorney and counselor by another person who is not an attorney and counselor.

(6) For the commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his or her relations as an attorney or counselor at law, or otherwise, and whether the same constitute a felony or misdemeanor or not; and if the act constitute a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disbarment or suspension from practice therefor.

(7) Misrepresentation or concealment of a material fact made in his or her application for admission or in support thereof.

(8) Disbarment by a foreign court of competent jurisdiction.

(9) Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his or her name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney or with any person not a licensed attorney.

(10) Gross incompetency in the practice of the profession.

(11) Violation of the ethics of the profession.

[**2011 c 336 § 68; 1921 c 126 § 14; 1909 c 139 § 7;** RRS § 139-14.]

NOTES:

es of court: *RLD 1.1.*

2.48.230
Code of ethics.

The code of ethics of the American Bar Association shall be the standard of ethics for the members of the bar of this state.

[**1921 c 126 § 15;** RRS § 139-15. Prior: **1917 c 115 § 20.**]

NOTES:

es of court: *See Code of Professional Responsibility, also Code of Judicial Conduct.*

Reviser's note: RCW **2.48.190**, **2.48.200**, **2.48.210**, **2.48.220**, and **2.48.230** are the only sections of the earlier act relating to the admission, regulation, disbarment, etc., of attorneys which are thought not to be embraced within the general repeal contained in the state bar act of 1933.

WSBA BYLAWS – REDLINE (10/12/2016)

I. FUNCTIONS

A. PURPOSES: IN GENERAL.

In general, the Washington State Bar Association (Bar) strives to:

1. Promote independence of the judiciary and the ~~bar~~legal profession;

2. Promote an effective legal system, accessible to all;

3. Provide services to its members and the public;

4. Foster and maintain high standards of competence, professionalism, and ethics among its members;

5. Foster collegiality among its members and goodwill between the ~~bar~~ legal profession and the public;

6. Promote diversity and equality in the courts~~,~~ and the legal profession~~, and the bar~~;

7. Administer admissions ~~to the bar~~, regulation, and discipline of ~~its members~~lawyers, Limited License Legal Technicians (LLLTs), and Limited Practice Officers (LPOs) in a manner that protects the public and respects the rights of the applicant or member;

8. Administer programs of legal education;

9. Promote understanding of and respect for our legal system and the law;

10. Operate a well-managed and financially sound ~~association~~organization, with a positive work environment for its employees;

11. Serve as a statewide voice to the public and to the branches of government on matters relating to these purposes and the activities of the ~~association~~organization and the legal profession.

B. SPECIFIC ACTIVITIES AUTHORIZED.

In pursuit of these purposes, the Washington State Bar Association may:

1. Sponsor and maintain committees and sections whose activities further these purposes;

2. Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;

3. Provide periodic reviews and recommendations concerning court rules and procedures;

4. Administer examinations and review applicants' character and fitness to practice law;

5. Inform and advise ~~lawyers~~ its members regarding their ethical obligations;

6. Administer an effective system of discipline of ~~its members~~lawyers, LLLTs, and LPOs, including receiving and investigating complaints of ~~lawyer~~ misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;

7. Maintain a program, pursuant to court rule, requiring members to submit fee disputes to arbitration;

8. Maintain a program for mediation of disputes between members and ~~their clients and~~ others;

9. Maintain a program for ~~lawyer~~ legal professional practice assistance;

10. Sponsor, conduct, and assist in producing programs and products of continuing legal education;

11. Maintain a system for accrediting programs of continuing legal education;

12. Conduct ~~audits~~ examinations of ~~lawyers'~~ lawyer, LLLT, and LPO trust accounts;

13. Maintain a ~~lawyers' fund for~~ client protection fund in accordance with the Admission and Practice Rules;

14. Maintain a program for the aid and rehabilitation of impaired members;

15. Disseminate information about ~~bar~~ the organization's activities, interests, and positions;

16. Monitor, report on, and advise public officials about matters of interest to the ~~Bar~~organization and the legal profession;

17. Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about ~~bar~~ the organization's positions and concerns;

18. Encourage public service by members and support programs providing legal services to those in need;

19. Maintain and foster programs of public information and education about the law and the legal system;

20. Provide, sponsor, and participate in services to its members;

21. Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the ~~bar's~~ organization's discretion, authorizing collective bargaining;

22. Establish the amount of all license, application, investigation, and other related fees, as well as charges for services provided by the Bar, and ~~Collect~~collect, allocate, invest, and disburse funds so that its mission, purposes, and activities may be effectively and efficiently discharged. The amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that it is not reasonable;

23. Administer Supreme Court-created boards in accordance with General Rule 12.3.

C. ACTIVITIES NOT AUTHORIZED.

The Washington State Bar Association will not:

1. Take positions on issues concerning the politics or social positions of foreign nations;

2. Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or

3. Support or oppose, in an election, candidates for public office.

II. DEFINITIONS AND GENERAL PROVISIONS

A. HEADQUARTERS.

The office of the Bar ~~shall~~ will be maintained in the State of Washington.

B. SEAL.

The Bar ~~shall~~ will have a Seal having the words and figures of "The Washington State Bar Association—June 7, 1933." The Seal ~~shall~~ will remain in the control of the Executive Director at the office of the Bar.

C. FILING PAPERS WITH THE BAR.

Whenever these Bylaws require that petitions, notices, or other documents be filed with the Bar, or served upon the Board of Governors (BOG) or the Executive Director, they must be filed at the office of the Bar.

D. COMPUTATION OF TIME.

If any date specified in these Bylaws is a Saturday, Sunday, or legal holiday observed by the Bar, it ~~shall~~refers to the next regular business day. Legal holidays observed by the Bar may differ from the legal holidays statutorily designated by the state Legislature.

E. DEFINITIONS AND USE OF TERMS.

Unless otherwise specifically stated herein,

1. "Days" means calendar days.

2. "Quorum" means the presence of a majority of the voting membership (i.e., half the voting members plus one).

3. "Excused absence" means an absence excused by the President or presiding officer.

4. "Writing" includes email and fax.

5. "Electronic means" includes email, fax, video conferencing, and telephone; however, in the context of meetings, "electronic means" is limited to video conferencing and telephone.

6. "Bar records" and/or "Bar documents" means documents or records maintained by the Bar, whether in printed or electronic form.

7. When used in connection with a particular act or event, the terms "active membership" or "active members" ~~shall~~refers to the Active membership at the time of the act or event.

8. "APR" refers to the Admission and Practice Rules.

9. "ELC" refers to the Rules for Enforcement of Lawyer Conduct.

10. "Member" means an individual in any of the groups of licensed legal professionals specified in Article III(A) of these Bylaws, unless otherwise specified.

11. "May" means "has discretion to," "has a right to," or "is permitted to."

12. "Must" means "is required to."

~~F. PARLIAMENTARY PROCEDURE.~~

1. ~~Proceedings at meetings of the Board of Governors shall be governed by the most current edition of Roberts' Rules of Order.~~

2. ~~The President may appoint a Parliamentarian to advise him or her on parliamentary matters during any meeting of the Board of Governors.~~

III. MEMBERSHIP

A. ~~CLASSES OF MEMBERSHIP~~MEMBER LICENSE TYPES.

1. Members of the Washington State Bar consist of these types of licensed legal professionals:

a. Lawyers admitted to the Bar and licensed to practice law pursuant to APR 3 and APR 5;

b. Limited License Legal Technicians; and

c. Limited Practice Officers.

Members of one type do not automatically qualify to be or become a member of another type, and in order to become a member of another type the member must comply with the requirements for admission as a member of that type.

2. Lawyers licensed to practice law in Washington pursuant to APR 8 (except Emeritus Pro Bono members) and APR 14, or who are permitted to practice pursuant to RPC 5.5 without being licensed in Washington are not members of the Bar.

3. Membership in the Bar ends when a member is disbarred or the equivalent, the member resigns or otherwise terminates his or her license, or when the member's license is revoked or terminated for any reason.

B. STATUS CLASSIFICATIONS.

~~There shall be four classes of m~~Membership status classifications have ~~with~~ the qualifications, privileges, and restrictions specified.

1. Active.

Any ~~lawyer~~ member who has been duly admitted by the Supreme Court to the practice of law in ~~the State of~~ Washington State ~~pursuant to APRs 3~~

~~and 5, and~~ who complies with these Bylaws and the Supreme Court ~~Rules~~ rules ~~of the Supreme Court of the State of Washington~~applicable to the member's license type, and who has not changed to another ~~membership class or been~~status classification or had his or her license suspended ~~or disbarred shall be~~is an Active member.

a. Active membership in the Bar grants the privilege to ~~fully~~ engage in the practice of law consistent with the rules governing the member's license type. Upon payment of the Active annual license fee and assessments required for the member's license type, compliance with these Bylaws and ~~Rules of the~~the applicable Supreme Court rules~~of Washington~~, and compliance with all other applicable licensing requirements, Active members are fully qualified to vote, hold office and otherwise participate in the affairs of the Bar as provided in these Bylaws.

b. Active members may:

1) ~~Fully e~~Engage in the practice of law~~:~~ consistent with the rules governing their license type;

2) Be appointed to serve on any committee, board, panel, council, task force, or other Bar entity ~~of the Bar~~;

3) Vote in Bar matters and hold office therein, as provided in these Bylaws; ~~and~~

4) Join ~~WSBA~~ Bar ~~Sections~~ sections as voting members~~.~~; and

5) Receive member benefits available to Active members.

c. All persons who become members of the Bar must first do so as an Active member.

2. Inactive.

~~There are three types of inactive membership: "Inactive Lawyer," "Inactive Disability," and "Inactive Honorary."~~

~~a.~~ Inactive members ~~shall~~ must not practice law in Washington, nor engage in employment or duties ~~in the State of Washington~~ that constitute the practice of law. Inactive members are not eligible to vote in Bar matters or hold office therein, or serve on any committee~~,~~ or board~~, or panel~~.

~~b.~~a. Inactive members may:

1) Join ~~WSBA S~~Bar sections as non-voting members, ~~if allowed under the Section's bylaws. This does not include eligibility to join as voting members;~~

2) Continue their affiliation with the Bar;

3) Change their membership ~~class~~ status to Active pursuant to these ~~bylaws~~Bylaws and any applicable court rule; ~~and~~

4) Request a free subscription to the Bar's official publication~~.~~; and

5) Receive member benefits available to Inactive members.

b. Types of Inactive membership:

1) *~~Inactive~~ ~~Lawyer~~ Member*: ~~Inactive~~ ~~Lawyer~~ members must pay an annual license fee in an amount established by the BOG and ~~as~~ approved by the Supreme Court. ~~They~~ Unless otherwise stated in the APR, they are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.

2) *~~Inactive~~ Disability*: ~~Inactive~~ Disability inactive members are not required to pay a license fee, or earn or report MCLE credits while ~~Inactive Disability~~in this status, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.

3) *~~Inactive~~ Honorary*: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become ~~Inactive~~ Honorary members of the Bar. ~~Inactive~~ Honorary members are not required to pay a license fee. A member who otherwise qualifies for ~~Inactive~~ Honorary membership but wants to continue to practice law in any manner must be an Active member or, if applicable, an Emeritus~~/~~ Pro Bono member.

3. Judicial. [*Effective January 1, 2012*]

a. An Active member may qualify to become a Judicial member ~~of the Bar~~ if the member is one of the following:

1) A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;

2) A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;

3) A current senior status or recall judge in the ~~Courts~~ courts of the United States;

4) An administrative law judge, which ~~shall be~~is defined as either:

(a) Current federal judges created under Article I of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or

(b) Full-time Washington State administrative law judges in positions created by either the Revised Code of Washington or the Washington Administrative Code; or

5) A current Tribal Court judge in the State of Washington.

b. Members not otherwise qualified for ~~judicial~~ Judicial membership under (1) through (5) above and who serve full-time, part-time or ad hoc as *pro tempore* judges, commissioners or magistrates are not eligible for ~~judicial~~ Judicial membership.

c. Judicial members, whether serving as a judicial officer full-time or part-time, ~~may~~ must not engage in the practice of law and ~~may~~ must not engage in mediation or arbitration for remuneration outside of their judicial duties.

d. Judicial members:

1) May practice law only where permitted by the then current Washington State Code of Judicial Conduct as applied to full-time judicial officers;

2) May be appointed to serve on any task force, council or Institute of the Bar;~~ and~~

3) May receive member benefits provided to Judicial members; and

~~3)~~4) May be non-voting members in ~~WSBA~~ Bar sections, if allowed under the ~~Section's~~ section's bylaws.

5) Judicial members are not eligible to vote in Bar matters or to hold office therein.

e. Nothing in these ~~bylaws~~ Bylaws ~~shall~~ will be deemed to prohibit ~~a~~ ~~judicial~~ Judicial members from carrying out their judicial duties.

f. Judicial members who wish to preserve eligibility to transfer to another membership ~~class~~ status upon leaving service as a judicial officer:

1) ~~are required to~~must provide the member registry information required of other members each year unless otherwise specified herein, and ~~are to~~ provide the Bar with any changes to such information within 10 days of any change; and

2) must annually pay any required license fee that may be established by the Bar, subject to approval by the Supreme Court, for this membership ~~class~~status. Notices, deadlines, and late fees ~~shall~~ will be consistent with those established for Active members.

g. Judicial members ~~are required to~~must inform the Bar within 10 days when they retire or when their employment situation has otherwise changed so as to cause them to be ineligible for Judicial membership, and must apply to change to another membership ~~class~~ status or to resign.

1) Failure to apply to change membership ~~class~~ status or to resign within ten days of becoming ineligible for Judicial membership, when a Judicial member has annually maintained eligibility to transfer to another membership ~~class~~status, ~~shall be cause~~is cause for administrative suspension of the member.

2) A Judicial member who has not annually complied with the requirements to maintain eligibility to transfer to another membership ~~class~~ status and who is no longer eligible for Judicial membership who fails to change to another membership ~~class~~ status will be deemed to have voluntarily resigned.

h. Administrative law judges who are judicial members ~~shall~~ must ~~be maintained in their assigned reporting group for mandatory continuing legal education purposes, and shall report earned credits to the Bar in accordance with the reporting requirements of that group~~continue to comply with APR 11 regarding MCLE. Either judicial continuing education credits or lawyer continuing legal education credits may be applied to the credit requirement for judicial members; if judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

i. Legal, legislative, and policy positions and resolutions taken by the ~~WSBA Board of Governors~~BOG are not taken on behalf of ~~judicial~~ Judicial members, are not considered to be those of ~~judicial~~ Judicial members, and are not binding on ~~judicial~~ Judicial members.

j. ~~WSBA's~~ The Bar's disciplinary authority over ~~judicial~~ Judicial members is governed exclusively by ELC 1.2 and RPC 8.5.

4. Emeritus/ Pro Bono.

A member may become an Emeritus/ Pro Bono member by complying with the requirements of APR 8(e), including payment of any required license fee and passing a character and fitness review.

Emeritus/ Pro Bono members ~~may~~ must not engage in the practice of law except as permitted under APR 8(e), but may:

a. Be appointed to serve on any task force, council, or Institute of the Bar. In addition, up to two Emeritus/ Pro Bono members are permitted to serve on the Pro Bono Legal Aid Committee (PBLAC) and may be appointed to serve as Chair, Co-Chair, or Vice-Chair of that committee;

b. Join ~~WSBA~~ Bar sections, ~~if permitted under the Section's bylaws;~~

c. Request a free subscription to the Bar's official publication~~.~~; and

d. Receive member benefits available to Emeritus Pro Bono members.

5. Suspended.

Members of any type and status can have their membership suspended by order of the Washington Supreme Court. Although suspended members remain members of the Bar, they lose all rights and privileges associated with that membership, including their authorization and license to practice law in Washington.

~~B.~~C. REGISTER OF MEMBERS.

1. All ~~WSBA~~ Bar members, ~~regardless of membership class,~~ including ~~judicial~~ Judicial members who wish to preserve eligibility to transfer to another membership ~~class~~ status upon leaving service as a judicial officer, must furnish the information below to the Bar:

a. physical residence address;

b. physical street address for a resident agent if required to have one pursuant to these Bylaws or by court rule;

~~b~~c. principal office address, telephone number, and email address;

~~c~~d. such other data as the ~~Board of Governors~~BOG or Washington Supreme Court may from time to time require of each member

and ~~shall~~ must promptly advise the Executive Director in writing of any change in this information within 10 days of such change. Judicial members are not required to provide a physical residence address.

2. The Executive Director ~~shall~~ will keep records of all members of the Washington State Bar Association, including, but not limited to:

a. physical residence address furnished by the member;

b. principal office address, telephone number, and email address furnished by the member;

c. physical street address of any resident agent for the member;

~~e~~d. date of admittance;

~~d~~.e. ~~class~~ type and status of membership;

~~e~~.f. date of transfer(s) from one status ~~class~~ to another, if any;

~~f~~.g. date and period(s) of administrative suspensions, if any;

~~g~~h. date and period of disciplinary actions or sanctions, if any including suspension and disbarment;

~~h~~i. such other data as the ~~Board of Governors~~BOG or Washington Supreme Court may from time to time require of each member.

3. Any Active member~~, other than Judicial,~~ residing out-of-state must file with the Bar, ~~on~~ in such form and manner as the Bar may prescribe, the name and physical street address of a designated resident agent within ~~the State of~~ Washington State ~~for the purpose of receiving service of process ("resident agent"). Service to such agent shall be deemed service upon or delivery to the lawyer~~. The member must notify the Bar of any change in resident agent within 10 days of any such change. ~~Any member required to designate a resident agent who fails to do so, or who fails to notify the Bar of a change in resident agent, shall be subject to administrative suspension pursuant to these bylaws and/or the Admission and Practice Rules.~~

4. Any member who fails to provide the Bar with the information required to be provided pursuant to these ~~bylaws~~Bylaws, or to notify the Bar of any changes in such information within 10 days, ~~shall~~ will be subject to administrative suspension pursuant to these ~~bylaws~~ Bylaws and/or the Admission and Practice Rules. Judicial members are exempt from suspension pursuant to this provision while eligible for Judicial membership and serving as a judicial officer.

~~C~~.D. CHANGE OF MEMBERSHIP ~~CLASS~~ STATUS TO ACTIVE.

1. Members may change membership status as provided below. In some situations, LLLTs and LPOs will need to refer to the APR for the appropriate procedure.

~~1~~.a. Transfer from Inactive to Active.

a.1) An Inactive ~~Lawyer~~ member or ~~Inactive~~ Honorary member may transfer to Active by:

~~1)~~(a) paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;

~~2)~~(b) earning, within the six years preceding the return to Active status, and reporting ~~at least 45~~the total number of approved MCLE credits ~~earned within the six years preceding return to Active~~required for one reporting period for an Active member with the same license type, and paying any outstanding MCLE late fees that are owed. ~~Members returning to Active from Inactive will be reinstated to the MCLE reporting group they were in at the time of transfer to Inactive. However, i~~If the member has been Inactive or a combination of Suspended and Inactive for less than one year, and the member ~~is in an MCLE reporting group that was~~would have been required to report during the time the member was Inactive and/or Suspended, the member must establish that the member is compliant with the MCLE reporting requirements for that reporting period before the member can change to Active. This paragraph does not apply to members transferring back to Active during their first MCLE reporting period;

~~3)~~(c) passing a character and fitness review essentially equivalent to that required of all applicants for admission to the Bar, pursuant to APR 20-24.3; and

~~4)~~(d) paying the current Active license fee, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as an Inactive member for the same year.

~~b.~~2) ~~In addition to the above requirements, any member seeking to change to Active who~~If a member was Inactive or any combination of Suspended and Inactive in Washington for more than six consecutive years, the member must ~~establish that the member has earned~~earn ~~a minimum of 45 approved credits of Continuing Legal Education~~MCLE credits in a manner consistent

with the requirement for one reporting period for an Active member of the same license type, and these credits must be earned and reported within the three years preceding the return to Active status. In addition ~~to the 45 credits, such~~, lawyer members must complete a reinstatement/readmission course sponsored by the Bar and accredited for a minimum of 15 live CLE credits, which course ~~shall~~ must comply with the following minimum requirements:

~~1)~~(a) At least four to six credit hours regarding professional responsibility and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust accounts, communications with clients, etc.; and

~~2)~~(b) At least three credit hours regarding legal research and writing.

~~3)~~(c) The remaining credit hours ~~shall~~ will cover areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.

The member is required to pay the cost of the course. Any member completing such course ~~shall~~ will be entitled to credit towards mandatory continuing legal education requirements for all CLE credits for which such reinstatement/admission course is accredited. ~~It is the member's responsibility to pay the cost of attending the course.~~ The member ~~shall~~ must comply with all registration, payment, attendance, and other requirements for such course, and ~~shall~~ will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

Periods of administrative and/or disciplinary suspension occurring immediately before or after a change to Inactive ~~shall~~ will be included when determining whether a member ~~must~~ is required to take the readmission course. For purposes of determining whether a member has been Inactive and/or Suspended for more than six consecutive years, the period continues to run until the change to Active membership is completed, regardless of when the application is submitted to the Bar.

3) Any lawyer member seeking to change to Active who was Inactive or any combination of Suspended and Inactive in Washington and not engaged in the active practice of law as defined in APR 3 in any jurisdiction for more than ten consecutive years, is required to complete the requirements in paragraphs a.1.a, c, and d, above, and is also required to take and pass the Uniform Bar Examination and the Multistate Professional Responsibility Examination.

~~c.~~4) ~~An Inactive~~ Disability Inactive status member may be reinstated to Active pursuant to ~~Title 8 of the Rules for Enforcement of Lawyer Conduct~~the disciplinary rules applicable to their license type. Before being transferred to Active, after establishing compliance with the ~~ELC~~disciplinary rules, the member also must comply with the requirements in these ~~bylaws~~ Bylaws for Inactive ~~Lawyers to change~~ members transferring to Active status.

~~d.~~5) ~~Any~~ member of any type who has transferred to Inactive status during the pendency of grievance or disciplinary proceedings may not be transferred to Active except as provided herein and may be subject to such discipline by reason of any grievance or complaint as may be imposed under the Rules for Enforcement of Lawyer Conduct or other applicable disciplinary rules~~by reason of any grievance or complaint~~.

~~2.~~b. Transfer from Judicial to Active. *[Effective January 1, 2012]*

A Judicial member may request to transfer to Active. Upon a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the Bar within 10 days, and any Judicial member desiring to continue his~~/~~ or her affiliation with the ~~WSBA~~ Bar must change to another membership ~~class~~ status within the Bar.

~~a.~~1) A Judicial member who has complied with all requirements for maintaining eligibility to return to another membership ~~class~~ status may transfer to Active by:

~~1)~~(a) paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;

~~2)~~(b) paying the then current Active license fee for the member's license type, including any mandatory assessments, less any license fee (not including late fees)

and assessments paid as a Judicial member for the same licensing year;

~~3.~~(c) passing a character and fitness review essentially equivalent to that required of applicants for admission to the Bar, pursuant to APR 20-24.3. Judicial members seeking to transfer to Active must disclose at the time of the requested transfer any pending public charges and/or substantiated public discipline of which the member is aware; and

~~4.~~(d) complying with the MCLE requirements for members returning from Inactive to Active, ~~including completing~~except that the member must complete a ~~full~~one-day reinstatement/readmission course tailored to judges, to include lawyer ethics and IOLTA requirements among other topics, if a Judicial member for six or more consecutive years. Administrative law judge Judicial members shall complete the 15 credit reinstatement/readmission course required of Inactive lawyers if a Judicial member for six or more consecutive years. Either judicial continuing education credits or lawyer continuing education credits may be applied to the credit requirement for Judicial members transferring to Active. If judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

~~b.~~2) A Judicial member wishing to transfer to Active upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information ~~and/~~or pay the annual ~~licensing~~ license fee required of Judicial members to maintain eligibility to transfer to another membership ~~class~~ status shall, prior to transfer to Active, be required to pay the Active ~~licensing~~ license fee for the member's license type any years the registry information was not provided or the Judicial fee was not paid, in addition to complying with the requirements of (a) above.

~~3.~~c. Transfer from Emeritus/ Pro Bono to Active.

An Emeritus/ Pro Bono member may transfer to Active by complying with the requirements for members returning from Inactive to Active. There is

no limit on how long a member may be Emeritus Pro Bono before returning to Active status.

4.d. Referral to Character and Fitness Board.

All applications for readmission to Active ~~membership~~ status ~~shall~~ will be reviewed by ~~WSBA~~ Bar staff ~~for purposes of determining whether any of the factors set forth in~~and handled consistent with the provisions of APR 20-24.2~~(a) are present~~3. ~~All applications that reflect one or more of those factors shall be referred to Bar Counsel for review, who may conduct or direct such further investigation as is deemed necessary. Applying the factors and considerations set forth in APR 24.2, Bar Counsel shall refer to the Character and Fitness Board for hearing any applicant about whom there is a substantial question whether the applicant currently possesses the requisite good moral character and fitness to practice law. The Character and Fitness Board shall conduct a hearing and enter a decision as described in APR 20-24, except that all decisions and recommendations shall be transmitted to the applicant and Bar Counsel, and that the applicant may request that the Board of Governors review a recommendation, with such review to be on the record only, without oral argument. If no review is requested, the decision and recommendation of the Character and Fitness Board shall become final. T~~In all cases reviewed by it, the Character and Fitness Board~~, and (on review) the Board of Governors, have~~ has broad authority to recommend withholding a transfer to ~~active~~ Active status or ~~to impose~~ imposing conditions on readmission to Active ~~membership~~status, which may include retaking and passing the ~~Washington State Bar~~licensing examination~~, in cases where the applicant fails to meet the burden of proof required by APR 20-24~~ applicable to the member's license type. -The member ~~shall~~ will be responsible for the costs of any investigation, ~~bar~~ examination, or proceeding before the Character and Fitness Board and ~~Board of Governors~~the Washington Supreme Court.

~~D.~~E. CHANGE OF MEMBERSHIP ~~CLASS~~ STATUS TO INACTIVE.

1. LLLT members and LPO members may change their membership status to Inactive as provided in the applicable APR.

2. Any lawyer member who is an Active, Judicial, or Emeritus/ Pro Bono member and who is not Suspended ~~or Disbarred shall~~will become an Inactive-~~Lawyer~~ member when the member files a ~~written~~ request for Inactive membership with the ~~Executive Director~~Bar, in such form and manner as the Bar may require, and that request is approved.

Effective January 1, 2012, a Judicial member wishing to transfer to Inactive-~~Lawyer~~ member status upon leaving service as a judicial officer, who has failed

in any year to provide the annual member registry information ~~and/~~ or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership ~~class~~ status shall, prior to transfer to Inactive, be required to pay the Active ~~licensing~~ license fee for lawyer members for any years the registry information was not provided or the Judicial fee was not paid.

~~2.~~3. Members are transferred to ~~Inactive~~ Disability Inactive pursuant to Title 8 of the Rules for Enforcement of Lawyer Conduct or equivalent disciplinary rules applicable to the member's license type. Any member seeking to transfer from Disability Inactive ~~Disability~~ to Inactive ~~Lawyer~~ member status must first establish that the member has complied with the requirements of Title 8 of the ELC or equivalent rules applicable to the member's license type, and then must submit a written request to make the change and comply with all applicable licensing requirements for Inactive ~~Lawyer~~ members.

~~3~~4. All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may qualify for ~~Inactive~~ Honorary ~~membership~~status. A qualified member may request to change to ~~Inactive~~ Honorary ~~membership~~ status by submitting a written request and any required application.

45. An Active member may apply to change from Active to Inactive ~~Lawyer~~ status while grievances or disciplinary proceedings are pending against such member. Such transfer, however, shall not terminate, stay or suspend any pending grievance or proceeding against the member.

~~E.~~F. CHANGE OF MEMBERSHIP ~~CLASS~~ STATUS TO JUDICIAL.

An Active member may request to become a Judicial member of the Bar by submitting a written request on judicial letterhead and any required application, and complying with the provisions of these Bylaws.

~~F.~~G. CHANGE OF MEMBERSHIP ~~CLASS~~ STATUS TO EMERITUS/ PRO BONO.

A member who is otherwise retired from the practice of law may become an Emeritus/ Pro Bono member by complying with the requirements of APR 8(e), including payment of any required license fee, and passing a character and fitness review.

Effective January 1, 2012, a Judicial member wishing to transfer to Emeritus/ Pro Bono status upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information ~~and/~~ or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership ~~class~~ status shall, prior to transfer to Emeritus/ Pro Bono, be

required to pay the Active ~~licensing~~ license fee for any years the registry information was not provided or the Judicial fee was not paid.

~~G.~~H. VOLUNTARY RESIGNATION.

Voluntary resignation may apply in any situation in which a member does not want to continue practicing law in Washington for any reason (including retirement from practice) and for that reason does not want to continue membership in the Bar. ~~A~~ Unless otherwise provided in the APR, a member may voluntarily resign from the Bar by submitting a written request for voluntary resignation to the ~~Executive Director~~Bar in such form and manner as the Bar may require. If there is a disciplinary investigation or proceeding then pending against the member, or if at the time the member submits the written request the member ~~had~~ has knowledge that the filing of a grievance of substance against such member ~~was~~ is imminent, resignation is permitted only under the provisions of the Rules for Enforcement of Lawyer Conduct or other applicable disciplinary rules. A member who resigns from the ~~WSBA~~ Bar cannot practice law in Washington in any manner. A member seeking reinstatement after resignation must comply with these ~~bylaws~~Bylaws.

~~H.~~I. ANNUAL LICENSE FEES AND ASSESSMENTS.

1. License Fees. Unless established otherwise pursuant to the APR or by order of the Washington Supreme Court, the following provisions apply to member license fees.

a. Active Members.

1) Effective 2010, and all subsequent years, the annual license fees for Active members ~~shall~~ will be as established by resolution of the ~~Board of Governors~~BOG, subject to review by the ~~state~~ Washington Supreme Court. First time lawyer admittees who are not admitted or licensed elsewhere, who take and pass the Washington Bar exam and are admitted in the first six months of the calendar year in which they took the exam, will pay 50% of the full ~~active~~ Active fee for that year. First time lawyer admittees not admitted or licensed elsewhere, who take and pass the Washington lawyer Bar examination and are admitted in the last six months of the calendar year in which they took the exam, will pay 25% of the full ~~active~~ Active fee for that year. Persons not admitted elsewhere, who take and pass the ~~Washington~~ lawyer Bar exam in one year but are not admitted until a subsequent year, shall pay 50% of the full ~~active~~ Active lawyer fee for their first two license years after admission. Persons admitted as a lawyer in one calendar year in another state or territory of the United States or in the District of Columbia by taking and passing a bar examination

in that state, territory, or district, who become admitted as a lawyer in Washington in the same calendar year in which they took and passed the examination, ~~shall~~ will pay 50% of the full ~~active~~ Active lawyer fee if admitted in Washington in the first six months of that calendar year and 25% of the full active fee if admitted in Washington in the last six months of that calendar year. All persons in their first two full licensing years after admission or licensure as a lawyer in any jurisdiction ~~shall~~ will pay 50% of the full ~~active~~ Active fee.

2) An Active member of the ~~Association~~ Bar who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than 60 days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States ~~shall~~ will be exempt from the payment of license fees and assessments for the ~~Lawyers' Fund for~~ Client Protection Fund upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the ~~Association~~ Bar's offices on or before February 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member. Granting or denying an exemption under this provision is within the sole discretion of the Executive Director and is not appealable.

b. Inactive Members.

1) ~~Effective 2010 and subsequent years, t~~The annual license fee for Inactive members ~~shall~~ will be as established by resolution of the ~~Board of Governors~~BOG and as approved by the ~~state~~ Washington Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members ~~shall~~ will apply to Inactive ~~Lawyer~~ members.

2) ~~Inactive~~ Honorary and Disability Inactive ~~Disability~~ status members ~~shall~~ will be exempt from license fees as assessments, unless otherwise provided by Supreme Court order.

c. Judicial Members. [*Effective January 1, 2012*]

Judicial members who wish to preserve eligibility to transfer to another membership ~~class~~ status upon leaving service as a judicial officer ~~shall~~ must pay the annual license fee established by the Bar as approved by the

Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members ~~shall~~ apply to Judicial members; however, Judicial members are not subject to administrative suspension for nonpayment of license or late payment fees.

d. Emeritus/ Pro Bono Members.

Emeritus/Pro Bono members ~~shall~~ must pay the annual license fee required of Inactive ~~Lawyer~~ members with the same type of license. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members ~~shall~~ apply to Emeritus/Pro Bono members.

2. Assessments.

Members ~~shall~~ must pay ~~the Lawyers' Fund for~~ any Client Protection Fund assessment, and any other assessments, as ordered by the Washington Supreme Court.

3. Deadline and Late Payment Fee.

a. License fees and mandatory assessments ~~shall~~ are ~~be~~ due and payable on or before February 1st of each year, in such form and manner ~~or on such form~~ as ~~is~~ required by the ~~WSBA~~Bar, unless otherwise established by these Bylaws or the APR. Members who pay their license fees on or after February 2nd ~~shall~~ will be assessed a late payment fee of 30% of the total amount of the license fees required for that membership ~~class~~type and status. License fees for newly admitted members ~~shall~~ are ~~be~~ due and payable at the time of admission and registration, and are not subject to the late payment fee.

b. Notices required for the collection of license fees, late payment fees, and/or assessments ~~shall~~ will be mailed one time by the ~~Executive Director~~Bar to the member's address of record with the Bar by registered or certified mail. In addition to the written notices, the Bar ~~shall~~ will make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and ~~shall~~ will speak to the member or leave a message, if possible. The Bar ~~shall~~ will also make one attempt to contact the member at the member's e-mail address of record with the Bar.

4. Rebates /Apportionments.

No part of the license fees ~~shall~~ will be apportioned to fractional parts of the year, except as provided for new admittees by the ~~Board of Governors~~BOG. After February 1st of any year, no part of the license fees ~~shall~~ will be rebated ~~by~~ for any reason, including but not limited to ~~of~~ death, resignation, suspension,

disbarment, license termination, cancellation or revocation, or change of membership ~~class~~status.

5. License Fee and Assessment Exemptions Due to Hardship.

In case of proven extreme financial hardship, which must entail a current annual household income equal to or less than 200% of the federal poverty level as determined ~~at the time of the application for hardship exemption~~based on the member's household income for the calendar year immediately preceding the calendar year for which the member is seeking to be exempted from license fees, the Executive Director may grant a one-time exemption from payment of annual license fees and assessments by any Active member. Hardship exemptions are for one licensing period only, and a request must be submitted on or before February 1st of the year for which the exemption is requested. Denial of an exemption request is not appealable.

6. License Fee Referendum.

Once approved by the ~~Board of Governors~~BOG, license fees shall be subject to the same referendum process as other BOG actions, but may not be modified or reduced as part of a referendum on the ~~WSBA~~ Bar's budget. The membership shall be timely notified of the BOG resolutions setting license fees both prior to and after the decision, by posting on the ~~WSBA~~ Bar's website, e-mail, and publication in the Bar's official publication.

~~I.~~J. SUSPENSION.

1. Interim Suspension.

Interim suspensions may be ordered during the course of a disciplinary investigation or proceeding, as provided in the Rules for Enforcement of Lawyer Conduct or equivalent rules for LPOs and LLLTs, and are not considered disciplinary sanctions.

2. Disciplinary Suspension.

Suspensions ordered as a disciplinary sanction pursuant to the Rules for Enforcement of Lawyer Conduct or equivalent rules for LPOs and LLLTs are considered disciplinary suspensions.

3. Administrative Suspension.

a. Administrative suspensions are neither interim nor disciplinary suspensions, nor are they disciplinary sanctions. Except as otherwise provided in the APR and these Bylaws, a member may be administratively suspended for the following reasons:

1) Nonpayment of license fees or late-payment fees; ~~APR 17~~

2) Nonpayment of any mandatory assessment (including without limitation the assessment for the ~~Lawyers' Fund for~~ Client Protection Fund) ~~(APR 15(d))~~;

3) Failure to file a trust account declaration ~~(ELC 15.5(b))~~;

4) Failure to file an insurance disclosure form ~~(APR 26(e))~~;

5) Failure to comply with mandatory continuing legal education requirements ~~(APR 11)~~;

6) Nonpayment of child support ~~(APR 17)~~;

7) Failure to designate a resident agent or notify the Bar of change in resident agent or the agent's address ~~(APR 5(f))~~;

8) Failure to provide ~~a~~ current ~~address~~ information required by APR 13 or to notify the Bar of a change of ~~address or other~~ information required by APR 13 within 10 days after the change ~~(APR 13)~~; and

9) For such other reasons as may be approved by the ~~Board of Governors~~BOG and the Washington Supreme Court.

b. Unless requirement for hearing and/or notice of suspension are otherwise stated in these ~~bylaws~~ Bylaws or the APR, ELC, or other applicable rules, a member ~~shall~~ will be provided notice of the member's failure to comply with requirements and of the pendency of administrative suspension if the member does not cure the failure within 60 days of the date of the written notice, as follows:

1) Written notice of non-compliance ~~shall~~ will be sent one time by the ~~Executive Director~~Bar to a member at the member's address of record with the Bar by registered or certified mail. Such written notice ~~shall~~ will inform the member that the Bar will recommend to the Washington Supreme Court that the member be suspended from membership and the practice of law if the member has not corrected the deficiency within 60 days of the date of the notice.

2) In addition to the written notice described above, the Bar ~~shall~~ will make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and ~~shall~~ will speak to the member or leave a message, if possible. The Bar ~~shall~~ will also make one attempt to contact the member at the member's e-mail address of record with the Bar.

c. Although not required to provide any additional notice beyond what is described above, the Bar may, in its sole discretion, make such other attempt(s) to contact delinquent members as it deems appropriate for that member's situation.

d. As directed by the Washington Supreme Court, any member failing to correct any deficiency after two months' written notice as provided above must be suspended from membership. The Executive Director must certify to the Clerk of the Supreme Court the name of any member who has failed to correct any deficiency, and when so ordered by the Supreme Court, the member ~~shall~~ will be suspended from membership in the Bar and from the practice of law in Washington. The list of suspended members may be provided to the relevant courts or otherwise published at the discretion of the ~~Board of Governors~~BOG.

4. A member may be suspended from membership and from the practice of law for more than one reason at any given time.

~~J.~~K. CHANGING STATUS AFTER SUSPENSION.

1. Upon the completion of an ordered disciplinary or interim suspension, or at any time after entry of an order for an administrative suspension, a suspended member may seek to change status from suspended to any other membership ~~class~~ status for which the member qualifies at the time the change in status would occur.

2. Before changing from suspended status, a member who is suspended pursuant to an interim or disciplinary suspension must comply with all requirements imposed by the Washington Supreme Court and/or the ~~ELC~~ applicable disciplinary rules in connection with the disciplinary or interim suspension. Additionally, such member must comply with all other requirements as stated in these ~~bylaws~~Bylaws and in the applicable APR.

3. If a member was suspended from practice for more than one reason, all requirements associated with each type of suspension must be met before the change from suspended status can occur.

4. ~~A~~ Unless otherwise provided in the applicable APR, a suspended member may seek to change status by:

a. paying the required license fee and any assessments for the licensing year in which the status change is sought, for the membership ~~class~~ status to which the member is seeking to change. For members seeking to change to Active or any other status ~~or membership class~~ from suspension for nonpayment of license fees, the required license fee ~~shall~~ will be the current year's license fee and assessments, the assessments for

the year of suspension, and double the amount of the delinquent license fee and late fees for the ~~licensing~~ license year that resulted in the member's suspension;

b. completing and submitting to the Bar an application for change of status, any required or requested additional documentation, and any required application or investigation fee, and cooperating with any additional character and fitness investigation or hearing that may be required pursuant to APR 20-24.3; and

c. completing and submitting all licensing forms required for the ~~licensing~~ license year for the membership ~~class~~ status to which the member is seeking to change.

d. In addition to the above requirements:

1) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for less than six consecutive years must establish that within the six years prior to the ~~requested change in~~return to active status, the member has earned and reported approved MCLE ~~a minimum of 45~~ credits ~~of continuing legal education~~ in a manner consistent with the requirements for one reporting period for an Active member with the same license type. However, if the member has been Suspended and/or Inactive for ~~less than~~ one year or less and the member ~~is in the MCLE reporting group that~~ was required to report MCLE compliance during the time the member was Suspended and/or Inactive, the member must establish that the member is compliant with the MCLE credits the member would have been required to report that period.

2) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for six or more ~~than six~~ consecutive years must establish that within the three years prior to the return to Active status, the member has earned ~~a minimum of 45~~and reported approved MCLE credits ~~of continuing legal education~~ in a manner consistent with the requirement for one reporting period for an Active member with the same license type. ~~and completing~~In addition, lawyer members must complete a reinstatement/readmission course sponsored by the Bar and accredited for a minimum of 15 live CLE credits, which course ~~shall~~ must comply with the following requirements:

(a) At least four to six credit hours regarding law office management and professional responsibility and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust

accounts, communications with clients, law practice issues, etc., and

(b) At least three credit hours regarding legal research and writing.

(c) The remaining credit hours ~~shall~~ will cover areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.

Any member completing such course ~~shall~~ will be entitled to credit towards mandatory continuing legal education requirement for all CLE credits for which such reinstatement/readmission course is accredited. It is the member's responsibility to pay the cost of attending the course. The member ~~shall~~ must comply with all registration, payment, attendance, and other requirements for such course, and ~~shall~~ will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

~~K.~~L. REINSTATEMENT AFTER DISBARMENT OR REVOCATION.

Applicants seeking reinstatement after disbarment or revocation must file a petition for reinstatement and otherwise comply with the requirements of the APRs relating to reinstatement after disbarment or revocation. If the petition is granted and reinstatement is recommended, the petitioner must take and pass the ~~Washington Bar~~required examination for admission and comply with all other admission and licensing requirements applicable to the member's membership type for the year in which the petitioner is reinstated.

~~L.~~M. REINSTATEMENT AFTER RESIGNATION IN LIEU OF DISCIPLINE, DISBARMENT, OR ~~DISCIPLINE~~REVOCATION.

No former member ~~shall~~ will be allowed to be readmitted to membership of any type after entering into a resignation in lieu of discipline ~~or~~, disbarment, or revocation pursuant to the ELC or disciplinary rules applicable to the member's license type. Persons who were allowed to resign with discipline pending under former provisions of these ~~bylaws~~ Bylaws prior to October 1, 2002, may be readmitted on such terms and conditions as the ~~Board~~ BOG determines, provided that if the person resigned with discipline pending and a prior petition for reinstatement or readmission has been denied, no petition may be filed or

accepted for a period of two years after an adverse decision on the prior petition for reinstatement or readmission.

~~M.~~N. READMISSION AFTER VOLUNTARY RESIGNATION.

Any former member who has resigned and who seeks readmission to membership must do so in one of two ways, unless otherwise provided by the applicable APR for the member's license type: by filing an application for readmission in the form and manner prescribed by the ~~Board of Governors~~BOG, including a statement detailing the reasons the member resigned and the reasons the member is seeking readmission, or by seeking admission by motion pursuant to APR 3(c) (if the former member is licensed in another U.S. jurisdiction and would otherwise qualify for admission under that rule).

1. A former member filing an application for readmission after voluntary resignation must:

a. pay the application fee, together with such amount as the ~~Board of Governors~~BOG may establish to defray the cost of processing the application and the cost of investigation; and

b. establish that such person is morally, ethically and professionally qualified to be licensed in the applicable member type and is of good moral character and has the requisite fitness to practice consistent with the requirements for other applicants for admission to practice in the applicable membership type. An application for readmission ~~shall~~ will be subject to character and fitness investigation and review as described in APR 20-24.3, consistent with other applications for admission.

c. In addition to the above requirements, if an application for readmission is granted and:

(i) it has been less than four consecutive years since the voluntary resignation, the applicant must establish:

1) that within the three years prior to the return to Active status the former member has earned ~~45~~ ~~approved~~and reported approved MCLE credits ~~in the three years preceding the application~~ in a manner consistent with the requirement for one reporting period for an Active member of the same license type, without including the credits that might otherwise be available ~~for~~ from the reinstatement/readmission course; and

2) attend and complete the BOG-approved reinstatement/readmission course.

(ii) it has been four or more consecutive years since the voluntary resignation, the petitioner must take and pass the ~~Washington Bar~~applicable examination required for admission.

d. Upon successful completion of the above requirements, the member must pay the license fees and assessments and complete and submit all required licensing forms for the applicable membership type for the year in which the member will be readmitted.

2. A voluntarily resigned former member seeking readmission through admission by motion pursuant to APR 3(c) must comply with all requirements for filing such application and for admission upon approval of such application.

O. ~~BAR~~ EXAMINATION ~~MAY BE~~ REQUIRED.

All applications for reinstatement after disbarment or revocation ~~shall~~ will be subject to character and fitness review, and taking and passing the ~~Washington Bar~~ examination for admission for the applicable license type, pursuant to the provisions of APR 25-25.6. All applications for readmission after voluntary resignation ~~shall~~ will be subject to character and fitness review pursuant to the provisions of APR 20-24.3. All applications for readmission to Active ~~membership~~ status from Suspended status ~~shall~~ will be handled in a similar fashion to applications for readmission from Inactive status. The Character and Fitness Board, and (on review) the ~~Board of Governors~~Washington Supreme Court, have broad authority to withhold a transfer to Active or to impose conditions on readmission to Active membership, which may include taking and passing the ~~Washington State Bar~~applicable examination for admission, in cases where the applicant fails to meet the burden of proof required by APR 20-24.3. The member/former member ~~shall~~ will be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Board and ~~Board of Governors~~the Washington Supreme Court.

IV. GOVERNANCE

A. BOARD OF GOVERNORS.

The Board of Governors (BOG) is the governing body of the ~~WSBA which~~ Bar that determines the general policies of the Bar and approves its budget each year.

1. Composition of the Board of Governors.

The ~~Board of Governors~~BOG ~~shall~~ will consist of (a) the President~~, pursuant to the State Bar Act~~; (b) one ~~member~~ Governor elected from each Congressional District, except in the Seventh Congressional District where members ~~shall~~ will be elected from separate geographic regions designated as North and South, and identified by postal zip codes as established by the Bar ~~Association~~ in accordance with these Bylaws and ~~Board of Governor~~BOG policy; and (c) ~~three~~ six ~~members~~ Governors elected at-large pursuant to these ~~bylaws~~Bylaws.

2. Duties.

a. The ~~Board of Governors~~BOG elects the President-elect of the Bar.

b. The ~~Board of Governors~~BOG selects the Bar's Executive Director and annually reviews the Executive Director's performance.

c. ~~The Board of Governors operates as a representative body of all members. As such, the Board of Governors~~Regardless of the method by which any person is selected to serve on the BOG, each Governor will act in the best interest of all members of the Bar and the public. Each Governor is primarily obligated to ensure that the Bar fulfills the mandate set forth in General Rule 12.1, carries out the mission of the Bar, and ~~furthers the WSBA's~~operates in accordance with the Bar's Guiding Principles~~, all within the mandate of General Rule 12~~.

d. Each Governor ~~represents a constituency of the Bar as defined by these bylaws. As a representative, each Governor~~ is expected to ~~communicate~~engage with members about ~~Board~~ BOG actions and issues, and to convey member viewpoints to the Board~~, and to fulfill liaison duties as assigned~~. In representing a Congressional District, a Governor will at a minimum: (1) bring to the BOG the perspective, values and circumstances of her or his district to be applied in the best interests of all members, the public and the Bar; and (2) bring information to the members in the district that promotes appreciation of actions and issues affecting the membership as a whole, the public and the organization.

e. Each Governor appointed to serve as a BOG liaison to a committee, task force, council, section, board, or other entity has the responsibility to fulfill those liaison duties on behalf of the BOG. Governors appointed to serve as BOG liaisons are not voting members of those entities. BOG liaisons must not be excluded but will not participate in those entities' executive sessions or confidential deliberations except when requested to do so as a resource.

f. Meetings of the ~~Board of Governors~~BOG ~~shall~~ will be held as provided in these ~~bylaws~~Bylaws. Each Governor ~~is committed to attending~~must attend all board meetings except~~,~~ in ~~a Governor's judgment, when an~~cases of emergency or compelling circumstance ~~arises~~ that prevents participation~~, and to attending other functions as possible~~.

~~Governors appointed to serve as BOG liaison to a WSBA committee, task force, council, section, board, or other WSBA entity are not voting members of those entities. Liaisons may be present during, but shall not participate in, executive session or confidential deliberations except when requested to do so as a resource.~~

3. Term ~~of Office~~.

Governors ~~shall~~ will ~~take office~~assume their duties at the close of the final regularly scheduled ~~Board~~ BOG meeting of the fiscal year in which they were elected. ~~-~~Governors ~~shall hold office for~~serve a term of three years, except as may be otherwise provided by these ~~bylaws~~Bylaws.

4. Vacancy.

a. ~~Vacancy~~ A vacancy may arise due to resignation, death, ~~or~~ removal by ~~Board of Governors~~BOG, or recall by members.

1) Removal by the Board of Governors. Any Governor may be removed from office for good cause by a 75% vote of the entire ~~Board of Governors~~BOG exclusive of the Governor subject to removal, who ~~shall~~ will not vote. The vote ~~shall~~ will be by secret written ballot. Good cause for removal ~~shall~~ includes, without limitation, incapacity to serve, serious or repeated failures to meet the duties outlined in these Bylaws, or conduct or activities that bring discredit to the Bar.

2) Recall by Members. Any Governor may be removed from the BOG by a recall by members, in accordance with the procedures set forth in these Bylaws.

b. Response to a Vacancy.

1) If a vacancy occurs ~~due to resignation, death, or the removal of a Governor by the BOG,~~for any reason~~-~~ and 12 months or less remain ~~on said~~in that Governor's term, in the ~~Board of Governors'~~BOG's sole discretion the position may remain vacant until the next regularly scheduled election for that Governor position. In that event, no interim governor ~~shall~~ will be elected or appointed to the position.

2) If a vacancy occurs due to resignation, death, or the removal of a Governor by the BOG, and more than 12 months remain ~~on said~~in that Governor's term, the ~~Board of Governors~~BOG ~~shall~~ must elect ~~an~~ a candidate eligible ~~candidate~~ for that position to serve as Governor until the next regularly scheduled election for that Governor position.

~~b. Vacancy due to recall by members~~

~~1) If a Governor is removed due to recall and 12 months or less remain on that Governor's term, in the Board of Governors' sole discretion the position may remain vacant until the next regularly scheduled election for that Governor position. In that event, no interim governor shall be elected or appointed to the position.~~

~~2)~~3) If a Governor is removed due to recall and more than 12 months remain ~~on~~ in that Governor's term, a special election ~~shall~~ will be conducted using the general procedures set forth in the "Election of Governors from Congressional Districts" provisions of these ~~bylaws~~Bylaws. The application period for any special election held pursuant to this ~~section~~ paragraph ~~shall~~ must be no less than 30 days and ~~shall~~must, at a minimum, be prominently posted on the ~~WSBA~~ Bar's website and e-mailed to all members eligible to vote in the election ~~who have valid e-mail addresses on record with the Bar~~.

~~3)~~4) Regardless of whether a special election will be held to fill a Governor position ~~which~~ that is vacant due to recall by the members, such position ~~shall~~ will not be filled by any interim governors selected by the BOG or appointed by the ~~president~~President.

B. OFFICERS OF THE BAR.

The officers of the Bar ~~shall~~ consist of a President, President-elect, Immediate Past-President, and Treasurer. The ~~WSBA~~ Executive Director of the Bar serves as secretary in an *ex officio* capacity. ~~Only~~ Except for the Executive Director, all officers must be Active lawyer members ~~may serve as officers~~ of the Bar.

1. President.

The President ~~shall be~~is the chief spokesperson of the Bar, and ~~shall~~ presides at all meetings of the ~~Board of Governors and at any meetings of the Bar~~BOG. The President has the authority to set the agenda; take action to execute the policies established by the ~~Board of Governors~~BOG; assign Governors as liaisons to ~~WSBA~~ Bar sections, committees, or task forces, specialty bar associations, and other law related organizations; and to appoint task forces, BOG committees, or other ad hoc entities to carry out policies established by the ~~Board of Governors~~BOG. The President ~~shall further~~ also performs ~~those~~ any other duties ~~that usually devolve upon such officer~~typically performed by an organization's President. The President may vote only if the President's vote will affect the result. The President ~~shall~~ must present a report to the membership covering the principal activities of the Bar during the President's tenure.

2. President-elect.

The President-elect performs the duties of the President at the request of the President, or in the absence, inability, recusal, or refusal of the President to perform those duties. The President-elect ~~shall~~ also performs such other duties as may be assigned by the President or the ~~Board of Governors~~BOG. The President-elect is not a voting member of the ~~Board of Governors~~BOG except

when acting in the President's place at a meeting of the ~~Board of Governors~~BOG and then only if the vote will affect the result.

3. Immediate Past President.

The Immediate Past President performs such duties as may be assigned by the President or the ~~Board of Governors~~BOG. The Immediate Past President ~~shall~~ will perform the duties of the President in the absence, inability, recusal, or refusal of the President, President-elect, and Treasurer to perform those duties. Among the duties specifically assigned to the Immediate Past President ~~shall be~~is to work on behalf of the ~~Board~~ BOG and the ~~Officers~~ officers to ensure appropriate training and education of new ~~board~~ BOG members and officers during their term.

The Immediate Past President is not a voting member of the ~~Board of Governors~~BOG except when acting in the President's place at a meeting of the ~~Board of Governors~~BOG and then only if the vote will affect the result.

4. Treasurer.

The Treasurer ~~shall~~ chairs the ~~WSBA~~ Budget ~~&~~ and Audit Committee and is responsible for ensuring that the ~~Board of Governors~~BOG and ~~Officers~~ officers are informed about the finances of the ~~Association~~Bar. The Treasurer ~~shall~~ will perform the duties of the President in the absence, inability, recusal, or refusal of the President and the President-elect to perform those duties. The Treasurer ~~shall~~ also performs such other duties as are assigned by the President or the ~~Board of Governors~~BOG.

5. Executive Director

The Executive Director is the principal administrative officer of the Bar. The Executive Director is responsible for the day-to-day operations of the Bar including, without limitation: (1) hiring, managing and terminating Bar personnel, (2) negotiating and executing contracts, (3) communicating with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters, (4) preparing an annual budget for the ~~WSBA~~ Budget and Audit Committee, (5) ensuring that the ~~WSBA~~ Bar's books are kept in proper order and are audited annually, (6) ensuring that the annual audited financial report is made available to all Active members, (7) collecting debts owed to the bar and assigning debts for collection as deemed appropriate, (8) acquiring, managing, and disposing of personal property related to the Bar's operations within the budget approved by the BOG, (9) attending all BOG meetings, (10) reporting to the ~~Board of Governors~~BOG regarding Bar operations, (11) ensuring that minutes are made and kept of all BOG meetings, and (12) performing such other

duties as the ~~Board of Governors~~BOG may assign. The Executive Director serves in an *ex officio* capacity and is not a voting member of the ~~Board of Governors~~BOG.

6. Terms of Office.

a. The President-elect is elected by the ~~Board of Governors~~BOG, as set forth in these ~~bylaws~~Bylaws. The President-elect ~~shall~~ succeeds the President unless removed from office pursuant to these Bylaws.

b. The President-elect and Treasurer ~~shall~~ take office at the close of the final regularly scheduled ~~Board~~ BOG meeting of the fiscal year in which they were elected to those positions. The President ~~shall~~ takes office at the close of the final regularly scheduled ~~Board~~ BOG meeting of the fiscal year in which he~~/~~ or she served as President-elect. The Immediate Past President ~~shall~~ takes office at the close of the final regularly scheduled ~~Board~~ BOG meeting of the fiscal year in which he~~/~~ or she served as President.

c. The term of office of each officer position is one year; however, the Executive Director serves at the ~~pleasure~~ direction of the ~~Board~~ BOG and has an annual performance review.

7. Vacancy.

a. The President, President-Elect, Immediate Past President, and Treasurer may resign or be removed from office for good cause by an affirmative vote of 75% of the entire ~~Board of Governors~~BOG. Good cause for removal ~~shall mean~~ includes, without limitation, incapacity to serve, serious or repeated failures to meet the duties outlined in these Bylaws, or conduct or activities that bring discredit to the Bar.

1) Upon removal or resignation of the President, the President-elect ~~shall~~ will fill the unexpired term of the President and ~~shall~~ then serve the term for which he~~/~~ or she was elected President. If there is no President-elect, then the ~~Board of Governors~~BOG ~~shall~~ will elect such other person as it may determine, with the Treasurer performing the duties of the President until the ~~Board of Governors~~BOG elects a new President.

2) Upon removal or resignation of the President-elect, or ascendancy of the President-elect to the Presidency pursuant to paragraph (1) above, the ~~Board of Governors~~BOG ~~shall~~ will elect a new President-elect (from Eastern Washington if the President-elect is mandated to be from Eastern Washington per these ~~bylaws~~Bylaws).

3) Upon disqualification, removal, or resignation of the Immediate Past President, the office ~~shall~~ will remain vacant until the close of the term of the then-current President.

4) ~~[Effective January 1, 2012]~~ Upon removal or resignation of the Treasurer, the ~~Board of Governors~~BOG ~~shall~~ will elect a new Treasurer pursuant to the procedures set forth in these Bylaws.

b. The Executive Director is appointed by the ~~Board of Governors~~BOG, serves at the ~~pleasure~~ direction of the ~~Board of Governors~~BOG, and may be ~~removed~~ dismissed at any time by the ~~Board~~ BOG without cause by a majority vote of the entire ~~Board of Governors~~BOG. If dismissed by the BOG, the Executive Director may, within 14 days of receipt of a notice terminating employment, file with the Supreme Court and serve on the President, a written request for review of the dismissal. If the Supreme Court finds that the dismissal of the Executive Director is based on the Executive Director's refusal to accede to a BOG directive to disregard or violate a Court order or rule, the Court may veto the dismissal and the Executive Director will be retained.

C. ~~BOG~~ BOARD OF GOVERNORS COMMITTEES.

1. The ~~Board of Governors~~BOG may delegate work to BOG standing committees, ~~and~~ special committees, work groups, or other subgroups however defined, the membership of which ~~shall~~ will be established by the President with due consideration given to Governors' membership requests. The BOG standing committees ~~shall~~ include, at a minimum, the following: Executive Committee; Awards Committee; Budget ~~&~~ and Audit Committee; Legislative Committee; Personnel Committee; and Diversity Committee.

2. The purpose of BOG committees, regardless of what they are called, is to make recommendations and make the work of the BOG more efficient. Consensus should govern meetings of BOG committees whenever possible. If a BOG committee is unable to reach a consensus, the committee will vote, in which case voting members are as follows: Governors and ~~Officers~~ officers appointed to BOG committees are voting members ~~of BOG committees and task forces~~. ~~WSBA~~ Bar staff are non-voting members of BOG ~~standing~~ committees or other Bar entities, unless the ~~chair~~ Chair determines otherwise~~, and may be voting members of other committees and task forces~~ at the ~~chair's~~ Chair's discretion.

3. Meetings of BOG committees are open to the public, unless provided otherwise in these Bylaws or by court rule. The ability to participate in and comment at BOG committee meetings is in the discretion of the Chair as provided in these Bylaws.

~~2.~~4. BOG Legislative Committee

a. Purpose: The BOG Legislative Committee is authorized to propose or adopt positions on behalf of the ~~Board of Governors~~BOG with respect to legislation that has been introduced or is expected to be introduced in the Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation.

b. Membership: The President ~~shall~~ appoints the Committee, which ~~shall~~ consists of the following voting members:

1) Eight ~~members of the Board of Governors~~Governors, including the Treasurer;

2) the President;

3) the President-elect; and

4) the Immediate Past President.

The ~~chair of the Committee shall be selected by the~~ President selects the Chair from among the Governors appointed to the Committee.

c. Procedure: Consideration of legislation by the Committee ~~shall~~ proceeds in the following order:

1) The Committee ~~shall~~ first determines, by a two-thirds majority vote of those voting, whether the legislation is within the scope of GR 12.1 and whether it is appropriate under the circumstances for the Committee to determine a position on the legislation on behalf of the ~~Board of Governors~~BOG.

2) If the determination in subsection (1) above is affirmative, then the Committee ~~shall~~ will determine by a two-thirds majority vote of those voting what position, if any, to adopt on the legislation on behalf of the ~~Board of Governors~~BOG.

3) The Committee may determine that major or novel legislative issues will be referred to the ~~Board of Governors~~BOG for consideration.

4) Any issues to be considered or actions taken by the Committee ~~shall~~ must be promptly communicated to the ~~Board of Governors~~BOG by electronic delivery; and actions taken by the Committee ~~shall~~ must also be communicated at the next BOG meeting ~~of the Board~~.

5) Due to the Committee's unique need to be able to act quickly to address issues that arise during a regular or special

legislative session, between meetings the Committee may discuss and vote on issues by e-mail; however, if any Committee member objects to using an e-mail process for any particular issue, the Committee ~~shall~~ will take up that issue at its next scheduled Committee meeting.

d. Quorum: A quorum ~~shall~~ consists of a majority of the Committee's voting members.

e. Committee Meetings: The ~~Board of Governors Legislative~~ Committee may meet in executive session, with no persons present except the members of the Committee, other members of the ~~Board of Governors~~BOG, the Executive Director, the Legislative Liaison, and such others as the Committee may authorize. Committee meetings may be held electronically.

D. POLITICAL ACTIVITY.

1. Board of Governors.

a. The ~~Board of Governors~~BOG acting as a ~~Board~~ board ~~shall~~ must not publicly support or oppose, in any election, any candidate for public office.

b. The ~~Board of Governors~~BOG acting as a ~~Board~~ board ~~shall~~ must not take a side or position publicly or authorize any officer or the Executive Director to take a side or position publicly on any issue being submitted to the voters or pending before the legislature, unless the matter is considered in public session at a meeting of the ~~Board~~ BOG with advance notice to the Bar's membership, and the following requirements are met:

1) The ~~Board~~ BOG ~~shall~~ first votes to determine whether the issue is within the scope of GR 12.1; and

2) If the ~~Board~~ BOG determines that the matter is within the scope of GR 12.1, then the ~~Board~~ BOG ~~shall~~ will vote to determine what position, if any, to adopt on the issue.

c. The restriction applies fully to prohibit:

1) the use of the name or logo of the ~~Washington State~~ Bar ~~Association~~;

2) the contribution of funds, facility use, or Bar staff time;

3) participation or support to any degree in the candidate's campaign, or the campaign on either side of the issue.

d. The restriction does not apply to matters that are exclusively related to the administration of the Bar's functions or to any issue put to a vote of the Bar's membership.

Notice of any ~~Board~~ BOG position or authorization to the President or Executive Director to take a position ~~shall~~ must be published on the Bar's website as soon as possible after the meeting at which the final action is taken.

2. President and President-elect.

The President and President-elect ~~shall~~ must not publicly support or oppose, in an election, any candidate for public office. This restriction applies fully to prohibit:

a. the use of the President's and President-elect's name,

b. the contribution of funds, or

c. participation or support to any degree in the candidate's campaign.

Further, the President and President-elect ~~shall~~ must not take a side publicly on any issue being submitted to the voters, pending before the legislature or otherwise in the public domain except when specifically authorized or instructed by the ~~Board of Governors~~BOG to do so on a matter relating to the function or purposes of the Bar.

3. Governors, other Officers and Executive Director.

Governors, other officers, and the Executive Director ~~shall~~ must not publicly support or oppose, in an election, any candidate for public elective office in the State of Washington the prerequisites for which include being an attorney, except where the candidate is a member of that person's immediate family. This restriction applies fully to prohibit:

a. the use of the Governor's, officer's, or Executive Director's name,

b. the contribution of funds, or

c. participation or support to any degree in the candidate's campaign.

The term "immediate family" as used in this Article includes a sibling, parent, spouse, domestic partner, child and the child of a spouse or domestic partner.

4. Other.

If any officer, Governor, or the Executive Director supports or opposes any candidate or issue as permitted in this ~~Bylaw~~Article, then that person ~~shall~~ must not state or imply that he or she is acting in his or her capacity as officer,

Governor or Executive Director of the ~~Washington State~~ Bar ~~Association~~ unless specifically authorized to do so by the ~~Board of Governors~~BOG.

5. Letterhead.

Use of Bar letterhead ~~shall be~~is limited to official business of the Bar and specifically ~~shall~~ must not be used for personal or charitable purposes, or in connection with any political campaign or to support or oppose any political candidate. Bar letterhead ~~shall~~ must not be used to support or oppose any public issue unless the ~~Board of Governors~~BOG has taken a position on the issue.

E. REPRESENTATION OF THE BAR.

Except as specifically set forth in these Bylaws, no committee, section, task force, or ~~WSBA~~ other Bar entity, or member thereof, member of the BOG, or officer or employee of the Bar ~~shall assume~~is permitted to speak for or represent the Bar, or any committee, section, task force, or entity thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State, unless prior authorization to do so has been specifically granted by the BOG by policy adopted by the BOG or by specific BOG action.

1. As the chief spokesperson of the Bar, the President has the authority to take action to execute the policies established by the ~~Board of Governors~~BOG, and to serve as the representative of the Bar in connection therewith.

2. The BOG Legislative Committee is specifically authorized, under the terms of these Bylaws, to propose or adopt positions on behalf of the BOG with respect to legislation that has been introduced or is expected to be introduced in the Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation.

3. The Executive Director may communicate with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters and policies established by the BOG, and is not required to obtain prior approval from the BOG before doing so.

4. ~~WSBA~~ Bar employees whose job duties require them to do so, and independent counsel retained at the direction of the President or the BOG, are specifically authorized to represent the ~~WSBA~~Bar, or any committee, section, or task force thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State as may be necessary to perform their job duties.

V. APPROPRIATIONS AND EXPENSES

WSBA BYLAWS – REDLINE (10/12/2016)

A. APPROPRIATIONS.

Appropriations of ~~WSBA~~Bar funds and authorization for payment of expenses ~~shall~~ will be made by the BOG through the adoption of an annual budget or by special appropriation as required.

1. The President ~~shall~~ appoints a BOG Budget and Audit Committee, which ~~shall~~ consists of the following voting members:

a. At least one Governor from each class, not to exceed seven Governors, one of whom ~~shall~~ must be the Treasurer;

b. The President; and

c. The President-~~Elect~~elect.

The ~~WSBA~~ Executive Director and ~~Deputy Director for Finance and Administration~~Chief Operations Officer ~~shall~~ serve as *ex officio*, non-voting members, and the Treasurer serves as Chair of the Committee~~ shall be the Treasurer~~. Up to two additional ~~non-Board of Governor~~ voting members who are not Governors or officers may be appointed by the President subject to the approval of the ~~Board of Governors~~BOG.

2. The Treasurer, together with the Budget and Audit Committee, ~~shall~~ will present a proposed Annual Budget to the BOG for approval prior to each fiscal year.

3. Decisions regarding non-budgeted appropriations ~~shall~~ must be made in accordance with the BOG-approved fiscal policies and procedures.

B. EXPENSES; LIMITED LIABILITY.

1. Requests for payment ~~shall~~must be in such form and supported by such documentation as the BOG ~~shall from time to time~~ prescribes.

2. The financial obligation of the Bar to any ~~committee, board, section, or other WSBA~~ Bar entity ~~shall~~is ~~be~~ limited to the amount budgeted and ~~shall~~ ceases upon payment of that amount unless the BOG authorizes otherwise.

3. Any liability incurred by any ~~committee, board, section, or other WSBA~~ Bar entity, or by its members ~~thereof~~, in excess of the funds budgeted, ~~shall~~will be the personal liability of the person or persons responsible for incurring or authorizing the ~~same~~ liability.

4. Any liability incurred by any ~~committee, board, section, or other WSBA~~Bar entity, or by its members~~thereof~~, not in accordance with the policies of the BOG or in conflict with any part of these Bylaws, ~~shall~~will be the personal

BYLAWS
Washington State Bar Association

Note: This edition of the Bylaws of the Washington State Bar Association includes the comprehensive review of the Bylaws adopted by the Board of Governors on September 24, 2010, and all other amendments approved by the Board of Governors through January 26, 2017.

I. FUNCTIONS

A. PURPOSES: IN GENERAL

In general, the Washington State Bar Association (Bar) strives to:

1. Promote independence of the judiciary and the legal profession;
2. Promote an effective legal system, accessible to all;
3. Provide services to its members and the public;
4. Foster and maintain high standards of competence, professionalism, and ethics among its members;
5. Foster collegiality among its members and goodwill between the legal profession and the public;
6. Promote diversity and equality in the courts and the legal profession;
7. Administer admissions, regulation, and discipline of lawyers, Limited License Legal Technicians (LLLTs), and Limited Practice Officers (LPOs) in a manner that protects the public and respects the rights of the applicant or member;
8. Administer programs of legal education;
9. Promote understanding of and respect for our legal system and the law;
10. Operate a well-managed and financially sound organization, with a positive work environment for its employees;
11. Serve as a statewide voice to the public and to the branches of government on matters relating to these purposes and the activities of the organization and the legal profession.

B. SPECIFIC ACTIVITIES AUTHORIZED

In pursuit of these purposes, the Washington State Bar Association may:

1. Sponsor and maintain committees and sections whose activities further these purposes;
2. Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;

3. Provide periodic reviews and recommendations concerning court rules and procedures;

4. Administer examinations and review applicants' character and fitness to practice law;

5. Inform and advise its members regarding their ethical obligations;

6. Administer an effective system of discipline of lawyers, LLLTs, and LPOs, including receiving and investigating complaints of misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;

7. Maintain a program, pursuant to court rule, requiring members to submit fee disputes to arbitration;

8. Maintain a program for mediation of disputes between members and others;

9. Maintain a program for legal professional practice assistance;

10. Sponsor, conduct, and assist in producing programs and products of continuing legal education;

11. Maintain a system for accrediting programs of continuing legal education;

12. Conduct examinations of lawyer, LLLT, and LPO trust accounts;

13. Maintain a client protection fund in accordance with the Admission and Practice Rules;

14. Maintain a program for the aid and rehabilitation of impaired members;

15. Disseminate information about the organization's activities, interests, and positions;

16. Monitor, report on, and advise public officials about matters of interest to the organization and the legal profession;

17. Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about the organization's positions and concerns;

18. Encourage public service by members and support programs providing legal services to those in need;

19. Maintain and foster programs of public information and education about the law and the legal system;

20. Provide, sponsor, and participate in services to its members;

21. Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the organization's discretion, authorizing collective bargaining;

22. Establish the amount of all license, application, investigation, and other related fees, as well as charges for services provided by the Bar, and collect, allocate, invest, and disburse funds so that its mission, purposes, and activities may be effectively and efficiently discharged;

23. Administer Supreme Court-created boards in accordance with General Rule 12.3.

C. ACTIVITIES NOT AUTHORIZED

The Washington State Bar Association will not:

1. Take positions on issues concerning the politics or social positions of foreign nations;

2. Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or

3. Support or oppose, in an election, candidates for public office.

II. DEFINITIONS AND GENERAL PROVISIONS

A. HEADQUARTERS

The office of the Bar will be maintained in the State of Washington.

B. SEAL

The Bar will have a Seal having the words and figures of "The Washington State Bar Association—June 7, 1933." The Seal will remain in the control of the Executive Director at the office of the Bar.

C. FILING PAPERS WITH THE BAR

Whenever these Bylaws require that petitions, notices, or other documents be filed with the Bar, or served upon the Board of Governors (BOG) or the Executive Director, they must be filed at the office of the Bar.

D. COMPUTATION OF TIME

If any date specified in these Bylaws is a Saturday, Sunday, or legal holiday observed by the Bar, it refers to the next regular business day. Legal holidays observed by the Bar may differ from the legal holidays statutorily designated by the state Legislature.

E. DEFINITIONS AND USE OF TERMS

Unless otherwise specifically stated herein,

1. "Days" means calendar days.
2. "Quorum" means the presence of a majority of the voting membership (i.e., half the voting members plus one).
3. "Excused absence" means an absence excused by the President or presiding officer.
4. "Writing" includes email and fax.
5. "Electronic means" includes email, fax, video conferencing, and telephone; however, in the context of meetings, "electronic means" is limited to video conferencing and telephone.
6. "Bar records" and/or "Bar documents" means documents or records maintained by the Bar, whether in printed or electronic form.
7. When used in connection with a particular act or event, the terms "active membership" or "active members" refers to the Active membership at the time of the act or event.
8. "APR" refers to the Admission and Practice Rules.
9. "ELC" refers to the Rules for Enforcement of Lawyer Conduct.
10. "Member" means an individual in any of the groups of licensed legal professionals specified in Article III(A) of these Bylaws, unless otherwise specified.
11. "May" means "has discretion to," "has a right to," or "is permitted to."
12. "Must" means "is required to."

III. MEMBERSHIP

A. MEMBER LICENSE TYPES

1. Members of the Washington State Bar consist of these types of licensed legal professionals:

    a. Lawyers admitted to the Bar and licensed to practice law pursuant to APR 3 and APR 5;

    b. Limited License Legal Technicians; and

    c. Limited Practice Officers.

Members of one type do not automatically qualify to be or become a member of another type, and in order to become a member of another type the member must comply with the requirements for admission as a member of that type.

2. Lawyers licensed to practice law in Washington pursuant to APR 8 (except Emeritus Pro Bono members) and APR 14, or who are permitted to practice pursuant to RPC 5.5 without being licensed in Washington are not members of the Bar.

3. Membership in the Bar ends when a member is disbarred or the equivalent, the member resigns or otherwise terminates his or her license, or when the member's license is revoked or terminated for any reason.

B. STATUS CLASSIFICATIONS

Membership status classifications have the qualifications, privileges, and restrictions specified.

1. Active

Any member who has been duly admitted by the Supreme Court to the practice of law in Washington State who complies with these Bylaws and the Supreme Court rules applicable to the member's license type, and who has not changed to another status classification or had his or her license suspended is an Active member.

a. Active membership in the Bar grants the privilege to engage in the practice of law consistent with the rules governing the member's license type. Upon payment of the Active annual license fee and assessments required for the member's license type, compliance with these Bylaws and the applicable Supreme Court rules, and compliance with all other applicable licensing requirements, Active members are fully qualified to vote, hold office and otherwise participate in the affairs of the Bar as provided in these Bylaws.

b. Active members may:

1) Engage in the practice of law consistent with the rules governing their license type;

2) Be appointed to serve on any committee, board, panel, council, task force, or other Bar entity;

3) Vote in Bar matters and hold office therein, as provided in these Bylaws;

4) Join Bar sections as voting members; and

5) Receive member benefits available to Active members.

c. All persons who become members of the Bar must first do so as an Active member.

2. Inactive

Inactive members must not practice law in Washington, nor engage in employment or duties that constitute the practice of law. Inactive members are not eligible to vote in Bar matters or hold office therein, or serve on any committee or board.

a. Inactive members may:

1) Join Bar sections as non-voting members,

2) Continue their affiliation with the Bar;

3) Change their membership status to Active pursuant to these Bylaws and any applicable court rule;

4) Request a free subscription to the Bar's official publication; and

5) Receive member benefits available to Inactive members.

b. Types of Inactive membership:

1) *Inactive Member*: Inactive members must pay an annual license fee in an amount established by the BOG and approved by the Supreme Court. Unless otherwise stated in the APR, they are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.

2) *Disability*: Disability inactive members are not required to pay a license fee, or earn or report MCLE credits while in this status, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.

3) *Honorary*: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become Honorary members of the Bar. Honorary members are not required to pay a license fee. A member who otherwise qualifies for Honorary membership but wants to continue to practice law in any manner must be an Active member or, if applicable, an Emeritus Pro Bono member.

3. Judicial [*Effective January 1, 2012*]

a. An Active member may qualify to become a Judicial member if the member is one of the following:

1) A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;

2) A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;

3) A current senior status or recall judge in the courts of the United States;

4) An administrative law judge, which is defined as either:

(a) Current federal judges created under Article I of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or

(b) Full-time Washington State administrative law judges in positions created by either the Revised

Code of Washington or the Washington Administrative Code; or

5) A current Tribal Court judge in the State of Washington.

b. Members not otherwise qualified for Judicial membership under (1) through (5) above and who serve full-time, part-time or ad hoc as *pro tempore* judges, commissioners or magistrates are not eligible for Judicial membership.

c. Judicial members, whether serving as a judicial officer full-time or part-time, must not engage in the practice of law and must not engage in mediation or arbitration for remuneration outside of their judicial duties.

d. Judicial members:

1) May practice law only where permitted by the then current Washington State Code of Judicial Conduct as applied to full-time judicial officers;

2) May be appointed to serve on any task force, council or Institute of the Bar;

3) May receive member benefits provided to Judicial members; and

4) May be non-voting members in Bar sections, if allowed under the section's bylaws.

5) Judicial members are not eligible to vote in Bar matters or to hold office therein.

e. Nothing in these Bylaws will be deemed to prohibit Judicial members from carrying out their judicial duties.

f. Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer:

1) must provide the member registry information required of other members each year unless otherwise specified herein, and provide the Bar with any changes to such information within 10 days of any change; and

2) must annually pay any required license fee that may be established by the Bar, subject to approval by the Supreme Court, for this membership status. Notices, deadlines, and late fees will be consistent with those established for Active members.

g. Judicial members must inform the Bar within 10 days when they retire or when their employment situation has otherwise changed so as to cause them to be ineligible for Judicial membership, and must apply to change to another membership status or to resign.

1) Failure to apply to change membership status or to resign within ten days of becoming ineligible for Judicial membership, when a Judicial member has annually maintained eligibility to transfer to another membership status, is cause for administrative suspension of the member.

2) A Judicial member who has not annually complied with the requirements to maintain eligibility to transfer to another membership status and who is no longer eligible for Judicial membership who fails to change to another membership status will be deemed to have voluntarily resigned.

h. Administrative law judges who are judicial members must continue to comply with APR 11 regarding MCLE. Either judicial continuing education credits or lawyer continuing legal education credits may be applied to the credit requirement for judicial members; if judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

i. Legal, legislative, and policy positions and resolutions taken by the BOG are not taken on behalf of Judicial members, are not considered to be those of Judicial members, and are not binding on Judicial members.

j. The Bar's disciplinary authority over Judicial members is governed exclusively by ELC 1.2 and RPC 8.5.

4. Emeritus Pro Bono

A member may become an Emeritus Pro Bono member by complying with the requirements of APR 8(e), including payment of any required license fee and passing a character and fitness review.

Emeritus Pro Bono members must not engage in the practice of law except as permitted under APR 8(e), but may:

a. Be appointed to serve on any task force, council, or Institute of the Bar. In addition, up to two Emeritus Pro Bono members are permitted to serve on the Pro Bono Legal Aid Committee (PBLAC) and may be appointed to serve as Chair, Co-Chair, or Vice-Chair of that committee;

b. Join Bar sections,

c. Request a free subscription to the Bar's official publication; and

d. Receive member benefits available to Emeritus Pro Bono members.

5. Suspended

Members of any type and status can have their membership suspended by order of the Washington Supreme Court. Although suspended members remain members of the Bar, they lose all rights and privileges associated with that membership, including their authorization and license to practice law in Washington.

C. REGISTER OF MEMBERS

1. All Bar members, including Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer, must furnish the information below to the Bar:

a. physical residence address;

b. physical street address for a resident agent if required to have one pursuant to these Bylaws or by court rule;

c. principal office address, telephone number, and email address;

d. such other data as the BOG or Washington Supreme Court may from time to time require of each member

and must promptly advise the Executive Director in writing of any change in this information within 10 days of such change. Judicial members are not required to provide a physical residence address.

2. The Executive Director will keep records of all members of the Washington State Bar Association, including, but not limited to:

    e. physical residence address furnished by the member;

    f. principal office address, telephone number, and email address furnished by the member;

    g. physical street address of any resident agent for the member;

    h. date of admittance;

    i. type and status of membership;

    j. date of transfer(s) from one status to another, if any;

    k. date and period(s) of administrative suspensions, if any;

    l. date and period of disciplinary actions or sanctions, if any including suspension and disbarment;

    m. such other data as the BOG or Washington Supreme Court may from time to time require of each member.

3. Any Active member residing out-of-state must file with the Bar, in such form and manner as the Bar may prescribe, the name and physical street address of a designated resident agent within Washington State. The member must notify the Bar of any change in resident agent within 10 days of any such change.

4. Any member who fails to provide the Bar with the information required to be provided pursuant to these Bylaws, or to notify the Bar of any changes in such information within 10 days, will be subject to administrative suspension pursuant to these Bylaws and/or the Admission and Practice Rules. Judicial members are exempt from suspension pursuant to this provision while eligible for Judicial membership and serving as a judicial officer.

D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

1. Members may change membership status as provided below. In some situations, LLLTs and LPOs will need to refer to the APR for the appropriate procedure.

    a. Transfer from Inactive to Active.

1) An Inactive member or Honorary member may transfer to Active by:

(a) paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;

(b) earning, within the six years preceding the return to Active status, and reporting the total number of approved-MCLE credits required for one reporting period for an Active member with the same license type, and paying any outstanding MCLE late fees that are owed. If the member has been Inactive or a combination of Suspended and Inactive for less than one year, and the member would have been required to report during the time the member was Inactive and/or Suspended, the member must establish that the member is compliant with the MCLE reporting requirements for that reporting period before the member can change to Active. This paragraph does not apply to members transferring back to Active during their first MCLE reporting period;

(c) passing a character and fitness review essentially equivalent to that required of all applicants for admission to the Bar, pursuant to APR 20-24.3; and

(d) paying the current Active license fee, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as an Inactive member for the same year.

2) If a member was Inactive or any combination of Suspended and Inactive in Washington for more than six consecutive years, the member must earn MCLE credits in a manner consistent with the requirement for one reporting period for an Active member of the same license type, and these credits must be earned and reported within the three years preceding the return to Active status. In addition, lawyer members must complete a reinstatement/readmission course sponsored by the Bar and accredited for a minimum

of 15 live CLE credits, which course must comply with the following minimum requirements:

(a) At least four to six credit hours regarding professional responsibility and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust accounts, communications with clients, etc.; and

(b) At least three credit hours regarding legal research and writing.

(c) The remaining credit hours will cover areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.

The member is required to pay the cost of the course. Any member completing such course will be entitled to credit towards mandatory continuing legal education requirements for all CLE credits for which such reinstatement/admission course is accredited. The member must comply with all registration, payment, attendance, and other requirements for such course, and will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

Periods of administrative and/or disciplinary suspension occurring immediately before or after a change to Inactive will be included when determining whether a member is required to take the readmission course. For purposes of determining whether a member has been Inactive and/or Suspended for more than six consecutive years, the period continues to run until the change to Active membership is completed, regardless of when the application is submitted to the Bar.

3) Any lawyer member seeking to change to Active who was Inactive or any combination of Suspended and Inactive in Washington and does not have active legal experience as defined in APR 3 in any jurisdiction for more than ten consecutive years, is required to complete the requirements in paragraphs a.1.a, c, and d, above, and is also required to take and pass the Uniform Bar Examination and the Multistate Professional Responsibility Examination.

4) A Disability Inactive status member may be reinstated to Active pursuant to the disciplinary rules applicable to their

license type. Before being transferred to Active, after establishing compliance with the disciplinary rules, the member also must comply with the requirements in these Bylaws for Inactive members transferring to Active status.

5) A member of any type who has transferred to Inactive status during the pendency of grievance or disciplinary proceedings may not be transferred to Active except as provided herein and may be subject to such discipline by reason of any grievance or complaint as may be imposed under the Rules for Enforcement of Lawyer Conduct or other applicable disciplinary rules.

b. Transfer from Judicial to Active. *[Effective January 1, 2012]*

A Judicial member may request to transfer to Active. Upon a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the Bar within 10 days, and any Judicial member desiring to continue his or her affiliation with the Bar must change to another membership status within the Bar.

1) A Judicial member who has complied with all requirements for maintaining eligibility to return to another membership status may transfer to Active by:

(a) paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;

(b) paying the then current Active license fee for the member's license type, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as a Judicial member for the same licensing year;

(c) passing a character and fitness review essentially equivalent to that required of applicants for admission to the Bar, pursuant to APR 20-24.3. Judicial members seeking to transfer to Active must disclose at the time of the requested transfer any

pending public charges and/or substantiated public discipline of which the member is aware; and

(d) complying with the MCLE requirements for members returning from Inactive to Active, except that the member must complete a one-day reinstatement/readmission course tailored to judges, to include lawyer ethics and IOLTA requirements among other topics, if a Judicial member for six or more consecutive years. Administrative law judge Judicial members shall complete the 15 credit reinstatement/readmission course required of Inactive lawyers if a Judicial member for six or more consecutive years. Either judicial continuing education credits or lawyer continuing education credits may be applied to the credit requirement for Judicial members transferring to Active. If judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

2) A Judicial member wishing to transfer to Active upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or pay the annual license fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Active, be required to pay the Active license fee for the member's license type any years the registry information was not provided or the Judicial fee was not paid, in addition to complying with the requirements of (a) above.

c. Transfer from Emeritus Pro Bono to Active

An Emeritus Pro Bono member may transfer to Active by complying with the requirements for members returning from Inactive to Active. There is no limit on how long a member may be Emeritus Pro Bono before returning to Active status.

d. Referral to Character and Fitness Board

All applications for readmission to Active status will be reviewed by Bar staff and handled consistent with the provisions of APR 20-24.3. In all cases reviewed by it, the Character and Fitness Board has broad authority to recommend withholding a transfer to Active status or imposing conditions on readmission to Active status, which may include retaking and passing the licensing examination applicable to the member's license type. The member will be responsible for the costs of any investigation, examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE

1. LLLT members and LPO members may change their membership status to Inactive as provided in the applicable APR.

2. Any lawyer member who is an Active, Judicial, or Emeritus Pro Bono member and who is not Suspended will become an Inactive member when the member files a request for Inactive membership with the Bar, in such form and manner as the Bar may require, and that request is approved.

Effective January 1, 2012, a Judicial member wishing to transfer to Inactive member status upon leaving service as a judicial officer, who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Inactive, be required to pay the Active license fee for lawyer members for any years the registry information was not provided or the Judicial fee was not paid.

3. Members are transferred to Disability Inactive pursuant to Title 8 of the Rules for Enforcement of Lawyer Conduct or equivalent disciplinary rules applicable to the member's license type. Any member seeking to transfer from Disability Inactive to Inactive member status must first establish that the member has complied with the requirements of Title 8 of the ELC or equivalent rules applicable to the member's license type, and then must submit a written request to make the change and comply with all applicable licensing requirements for Inactive members.

4. All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may qualify for Honorary status. A qualified member may request to change to Honorary status by submitting a written request and any required application.

5. An Active member may apply to change from Active to Inactive status while grievances or disciplinary proceedings are pending against such member. Such transfer, however, shall not terminate, stay or suspend any pending grievance or proceeding against the member.

F. CHANGE OF MEMBERSHIP STATUS TO JUDICIAL

An Active member may request to become a Judicial member of the Bar by submitting a written request on judicial letterhead and any required application, and complying with the provisions of these Bylaws.

G. CHANGE OF MEMBERSHIP STATUS TO EMERITUS PRO BONO

A member who is otherwise retired from the practice of law may become an Emeritus Pro Bono member by complying with the requirements of APR 8(e), including payment of any required license fee, and passing a character and fitness review.

Effective January 1, 2012, a Judicial member wishing to transfer to Emeritus Pro Bono status upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Emeritus Pro Bono, be required to pay the Active license fee for any years the registry information was not provided or the Judicial fee was not paid.

H. VOLUNTARY RESIGNATION

Voluntary resignation may apply in any situation in which a member does not want to continue practicing law in Washington for any reason (including retirement from practice) and for that reason does not want to continue membership in the Bar. Unless otherwise provided in the APR, a member may voluntarily resign from the Bar by submitting a written request for voluntary resignation to the Bar in such form and manner as the Bar may require. If there is a disciplinary investigation or proceeding then pending against the member, or if at the time the member submits the written request the member has knowledge that the filing of a grievance of substance against such member is imminent, resignation is permitted only under the provisions of the Rules for Enforcement of Lawyer Conduct or other applicable disciplinary rules. A member who resigns from the Bar cannot practice law in Washington in any manner. A member seeking reinstatement after resignation must comply with these Bylaws.

I. ANNUAL LICENSE FEES AND ASSESSMENTS

1. License Fees

Unless established otherwise pursuant to the APR or by order of the Washington Supreme Court, the following provisions apply to member license fees.

a. Active Members

1) Effective 2010, and all subsequent years, the annual license fees for Active members will be as established by

resolution of the BOG, subject to review by the Washington Supreme Court. First time lawyer admittees who are not admitted or licensed elsewhere, who take and pass the Washington Bar exam and are admitted in the first six months of the calendar year in which they took the exam, will pay 50% of the full Active fee for that year. First time lawyer admittees not admitted or licensed elsewhere, who take and pass the Washington lawyer Bar examination and are admitted in the last six months of the calendar year in which they took the exam, will pay 25% of the full Active fee for that year. Persons not admitted elsewhere, who take and pass the lawyer Bar exam in one year but are not admitted until a subsequent year, shall pay 50% of the full Active lawyer fee for their first two license years after admission. Persons admitted as a lawyer in one calendar year in another state or territory of the United States or in the District of Columbia by taking and passing a bar examination in that state, territory, or district, who become admitted as a lawyer in Washington in the same calendar year in which they took and passed the examination, will pay 50% of the full Active lawyer fee if admitted in Washington in the first six months of that calendar year and 25% of the full active fee if admitted in Washington in the last six months of that calendar year. All persons in their first two full licensing years after admission or licensure as a lawyer in any jurisdiction will pay 50% of the full Active fee.

2) An Active member of the Bar who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than 60 days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States will be exempt from the payment of license fees and assessments for the Client Protection Fund upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Bar's offices on or before February 1st of the year for which the exemption is requested. Eligible members must apply

every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member. Granting or denying an exemption under this provision is within the sole discretion of the Executive Director and is not appealable.

b. Inactive Members

1) The annual license fee for Inactive members will be as established by resolution of the BOG and as approved by the Washington Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members will apply to Inactive members.

2) Honorary and Disability Inactive status members will be exempt from license fees and assessments, unless otherwise provided by Supreme Court order.

c. Judicial Members [*Effective January 1, 2012*]

Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer must pay the annual license fee established by the Bar as approved by the Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Judicial members; however, Judicial members are not subject to administrative suspension for nonpayment of license or late payment fees.

d. Emeritus Pro Bono Members

Emeritus/Pro Bono members must pay the annual license fee required of Inactive members with the same type of license. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Emeritus Pro Bono members.

2. Assessments

Members must pay any Client Protection Fund assessment, and any other assessments, as ordered by the Washington Supreme Court.

3. Deadline and Late Payment Fee

a. License fees and mandatory assessments are due and payable on or before February 1st of each year, in such form and manner as required by the Bar, unless otherwise established by these Bylaws or the APR. Members who pay their license fees on or after February 2nd will be assessed a late payment fee of 30% of the total amount of the license fees required for that membership type and status. License fees for newly admitted members are due and payable at the time of admission and registration, and are not subject to the late payment fee.

b. Notices required for the collection of license fees, late payment fees, and/or assessments will be mailed one time by the Bar to the member's address of record with the Bar by registered or certified mail. In addition to the written notices, the Bar will make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and will speak to the member or leave a message, if possible. The Bar will also make one attempt to contact the member at the member's e-mail address of record with the Bar.

4. Rebates /Apportionments

No part of the license fees will be apportioned to fractional parts of the year, except as provided for new admittees by the BOG. After February 1st of any year, no part of the license fees will be rebated for any reason, including but not limited to death, resignation, suspension, disbarment, license termination, cancellation or revocation, or change of membership status.

5. License Fee and Assessment Exemptions Due to Hardship

In case of proven extreme financial hardship, which must entail a current annual household income equal to or less than 200% of the federal poverty level as determined based on the member's household income for the calendar year immediately preceding the calendar year for which the member is seeking to be exempted from license fees, the Executive Director may grant a one-time exemption from payment of annual license fees and assessments by any Active member. Hardship exemptions are for one licensing period only, and a request must be submitted on or before February 1st of the year for which the exemption is requested. Denial of an exemption request is not appealable.

6. License Fee Referendum

Once approved by the BOG, license fees shall be subject to the same referendum process as other BOG actions, but may not be modified or reduced as part of a referendum on the Bar's budget. The membership shall be timely notified of the BOG resolutions setting license fees

both prior to and after the decision, by posting on the Bar's website, e-mail, and publication in the Bar's official publication.

J. SUSPENSION

1. Interim Suspension

Interim suspensions may be ordered during the course of a disciplinary investigation or proceeding, as provided in the Rules for Enforcement of Lawyer Conduct or equivalent rules for LPOs and LLLTs, and are not considered disciplinary sanctions.

2. Disciplinary Suspension

Suspensions ordered as a disciplinary sanction pursuant to the Rules for Enforcement of Lawyer Conduct or equivalent rules for LPOs and LLLTs are considered disciplinary suspensions.

3. Administrative Suspension

a. Administrative suspensions are neither interim nor disciplinary suspensions, nor are they disciplinary sanctions. Except as otherwise provided in the APR and these Bylaws, a member may be administratively suspended for the following reasons:

1) Nonpayment of license fees or late-payment fees;

2) Nonpayment of any mandatory assessment (including without limitation the assessment for the Client Protection Fund);

3) Failure to file a trust account declaration;

4) Failure to file an insurance disclosure form;

5) Failure to comply with mandatory continuing legal education requirements;

6) Nonpayment of child support;

7) Failure to designate a resident agent or notify the Bar of change in resident agent or the agent's address;

8) Failure to provide current information required by APR 13 or to notify the Bar of a change of information required by APR 13 within 10 days after the change; and

9) For such other reasons as may be approved by the BOG and the Washington Supreme Court.

b. Unless requirement for hearing and/or notice of suspension are otherwise stated in these Bylaws or the APR, ELC, or other applicable rules, a member will be provided notice of the member's failure to comply with requirements and of the pendency of administrative suspension if the member does not cure the failure within 60 days of the date of the written notice, as follows:

1) Written notice of non-compliance will be sent one time by the Bar to a member at the member's address of record with the Bar by registered or certified mail. Such written notice will inform the member that the Bar will recommend to the Washington Supreme Court that the member be suspended from membership and the practice of law if the member has not corrected the deficiency within 60 days of the date of the notice.

2) In addition to the written notice described above, the Bar will make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and will speak to the member or leave a message, if possible. The Bar will also make one attempt to contact the member at the member's e-mail address of record with the Bar.

c. Although not required to provide any additional notice beyond what is described above, the Bar may, in its sole discretion, make such other attempt(s) to contact delinquent members as it deems appropriate for that member's situation.

d. As directed by the Washington Supreme Court, any member failing to correct any deficiency after two months' written notice as provided above must be suspended from membership. The Executive Director must certify to the Clerk of the Supreme Court the name of any member who has failed to correct any deficiency, and when so ordered by the Supreme Court, the member will be suspended from membership in the Bar and from the practice of law in Washington. The list of suspended members may be provided to the relevant courts or otherwise published at the discretion of the BOG.

4. Multiple Suspensions

A member may be suspended from membership and from the practice of law for more than one reason at any given time.

K. CHANGING STATUS AFTER SUSPENSION

1. Upon the completion of an ordered disciplinary or interim suspension, or at any time after entry of an order for an administrative suspension, a suspended member may seek to change status from suspended to any other membership status for which the member qualifies at the time the change in status would occur.

2. Before changing from suspended status, a member who is suspended pursuant to an interim or disciplinary suspension must comply with all requirements imposed by the Washington Supreme Court and/or the applicable disciplinary rules in connection with the disciplinary or interim suspension. Additionally, such member must comply with all other requirements as stated in these Bylaws and in the applicable APR.

3. If a member was suspended from practice for more than one reason, all requirements associated with each type of suspension must be met before the change from suspended status can occur.

4. Unless otherwise provided in the applicable APR, a suspended member may seek to change status by:

   a. paying the required license fee and any assessments for the licensing year in which the status change is sought, for the membership status to which the member is seeking to change. For members seeking to change to Active or any other status from suspension for nonpayment of license fees, the required license fee will be the current year's license fee and assessments, the assessments for the year of suspension, and double the amount of the delinquent license fee and late fees for the license year that resulted in the member's suspension;

   b. completing and submitting to the Bar an application for change of status, any required or requested additional documentation, and any required application or investigation fee, and cooperating with any additional character and fitness investigation or hearing that may be required pursuant to APR 20-24.3; and

c. completing and submitting all licensing forms required for the license year for the membership status to which the member is seeking to change.

d. In addition to the above requirements:

1) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for less than six consecutive years must establish that within the six years prior to the return to active status, the member has earned and reported approved MCLE in a manner consistent with the requirements for one reporting period for an Active member with the same license type. However, if the member has been Suspended and/or Inactive for one year or less and the member was required to report MCLE compliance during the time the member was Suspended and/or Inactive, the member must establish that the member is compliant with the MCLE credits the member would have been required to report that period.

2) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for six or more consecutive years must establish that within the three years prior to the return to Active status, the member has earned and reported approved MCLE credits in a manner consistent with the requirement for one reporting period for an Active member with the same license type. In addition, lawyer members must complete a reinstatement/readmission course sponsored by the Bar and accredited for a minimum of 15 live CLE credits, which course must comply with the following requirements:

(a) At least four to six credit hours regarding law office management and professional responsibility and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust accounts, communications with clients, law practice issues, etc., and

(b) At least three credit hours regarding legal research and writing.

(c) The remaining credit hours will cover areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.

Any member completing such course will be entitled to credit towards mandatory continuing legal education requirement for all CLE credits for which such reinstatement/readmission course is accredited. It is the member's responsibility to pay the cost of attending the course. The member must comply with all registration, payment, attendance, and other requirements for such course, and will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

L. REINSTATEMENT AFTER DISBARMENT OR REVOCATION

Applicants seeking reinstatement after disbarment or revocation must file a petition for reinstatement and otherwise comply with the requirements of the APR relating to reinstatement after disbarment or revocation. If the petition is granted and reinstatement is recommended, the petitioner must take and pass the required examination for admission and comply with all other admission and licensing requirements applicable to the member's license type for the year in which the petitioner is reinstated.

M. REINSTATEMENT AFTER RESIGNATION IN LIEU OF DISCIPLINE, DISBARMENT, OR REVOCATION

No former member will be allowed to be readmitted to membership of any type after entering into a resignation in lieu of discipline, disbarment, or revocation pursuant to the ELC or disciplinary rules applicable to the member's license type. Persons who were allowed to resign with discipline pending under former provisions of these Bylaws prior to October 1, 2002, may be readmitted on such terms and conditions as the BOG determines, provided that if the person resigned with discipline pending and a prior petition for reinstatement or readmission has been denied, no petition may be filed or accepted for a period of two years after an adverse decision on the prior petition for reinstatement or readmission.

N. READMISSION AFTER VOLUNTARY RESIGNATION

Any former member who has resigned and who seeks readmission to membership must do so in one of two ways, unless otherwise provided by the applicable APR for the member's license type: by filing an application for readmission in the form and manner prescribed by the BOG, including a statement detailing the reasons the member resigned and the reasons the member is seeking readmission, or by seeking admission by motion pursuant to APR 3(c) (if the former

member is licensed in another U.S. jurisdiction and would otherwise qualify for admission under that rule).

1. A former member filing an application for readmission after voluntary resignation must:

    a. pay the application fee, together with such amount as the BOG may establish to defray the cost of processing the application and the cost of investigation; and

    b. establish that such person is morally, ethically and professionally qualified to be licensed in the applicable member type and is of good moral character and has the requisite fitness to practice consistent with the requirements for other applicants for admission to practice in the applicable membership type. An application for readmission will be subject to character and fitness investigation and review as described in APR 20-24.3, consistent with other applications for admission.

    c. In addition to the above requirements, if an application for readmission is granted and:

        i) it has been less than four consecutive years since the voluntary resignation, the applicant must establish:

            1) that within the three years prior to the return to Active status the former member has earned and reported approved MCLE credits in a manner consistent with the requirement for one reporting period for an Active member of the same license type, without including the credits that might otherwise be available from the reinstatement/readmission course; and

            2) attend and complete the BOG-approved reinstatement/readmission course.

        ii) it has been four or more consecutive years since the voluntary resignation, the petitioner must take and pass the applicable examination required for admission.

    d. Upon successful completion of the above requirements, the member must pay the license fees and assessments and complete

and submit all required licensing forms for the applicable membership type for the year in which the member will be readmitted.

2. A voluntarily resigned former member seeking readmission through admission by motion pursuant to APR 3(c) must comply with all requirements for filing such application and for admission upon approval of such application.

O. EXAMINATION REQUIRED

All applications for reinstatement after disbarment or revocation will be subject to character and fitness review, and taking and passing the examination for admission for the applicable license type, pursuant to the provisions of APR 25-25.6. All applications for readmission after voluntary resignation will be subject to character and fitness review pursuant to the provisions of APR 20-24.3. All applications for readmission to Active status from Suspended status will be handled in a similar fashion to applications for readmission from Inactive status. The Character and Fitness Board, and (on review) the Washington Supreme Court, have broad authority to withhold a transfer to Active or to impose conditions on readmission to Active membership, which may include taking and passing the applicable examination for admission, in cases where the applicant fails to meet the burden of proof required by APR 20-24.3. The member/former member will be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

IV. GOVERNANCE

A. BOARD OF GOVERNORS

The Board of Governors (BOG) is the governing body of the Bar that determines the general policies of the Bar and approves its budget each year.

1. Composition of the Board of Governors

The BOG will consist of (a) the President; (b) one Governor elected from each Congressional District, except in the Seventh Congressional District where members will be elected from separate geographic regions designated as North and South, and identified by postal zip codes as established by the Bar in accordance with these Bylaws and BOG policy; and (c) six Governors elected at-large pursuant to these Bylaws.

2. Duties

a. The BOG elects the President-elect of the Bar.

b. The BOG selects the Bar's Executive Director and annually reviews the Executive Director's performance.

c. Regardless of the method by which any person is selected to serve on the BOG, each Governor will act in the best interest of all members of the Bar and the public. Each Governor is primarily obligated to ensure that the Bar fulfills the mandate set forth in General Rule 12.1, carries out the mission of the Bar, and operates in accordance with the Bar's Guiding Principles.

d. Each Governor is expected to engage with members about BOG actions and issues, and to convey member viewpoints to the Board. In representing a Congressional District, a Governor will at a minimum: (1) bring to the BOG the perspective, values and circumstances of her or his district to be applied in the best interests of all members, the public and the Bar; and (2) bring information to the members in the district that promotes appreciation of actions and issues affecting the membership as a whole, the public and the organization.

e. Each Governor appointed to serve as a BOG liaison to a committee, task force, council, section, board, or other entity has the responsibility to fulfill those liaison duties on behalf of the BOG. Governors appointed to serve as BOG liaisons are not voting members of those entities. BOG liaisons must not be excluded but will not participate in those entities' executive sessions or confidential deliberations except when requested to do so as a resource.

f. Meetings of the BOG will be held as provided in these Bylaws. Each Governor must attend all board meetings except in cases of emergency or compelling circumstance that prevents participation.

3. Term

Governors will assume their duties at the close of the final regularly scheduled BOG meeting of the fiscal year in which they were elected. Governors serve a term of three years, except as may be otherwise provided by these Bylaws.

4. Vacancy

g. A vacancy may arise due to resignation, death, removal by BOG, or recall by members.

1) Removal by the Board of Governors. Any Governor may be removed from office for good cause by a 75% vote of

the entire BOG exclusive of the Governor subject to removal, who will not vote. The vote will be by secret written ballot. Good cause for removal includes, without limitation, incapacity to serve, serious or repeated failures to meet the duties outlined in these Bylaws, or conduct or activities that bring discredit to the Bar.

2) Recall by Members. Any Governor may be removed from the BOG by a recall by members, in accordance with the procedures set forth in these Bylaws.

h. Response to a Vacancy

1) If a vacancy occurs for any reason and 12 months or less remain in that Governor's term, in the BOG's sole discretion the position may remain vacant until the next regularly scheduled election for that Governor position. In that event, no interim governor will be elected or appointed to the position.

2) If a vacancy occurs due to resignation, death, or the removal of a Governor by the BOG, and more than 12 months remain in that Governor's term, the BOG must elect a candidate eligible for that position to serve as Governor until the next regularly scheduled election for that Governor position.

3) If a Governor is removed due to recall and more than 12 months remain in that Governor's term, a special election will be conducted using the general procedures set forth in the "Election of Governors from Congressional Districts" provisions of these Bylaws. The application period for any special election held pursuant to this paragraph must be no less than 30 days and must, at a minimum, be prominently posted on the Bar's website and e-mailed to all members eligible to vote in the election.

4) Regardless of whether a special election will be held to fill a Governor position that is vacant due to recall by the members, such position will not be filled by any interim governors selected by the BOG or appointed by the President.

B. OFFICERS OF THE BAR

The officers of the Bar consist of a President, President-elect, Immediate Past-President, and Treasurer. The Executive Director of the Bar serves as secretary in an *ex officio* capacity. Except for the Executive Director, all officers must be Active lawyer members of the Bar.

1. President

The President is the chief spokesperson of the Bar, and presides at all meetings of the BOG. The President has the authority to set the agenda; take action to execute the policies established by the BOG; assign Governors as liaisons to Bar sections, committees, or task forces, specialty bar associations, and other law related organizations; and to appoint task forces, BOG committees, or other ad hoc entities to carry out policies established by the BOG. The President also performs any other duties typically performed by an organization's President. The President may vote only if the President's vote will affect the result. The President must present a report to the membership covering the principal activities of the Bar during the President's tenure.

2. President-elect

The President-elect performs the duties of the President at the request of the President, or in the absence, inability, recusal, or refusal of the President to perform those duties. The President-elect also performs such other duties as may be assigned by the President or the BOG. The President-elect is not a voting member of the BOG except when acting in the President's place at a meeting of the BOG and then only if the vote will affect the result.

3. Immediate Past President

The Immediate Past President performs such duties as may be assigned by the President or the BOG. The Immediate Past President will perform the duties of the President in the absence, inability, recusal, or refusal of the President, President-elect, and Treasurer to perform those duties. Among the duties specifically assigned to the Immediate Past President is to work on behalf of the BOG and the officers to ensure appropriate training and education of new BOG members and officers during their term.

The Immediate Past President is not a voting member of the BOG except when acting in the President's place at a meeting of the BOG and then only if the vote will affect the result.

4. Treasurer

The Treasurer chairs the Budget and Audit Committee and is responsible for ensuring that the BOG and officers are informed about the finances of the Bar. The Treasurer will perform the duties of the President in the absence, inability, recusal, or refusal of the President and the President-elect to perform those duties. The Treasurer also performs such other duties as are assigned by the President or the BOG.

5. Executive Director

The Executive Director is the principal administrative officer of the Bar. The Executive Director is responsible for the day-to-day operations of the Bar including, without limitation: (1) hiring, managing and terminating Bar personnel, (2) negotiating and executing contracts, (3) communicating with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters, (4) preparing an annual budget for the Budget and Audit Committee, (5) ensuring that the Bar's books are kept in proper order and are audited annually, (6) ensuring that the annual audited financial report is made available to all Active members, (7) collecting debts owed to the bar and assigning debts for collection as deemed appropriate, (8) acquiring, managing, and disposing of personal property related to the Bar's operations within the budget approved by the BOG, (9) attending all BOG meetings, (10) reporting to the BOG regarding Bar operations, (11) ensuring that minutes are made and kept of all BOG meetings, and (12) performing such other duties as the BOG may assign. The Executive Director serves in an *ex officio* capacity and is not a voting member of the BOG.

6. Terms of Office

a. The President-elect is elected by the BOG, as set forth in these Bylaws. The President-elect succeeds the President unless removed from office pursuant to these Bylaws.

b. The President-elect and Treasurer take office at the close of the final regularly scheduled BOG meeting of the fiscal year in which they were elected to those positions. The President takes office at the close of the final regularly scheduled BOG meeting of the fiscal year in which he or she served as President-elect. The Immediate Past President takes office at the close of the final regularly scheduled BOG meeting of the fiscal year in which he or she served as President.

c. The term of office of each officer position is one year; however, the Executive Director serves at the direction of the BOG and has an annual performance review.

7. Vacancy

d. The President, President-Elect, Immediate Past President, and Treasurer may resign or be removed from office for good cause by an affirmative vote of 75% of the entire BOG. Good cause for removal includes, without limitation, incapacity to serve, serious or repeated failures to meet the duties outlined in these Bylaws, or conduct or activities that bring discredit to the Bar.

1) Upon removal or resignation of the President, the President-elect will fill the unexpired term of the President and then serve the term for which he or she was elected President. If there is no President-elect, then the BOG will elect such other person as it may determine, with the Treasurer performing the duties of the President until the BOG elects a new President.

2) Upon removal or resignation of the President-elect, or ascendancy of the President-elect to the Presidency pursuant to paragraph (1) above, the BOG will elect a new President-elect (from Eastern Washington if the President-elect is mandated to be from Eastern Washington per these Bylaws).

3) Upon disqualification, removal, or resignation of the Immediate Past President, the office will remain vacant until the close of the term of the then-current President.

4) Upon removal or resignation of the Treasurer, the BOG will elect a new Treasurer pursuant to the procedures set forth in these Bylaws.

e. The Executive Director is appointed by the BOG, serves at the direction of the BOG, and may be dismissed at any time by the BOG without cause by a majority vote of the entire BOG. If dismissed by the BOG, the Executive Director may, within 14 days of receipt of a notice terminating employment, file with the Supreme Court and serve on the President, a written request for review of the dismissal. If the Supreme Court finds that the dismissal of the Executive Director is based on the Executive Director's refusal to accede to a BOG directive to disregard or violate a Court order or rule, the Court may veto the dismissal and the Executive Director will be retained.

C. BOARD OF GOVERNORS COMMITTEES

1. The BOG may delegate work to BOG standing committees, special committees, work groups, or other subgroups however defined, the membership of which will be established by the President with due consideration given to Governors' membership requests. The BOG standing committees include, at a minimum, the following: Executive Committee; Awards Committee; Budget and Audit

1) Upon removal or resignation of the President, the President-elect will fill the unexpired term of the President and then serve the term for which he or she was elected President. If there is no President-elect, then the BOG will elect such other person as it may determine, with the Treasurer performing the duties of the President until the BOG elects a new President.

2) Upon removal or resignation of the President-elect, or ascendancy of the President-elect to the Presidency pursuant to paragraph (1) above, the BOG will elect a new President-elect (from Eastern Washington if the President-elect is mandated to be from Eastern Washington per these Bylaws).

3) Upon disqualification, removal, or resignation of the Immediate Past President, the office will remain vacant until the close of the term of the then-current President.

4) Upon removal or resignation of the Treasurer, the BOG will elect a new Treasurer pursuant to the procedures set forth in these Bylaws.

e. The Executive Director is appointed by the BOG, serves at the direction of the BOG, and may be dismissed at any time by the BOG without cause by a majority vote of the entire BOG. If dismissed by the BOG, the Executive Director may, within 14 days of receipt of a notice terminating employment, file with the Supreme Court and serve on the President, a written request for review of the dismissal. If the Supreme Court finds that the dismissal of the Executive Director is based on the Executive Director's refusal to accede to a BOG directive to disregard or violate a Court order or rule, the Court may veto the dismissal and the Executive Director will be retained.

C. BOARD OF GOVERNORS COMMITTEES

1. The BOG may delegate work to BOG standing committees, special committees, work groups, or other subgroups however defined, the membership of which will be established by the President with due consideration given to Governors' membership requests. The BOG standing committees include, at a minimum, the following: Executive Committee; Awards Committee; Budget and Audit

Committee; Legislative Committee; Personnel Committee; and Diversity Committee.

2. The purpose of BOG committees, regardless of what they are called, is to make recommendations and make the work of the BOG more efficient. Consensus should govern meetings of BOG committees whenever possible. If a BOG committee is unable to reach a consensus, the committee will vote, in which case voting members are as follows: Governors and officers appointed to BOG committees are voting members. Bar staff are non-voting members of BOG committees or other Bar entities, unless the Chair determines otherwise at the Chair's discretion.

3. Meetings of BOG committees are open to the public, unless provided otherwise in these Bylaws or by court rule. The ability to participate in and comment at BOG committee meetings is in the discretion of the Chair as provided in these Bylaws.

4. BOG Legislative Committee

    a. Purpose: The BOG Legislative Committee is authorized to propose or adopt positions on behalf of the BOG with respect to legislation that has been introduced or is expected to be introduced in the Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation.

    b. Membership: The President appoints the Committee, which consists of the following voting members:

        1) Eight Governors, including the Treasurer;

        2) the President;

        3) the President-elect; and

        4) the Immediate Past President.

        The President selects the Chair from among the Governors appointed to the Committee.

    c. Procedure: Consideration of legislation by the Committee proceeds in the following order:

        1) The Committee first determines, by a two-thirds majority vote of those voting, whether the legislation is within the scope of GR 12.1 and whether it is appropriate under the

circumstances for the Committee to determine a position on the legislation on behalf of the BOG.

2) If the determination in subsection (1) above is affirmative, then the Committee will determine by a two-thirds majority vote of those voting what position, if any, to adopt on the legislation on behalf of the BOG.

3) The Committee may determine that major or novel legislative issues will be referred to the BOG for consideration.

4) Any issues to be considered or actions taken by the Committee must be promptly communicated to the BOG by electronic delivery; and actions taken by the Committee must also be communicated at the next BOG meeting.

5) Due to the Committee's unique need to be able to act quickly to address issues that arise during a regular or special legislative session, between meetings the Committee may discuss and vote on issues by e-mail; however, if any Committee member objects to using an e-mail process for any particular issue, the Committee will take up that issue at its next scheduled Committee meeting.

d. Quorum: A quorum consists of a majority of the Committee's voting members.

e. Committee Meetings: The Committee may meet in executive session, with no persons present except the members of the Committee, other members of the BOG, the Executive Director, the Legislative Liaison, and such others as the Committee may authorize. Committee meetings may be held electronically.

D. POLITICAL ACTIVITY

1. Board of Governors

a. The BOG acting as a board must not publicly support or oppose, in any election, any candidate for public office.

b. The BOG acting as a board must not take a side or position publicly or authorize any officer or the Executive Director to take a side or position publicly on any issue being submitted to the voters

or pending before the legislature, unless the matter is considered in public session at a meeting of the BOG with advance notice to the Bar's membership, and the following requirements are met:

1) The BOG first votes to determine whether the issue is within the scope of GR 12.1; and

2) If the BOG determines that the matter is within the scope of GR 12.1, then the BOG will vote to determine what position, if any, to adopt on the issue.

c. The restriction applies fully to prohibit:

1) the use of the name or logo of the Bar;

2) the contribution of funds, facility use, or Bar staff time;

3) participation or support to any degree in the candidate's campaign, or the campaign on either side of the issue.

d. The restriction does not apply to matters that are exclusively related to the administration of the Bar's functions or to any issue put to a vote of the Bar's membership.

Notice of any BOG position or authorization to the President or Executive Director to take a position must be published on the Bar's website as soon as possible after the meeting at which the final action is taken.

2. President and President-elect

The President and President-elect must not publicly support or oppose, in an election, any candidate for public office. This restriction applies fully to prohibit:

e. the use of the President's and President-elect's name,

f. the contribution of funds, or

g. participation or support to any degree in the candidate's campaign.

Further, the President and President-elect must not take a side publicly on any issue being submitted to the voters, pending before the legislature or otherwise in the public domain except when specifically authorized or instructed by the BOG to do so on a matter relating to the function or purposes of the Bar.

3. Governors, other Officers, and Executive Director

Governors, other officers, and the Executive Director must not publicly support or oppose, in an election, any candidate for public elective office in the State of Washington the prerequisites for which include being an attorney, except where the candidate is a member of that person's immediate family. This restriction applies fully to prohibit:

h. the use of the Governor's, officer's, or Executive Director's name,

i. the contribution of funds, or

j. participation or support to any degree in the candidate's campaign.

The term "immediate family" as used in this Article includes a sibling, parent, spouse, domestic partner, child and the child of a spouse or domestic partner.

4. Other

If any officer, Governor, or the Executive Director supports or opposes any candidate or issue as permitted in this Article, then that person must not state or imply that he or she is acting in his or her capacity as officer, Governor or Executive Director of the Bar unless specifically authorized to do so by the BOG.

5. Letterhead

Use of Bar letterhead is limited to official business of the Bar and specifically must not be used for personal or charitable purposes, or in connection with any political campaign or to support or oppose any political candidate. Bar letterhead must not be used to support or oppose any public issue unless the BOG has taken a position on the issue.

E. REPRESENTATION OF THE BAR

Except as specifically set forth in these Bylaws, no committee, section, task force, or other Bar entity, or member thereof, member of the BOG, or officer or employee of the Bar is permitted to speak for or represent the Bar, or any committee, section, task force, or entity thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State, unless prior authorization to do so has been specifically granted by the BOG by policy adopted by the BOG or by specific BOG action.

1. As the chief spokesperson of the Bar, the President has the authority to take action to execute the policies established by the BOG, and to serve as the representative of the Bar in connection therewith.

2. The BOG Legislative Committee is specifically authorized, under the terms of these Bylaws, to propose or adopt positions on behalf of the BOG with respect to legislation that has been introduced or is expected to be introduced in the

Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation.

3. The Executive Director may communicate with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters and policies established by the BOG, and is not required to obtain prior approval from the BOG before doing so.

4. Bar employees whose job duties require them to do so, and independent counsel retained at the direction of the President or the BOG, are specifically authorized to represent the Bar, or any committee, section, or task force thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State as may be necessary to perform their job duties.

V. APPROPRIATIONS AND EXPENSES

A. APPROPRIATIONS

Appropriations of Bar funds and authorization for payment of expenses will be made by the BOG through the adoption of an annual budget or by special appropriation as required.

1. The President appoints a BOG Budget and Audit Committee, which consists of the following voting members:

    a. At least one Governor from each class, not to exceed seven Governors, one of whom must be the Treasurer;

    b. The President; and

    c. The President-elect.

The Executive Director and Chief Operations Officer serve as *ex officio*, non-voting members, and the Treasurer serves as Chair of the Committee. Up to two additional voting members who are not Governors or officers may be appointed by the President subject to the approval of the BOG.

2. The Treasurer, together with the Budget and Audit Committee, will present a proposed Annual Budget to the BOG for approval prior to each fiscal year.

3. Decisions regarding non-budgeted appropriations must be made in accordance with the BOG-approved fiscal policies and procedures.

B. EXPENSES; LIMITED LIABILITY

WASHINGTON STATE

Report on the Lawyer Regulation System

August 2006

Sponsored by the
American Bar Association
Standing Committee on
Professional Discipline

III. STRUCTURE

Recommendation 1: The Supreme Court's Oversight Of The Washington Discipline System Should Be Emphasized

Commentary

As recommended in its 1993 Report, the Standing Committee on Professional Discipline believes that that the Supreme Court should exercise more direct control over the discipline system. This includes taking steps to distance the system from involvement and oversight by the Washington State Bar Association. Although the rules of the Supreme Court of Washington provide for the creation of the lawyer disciplinary system and state that it operates pursuant to the Court's authority, in reality it functions as a component of the Washington State Bar Association. The disciplinary agency is physically located in the State Bar Association's headquarters and bears the Association's name (as does its letterhead). The system is funded by the Bar Association from lawyers' annual dues and its budget competes with the requests of other Bar Association programs.

Rule 2.2 of the Rules for Enforcement of Lawyer Conduct provides that the Board of Governors is responsible for supervising the general functioning of the components of the discipline system. The Board of Governors appoints and can remove the Disciplinary Board members, Hearing Officers and the Chief Hearing Officer.

The Executive Director of the Washington State Bar Association hires the Chief Disciplinary Counsel, who reports to the Executive Director. The Rules provide that the Chief Disciplinary Counsel acts on the Washington State Bar Association's behalf for all disciplinary matters, and further performs other duties as required by the Executive Director and the Board of Governors. Rule 2.8(a), Rules for Enforcement of Lawyer Conduct.

Rule 3.4(d) permits the President of the Association, the Board of Governors, the Executive Director or Chief Disciplinary Counsel to release otherwise confidential information under certain circumstances if that information is not subject to a protective order. Rule 3.4(k) of the Rules for Enforcement of Lawyer Conduct states that the Board of Governors, in furtherance of its supervisory duties, has access to all confidential disciplinary information but must keep it confidential. As noted above, there does not seem to be any specific provision limiting members of the Board of Governors or Executive Director from involving themselves in investigative or prosecutorial decisions by the Chief Disciplinary Counsel.

The Court, the professionals and volunteers of the disciplinary agency and the Washington State Bar Association are all dedicated to having an effective and efficient lawyer discipline system. They have demonstrated a commendable interest in seeing that the system operates in a manner that is protective of the public and fair to the profession. One of the hallmarks of such a system is independence. An independent lawyer discipline system, operated under the direct oversight of the Court, promotes the integrity of our judicially regulated profession. It

enhances the public's perception of the system as being fair, accessible and free from appearance that the internal politics of bar associations may somehow influence disciplinary proceedings. Rule 2 and Comment, *ABA Model Rules for Lawyer Disciplinary Enforcement*. For these reasons, the Standing Committee on Professional Discipline's 1993 Report focused on the importance of distancing the discipline system from the Washington State Bar Association.

The problems identified in the 1993 Report that stem from the structure of the system continue to exist, despite all of the improvements that have been implemented by the Court and the Bar Association. The current consultation team's interviews and research led it to believe that the ability of Disciplinary Counsel's Office and the adjudicative part of the system to function with requisite independence is still at risk due to the manner in which the system operates and is controlled.

Optimally, the disciplinary agency should not be housed within the Washington State Bar Association. The Committee is aware of the gravity of the suggestion that the Court act to separate its disciplinary agency from the Washington State Bar Association. The Committee is aware that making such a recommendation in a unified bar state is particularly sensitive. However, when elected bar officials control all or parts of the disciplinary process, the appearance of impropriety or conflicts of interest is created, regardless of the actual fairness of the system. This is true whether the bar is unified or not. Implementing this recommendation will assure the public that the disciplinary agency is an independent agency functioning directly under the Supreme Court. This alleviates the risk of any public misperception that the agency is overly protective of lawyers and gives proper credit to the Court for the efforts of its agency.

Consultation teams have made similar recommendations in other unified bar states, such as California, Louisiana, Nebraska and Rhode Island. While some disciplinary agencies remain under the purview of the state bar association in unified bar states, the majority are physically separate and governed more directly by the highest court of appellate jurisdiction. Examples of unified bar states where the disciplinary function is more separate from the other bar functions for the Court to consider include Wisconsin, the District of Columbia, Michigan, Missouri, New Mexico, Montana, South Carolina and North Dakota.

Given the realities of the situation in Washington, the team recommends that even if the Court does not physically separate the disciplinary agency from the Washington State Bar Association, the Court should administratively separate it. In doing so, the Court should change the agency's name to the Office of Disciplinary Counsel of the Supreme Court of Washington. A similar change should be made for the Disciplinary Board. The Court should also amend all relevant Rules for Enforcement of Lawyer Conduct to repeal any provisions providing specifically or implicitly that the Chief Disciplinary Counsel acts on behalf of the Washington State Bar Association, that matters may be opened and pursued in the name of the Association and that the captions of pleadings in disciplinary matters include the name of the Bar Association.

In addition, the team recommends cessation of the Association's role in funding the disciplinary system from its budget. The Court should fund the disciplinary agency via a direct annual assessment on lawyers for the discipline system. The Court, as part of its exclusive authority to regulate the practice of law, may impose such an assessment. This fee would be separate and distinct from Bar Association dues and the annual registration statement could be modified to delineate between the two amounts. If the Court thinks it appropriate and more expedient, it may continue to allow the Washington State Bar Association to collect this separate fee along with the annual dues. The Bar should be required to deposit all these licensing fees into a separate, designated account for the system. Such an assessment by the Court will eliminate any perceived or actual conflicts during the State Bar Association's budgeting process when it must necessarily weigh competing interests and programs. It is important to note that since 1993, the Board of Governors has taken steps to ensure appropriate funding for the discipline system.

A separate fee for discipline will reflect a budget developed by the Chief Disciplinary Counsel and approved by the oversight body proposed below for submission to the Court. It will not have to compete with other Bar Association programs. The amount of the annual assessment should ultimately be determined by the Court after consultation with the Chief Disciplinary Counsel and that Administrative Oversight Committee. It should take into consideration existing and future needs in terms of space, caseload, staffing and technology. In this way, subsequent increases, if necessary, will not be required for a period of years.

A. The Court Should Appoint An Independent Administrative Oversight Committee For The Discipline System

Regardless of whether the Court decides to physically separate the discipline system from the Washington State Bar Association, it should create an independent administrative oversight mechanism for the system. This Administrative Oversight Committee would interact directly with the Court through a liaison justice to ensure that the Court's system operates as effectively and efficiently as possible. The team recommends that the Court amend the Rules for Enforcement of Lawyer Conduct and provide for the creation and operation of this Administrative Oversight Committee. At the same time, the Court should amend all related Rules for Enforcement of Lawyer Conduct to eliminate any supervisory authority over the system by the Washington State Bar Association's Board of Governors and Executive Director. The Court should also eliminate the role of the President of the Association in the signing of reprimands as described in Recommendation Twenty-Two.

The Court should repeal the provisions of the Rules for Enforcement of Lawyer Conduct that provide the President of the Association, Board of Governors and Executive Director access to and authority to disseminate confidential disciplinary information. These individuals should no longer have the ability to access and release such information. Rule 16, *ABA Model Rules for Lawyer Disciplinary Enforcement.* The Rules should prohibit *ex parte* communications by the officers of the Association or the Executive Director with disciplinary adjudicators or Disciplinary Counsel regarding pending matters. Similarly, individual

STANDARDS FOR IMPOSING LAWYER SANCTIONS

AS APPROVED, FEBRUARY 1986
AND AS AMENDED, FEBRUARY 1992

I. PREFACE

A. Background

In 1979, the American Bar Association published the Standards for Lawyer Discipline and Disability Proceedings. [The Standards for Lawyer Discipline and Disability Proceedings have been superseded by the ABA Model Rules for Lawyer Disciplinary Enforcement (MRLDE)][1] That book [the Standards] was a result of work by the Joint Committee on Professional Discipline of the American Bar Association. The Joint Committee was composed of members of the Judicial Administration Division and the Standing Committee on Professional Discipline of the American Bar Association. The task of the Joint Committee was to prepare standards for enforcement of discipline in the legal community.

The 1979 standards have been most helpful, and have been used by numerous jurisdictions as a frame of reference against which to compare their own disciplinary systems. Many jurisdictions have modified their procedures to comport with these suggested standards, and the Standing Committee on Professional Discipline of the American Bar Association has assisted state disciplinary systems in evaluating their programs in light of the approved standards.

It became evident that additional analysis was necessary in one important area -- that of appropriate sanctions for lawyer misconduct. The American Bar Association Standards for Lawyer Discipline and Disability Proceedings (hereinafter "Standards for Lawyer Discipline") do not attempt to recommend the type of discipline to be imposed in any particular case. The Standards merely state that the discipline to be imposed "should depend upon the facts and circumstances of the case, should be fashioned in light of the purpose of lawyer discipline, and may take into account aggravating or mitigating circumstances" (Standard 7.1) [See generally Rule 10, ABA MRLDE].

For lawyer discipline to be truly effective, sanctions must be based on clearly developed standards. Inappropriate sanctions can undermine the goals of lawyer discipline: sanctions which are too lenient fail to adequately deter misconduct and thus lower public confidence in the profession; sanctions which are too onerous may impair confidence in the system and deter lawyers from reporting ethical violations on the part of other lawyers. Inconsistent sanctions, either within a jurisdiction or among jurisdictions, cast doubt on the efficiency and the basic fairness of all disciplinary systems.

As an example of this problem of inconsistent sanctions, consider the range in levels of sanctions imposed for a conviction for failure to file federal income taxes. In one jurisdiction, in 1979, a lawyer who failed to file income tax returns for one year was suspended for one year,[2] while, in 1980, a lawyer who failed to file income tax returns for two years was merely censured.[3] Within a two-year period, the sanctions imposed on lawyers who converted their clients' funds included disbarment,[4] suspension,[5] and censure.[6] The inconsistency of sanctions imposed by different jurisdictions for the same misconduct is even greater.

An examination of these cases illustrates the need for a comprehensive system of sanctions. In many cases, different sanctions are imposed for the same acts of misconduct, and the courts rarely provide any explanation for the selection of sanctions. In other cases, the courts may give reasons for their decisions, but their statements are too general to be useful. In still other cases, the courts may list specific factors to support a certain result, but they do not state whether these factors must be considered in every discipline case, nor do they explain whether these factors are entitled to equal weight.

The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct. Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors (see Standard 9.22).

III. STANDARDS FOR IMPOSING LAWYER SANCTIONS: BLACK LETTER RULES

For reference purposes, a list of the black letter rules is set out below.

DEFINITIONS

"Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury; a reference to "injury" alone indicates any level of injury greater than "little or no" injury.

"Intent" is the conscious objective or purpose to accomplish a particular result.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

"Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

"Potential injury" is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct.

A. PURPOSE AND NATURE OF SANCTIONS

1.1 Purpose of Lawyer Discipline Proceedings.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.

1.2 Public Nature of Lawyer Discipline.

Upon the filing and service of formal charges, lawyer discipline should be public, and disposition of lawyer discipline should be public in cases of disbarment, suspension, and reprimand. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should private discipline be imposed.

1.3 Purpose of These Standards.

These standards are designed for use in imposing a sanction or sanctions following a determination by clear and convincing evidence that a member of the legal profession has violated a provision of the Model Rules of Professional Conduct (or applicable standard under the laws of the jurisdiction where the proceeding is brought). Descriptions in these standards of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of the Model Rules. The Standards constitute a model, setting forth a comprehensive system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote: (1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; (3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions.

B. SANCTIONS

2.1 Scope

A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgement that the lawyer has engaged in professional misconduct.

2.2 Disbarment

Disbarment terminates the individual's status as a lawyer. Where disbarment is not permanent, procedures should be established for a lawyer who has been disbarred to apply for readmission, provided that:

(1) no application should be considered for five years from the effective date of disbarment; and

(2) the petitioner must show by clear and convincing evidence:

(a) successful completion of the bar examination;
(b) compliance with all applicable discipline or disability orders or rules; and
(c) rehabilitation and fitness to practice law.

2.3 Suspension

Suspension is the removal of a lawyer from the practice of law for a specified minimum period of time. Generally, suspension should be for a period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years. Procedures should be established to allow a suspended lawyer to apply for reinstatement, but a lawyer who has been suspended should not be permitted to return to practice until he has completed a reinstatement process demonstrating rehabilitation, compliance with all applicable discipline or disability orders, and fitness to practice law.

2.4 Interim Suspension

Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. Interim suspension includes:

(a) suspension upon conviction of a "serious crime" or,