

WSR 22-13-087
RULES OF COURT
STATE SUPREME COURT
[June 9, 2022]

IN THE MATTER OF THE PROPOSED) ORDER
AMENDMENTS TO RULES FOR) NO. 25700-A-1433
ENFORCEMENT OF LAWYER)
CONDUCT (ELC) 3.4, 4.1, 4.3, 5.1, 5.3,)
5.7, 7.2, 14.3, AND 15.1)

The Washington State Bar Association, having recommended the adoption of the proposed amendments to Rules for Enforcement of Lawyer Conduct (ELC) 3.4, 4.1, 4.3, 5.1, 5.3, 5.7, 7.2, 14.3, and 15.1, and the Court having considered the proposed amendments, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the proposed amendments as shown below are adopted.

(b) That the proposed amendments will be published in the Washington Reports and will become effective September 1, 2022.

DATED at Olympia, Washington this 9th day of June, 2022.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Whitener, J.

ELC 3.4
RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

(a) [Unchanged].

(b) Investigative Disclosure. The Association may disclose otherwise confidential information, including relevant information from related grievances filed by the same grievant, as necessary to conduct the a review or investigation, to 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) - (n) [Unchanged.]

ELC 4.1
SERVICE OF PAPERS

(a) Service Required; Transmittal of Other Documents.

(1) Whenever these Rules require service of papers or documents, service must be accomplished as provided in this Rule or as otherwise agreed to in writing by the parties. 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.

(2) Every written request or other paper or document issued under these Rules, which these Rules do not require to be served, may be transmitted by postage prepaid mail or electronic means (including e-mail), or may be personally delivered.

(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)-(C) [Unchanged.]

(2)-(3) [Unchanged.]

(4) Electronic Service.

(A) Unless personal service is required, service may also be accomplished by electronic service of all papers or documents. Electronic service is complete on transmission when made prior to 5:00 p.m. Pacific Time on a day that is not a Saturday, Sunday, or legal holiday. Service made on a Saturday, Sunday, legal holiday, or after 5:00 p.m. Pacific Time on any other day is deemed complete on the first day thereafter that is not a Saturday, Sunday, or legal holiday. If properly made, electronic service is presumed effective.

(B) The address for electronic service is as follows:

(i) If service is on the Office of Disciplinary Counsel, to the assigned disciplinary counsel's e-mail address on file with the Bar, unless a different e-mail address is provided in writing by disciplinary counsel;

(ii) If service is on respondent or any lawyer representing the respondent, to the e-mail address on file with the Bar, unless a different e-mail address is provided in writing by respondent or respondent's counsel.

(C) The e-mail address specified in section (b) (4) (B) of this Rule must be sufficient to receive electronic transmission of information and electronic documents.

(c) [Unchanged.]

(d) Proof of Service.

(1) If service is accomplished electronically, by mail, or by other means authorized by this Rule, proof of service may be made by a certificate of service.

(2) If personal service is required, proof of service may be made by affidavit or declaration of service, sheriff's return of service, or a signed acknowledgment of service.

(3) Proof of service in all cases must be filed but need not be served. 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.

ELC 4.3
PAPERS

All pleadings or other papers must be legibly typewritten or printed, double spaced, on good quality 8 1/2- by 11-inch paper or the electronic equivalent. The use of letter-size copies of exhibits is encouraged if it does not impair legibility.

ELC 5.1

GRIEVANTS

(a)-(b) [Unchanged.]

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

(1)-(2) [Unchanged.]

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

(A) [Unchanged.]

(B) Challenge to Disclosure Decision. Either the grievant or the respondent may ~~file~~ transmit a written 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~~ transmittal of the decision by disciplinary counsel. The challenge shall be resolved by a review committee, unless the matter has previously been dismissed under rule 5.7(d) or the time period for submitting a request for review of a dismissal has expired under rule 5.7(b).

(4)-(8) [Unchanged.]

(d) [Unchanged.]

(e) **Vexatious grievants.**

(1)-(3) [Unchanged.]

(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)-(8) [Unchanged].

ELC 5.3

INVESTIGATION OF GRIEVANCE

(a)-(c) [Unchanged.]

(d) **Deferral by Disciplinary Counsel.**

(1) [Unchanged.]

(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 or transmit a written request for review to disciplinary counsel no later than 45 days after disciplinary counsel ~~mails~~ transmits the notice regarding deferral. If the request for review is deposited in the mail, it must be postage prepaid.

(e)-(h) [Unchanged.]

(i) **Objections.** Within 30 days of ~~service~~ transmittal of an investigative inquiry under subsection (g) of this rule, a lawyer may serve a written objection on disciplinary counsel. An objection is reviewed by motion as provided in rule 5.6.

ELC 5.7

DISPOSITION OF GRIEVANCE

(a) [Unchanged.]

(b) **Review of Dismissal.** A grievant may request review of dismissal of the grievance by ~~delivering or~~ depositing in the mail or transmitting a written request for review to disciplinary counsel no

later than 45 days after disciplinary counsel mails transmits the notice of dismissal. If the request for review is deposited in the mail, it Mailing requires must be 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)-(f) [Unchanged.]

ELC 7.2

INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

(a) [Unchanged.]

(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 or electronic service as provided in ELC 4.1 ~~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)-(6) [Unchanged.]

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 and e-mail 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 and e-mail address are ~~is~~ treated as a changes of ~~mailing~~ address under APR 13 (b) and (c).

ELC 15.1

RANDOM EXAMINATION OF BOOKS AND RECORDS

(a)-(d) [Unchanged.]

(e) **Review Committee Action.** In reviewing matters under this rule, a review committee has the following authority:

(1) [Unchanged.]

(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 transmittal of the notice of selection.

(3) [Unchanged.]