

WSR 24-01-054
RULES OF COURT
STATE SUPREME COURT
[December 7, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1561
THE RULE FOR ENFORCEMENT OF)
LAWYER CONDUCT (ELC) 2.14—)
RESTRICTIONS ON REPRESENTING)
OR ADVISING RESPONDENTS OR)
GRIEVANTS)

The Disciplinary Advisory Round Table, having recommended the suggested amendments to the Rule for Enforcement of Lawyer Conduct (ELC) 2.14—Restrictions on Representing or Advising Respondents or Grievants, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State bar Association and Administrative Office of the Court's websites in January 2024.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar, and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2024. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of December, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET
Suggested Amendments to
RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)
Rule 2.14(d)

A. Proponent: Disciplinary Advisory Round Table

B. Spokespersons:

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C. Purpose: The suggested amendment adds an exception to ELC 2.14(d) to allow a former member of the Board of Governor to represent individuals in pending disciplinary proceedings or grievances after leaving office under certain criteria.

ELC 2.14 restricts current Board of Governor members, Association officers, the Executive Director, Disciplinary Board members, and

hearing officers from advising or representing individuals in pending or likely disciplinary grievances or proceedings while serving in that capacity. After leaving office, the former officeholders are further prohibited from representing individuals in pending disciplinary grievances or proceedings for three years. ELC 2.14(b). The rule provides an exception for former officeholders to serve as appointed disability counsel. ELC 2.14(d).

Under the amendment, a former Board of Governor member would not be subject to the three-year prohibition on representing individuals after leaving office if: 1) the former BOG member represented at least 10 respondents in disciplinary proceedings or grievances before taking office, and 2) the former Board of Governors member is prohibited from involvement with decisions or actions of the Board related to functions under the ELC for three years after BOG service ends.

BOG members who routinely represent respondents in disciplinary matters may be disincentivized from serving on the Board of Governors because doing so would prevent them from providing services in their area of practice during their three years of service on the Board and for three years after departing office. In the event an experienced respondents counsel does choose to serve, the rule has an unnecessarily severe impact on the pool of available lawyers who do such work in Washington State.

The rule serves important purposes related to the integrity of the discipline system, such as minimizing the risk of influence peddling and cronyism. But those purposes are less weighty when a lawyer joins the Board of Governors with meaningful prior experience serving as counsel in the discipline system. In such cases, it is unlikely that the lawyer is seeking office in order to gain undeserved credibility as a lawyer in discipline matters and then peddle that influence after leaving office.

For this reason, the suggested amendment applies only to former BOG members with substantial experience representing respondents prior to being elected. Furthermore, the risk of cronyism is addressed because such lawyers would be prohibited from lobbying the BOG on issues related to disciplinary functions for three years after leaving office to minimize the potential for exertion of undue influence on former Board-member colleagues.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material:

- a. ELC 2.14(d) Redline
- b. ELC 2.14(d) Clean

SUGGESTED AMENDMENTS TO 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. Exceptions.~~ The prohibition in subsection (b) of this rule on representing individuals after leaving office does not prevent:

(1) a lawyer from serving as appointed counsel under rule 8.3

(d) (3); or

(2) a former Board of Governors member from representing individuals in pending disciplinary proceedings or grievances after leaving office provided that:

(a) the former member represented at least 10 respondents in disciplinary proceedings or grievances prior to taking office, and

(b) for three years after leaving office, the former member does not participate in or seek to influence a decision or action of the Board of Governors related to functions under these rules.