The History of the Rules of Disciplinary Procedure in Washington

Selected Historical Highlights

Initially, discipline of lawyers was a matter for the individual courts before which the lawyers practiced. Individual superior courts had the power to suspend and prohibit lawyers from practicing before them. In 1891, these local powers were given statewide effect by the Supreme Court in Rule XII of the Rules for Examination and Admission of Attorneys:

A judgment of disbarment or suspension of the supreme court, or any superior court ..., shall disqualify ay attorney against whom same is pronounced from practicing ... in any court of the state until same shall be reversed; and any attorney who, while disbarred or suspended, shall practice ..., shall be deemed guilty of contempt and punished accordingly.

2 Wash. 698.

Overview (Disciplinary Procedure): With the publication in 1891 of the Rules for Examination and Admission of Attorneys, lawyer discipline was covered solely by Rule XII. By 1930 lawyer discipline rules had expanded to five sections of the Rules for Examination and Admission of Attorneys (XI-XV). It wasn't until 1938 that rules for attorney discipline were assembled into their own section of the court rules: the Rules for Discipline of Attorneys (RDA). In 1968 the Supreme Court adopted the Discipline Rules for Attorneys (DRA), then, in 1983, the Rules for Lawyer Discipline (RLD). The latest and current incarnation, the Rules for Enforcement of Lawyer Conduct (ELC), were adopted in 2002.

Overview (Rules of Ethics): In 1908, at its annual meeting in Seattle, the House of Delegates of the American Bar Association adopted the original Canons of Professional Ethics. These were based principally on the Code of Ethics adopted by the Alabama Bar Association in 1887, which in turn had been borrowed largely from the lectures of Judge George Sharswood, published in 1854 as Professional Ethics, and from the fifty resolutions included in David Hoffman's A Course of Legal Study (2d ed. 1836). See American Bar Association, Model Rules of Professional Conduct at vii (2007 ed.) (Preface). In 1917, the Washington State Legislature adopted the code of ethics adopted by the American Bar Association "at its annual convention in Seattle in the year 1908." The law stated that the ABA code "shall be deemed the standard of ethics for the guidance of the members of the bar of this state." See Laws of 1917, ch. 115, § 20. The ABA amended the Canons from time to time, and in 1921 the Washington State Legislature amended the provision to merely state, "The code of ethics of the American Bar Association shall be the standard of ethics for the members of the bar of this state." This law is still on the books as part of the State Bar Act. See RCW 2.48.230.

In 1938, contemporaneously with the adoption of the Rules for Discipline of Attorneys as a set of rules distinct from the Rules for Admission to Practice, the Supreme Court specified that the "Code of Ethics of the American Bar Association would be "the
In 1964, the ABA House of Delegates created a Special Committee on Evaluation of Ethical Standards (the “Wright Committee”) to assess whether changes should be made to the then-current Canons. They concluded that changes should be made and produced the Model Code of Professional Responsibility, which the House of Delegates adopted in 1969. The Washington Supreme Court, along with the vast majority of U.S. jurisdictions, followed suit, adopting Washington’s Code of Professional Responsibility (CPR) effective January 1, 1972.

In 1977, the ABA created the Commission on Evaluation of Professional Standards to undertake a comprehensive rethinking of the ethical premises and problems of the legal profession. Determining that mere amendment to the Model Code would not achieve a “comprehensive statement of the law governing the legal profession,” the Commission produced the Model Rules of Professional Conduct, which were adopted by the ABA House of Delegates in 1983. American Bar Association, Model Rules of Professional Conduct at viii (2007 ed.) (Preface). Despite initial resistance from the WSBA Code of Professional Responsibility Committee (“The Committee feels that the Board of Governors should consider opposing the Model Rules . . . by all available means.” Memo of June 19, 1980), Washington was an early adopter of a Model Rules-based system. The Supreme Court adopted Washington Rules of Professional Conduct (RPC), effective September 1, 1985, becoming the fifth U.S. jurisdiction to do so. Significantly, Washington did not adopt the ABA comments to the Model Rules, though many other jurisdictions chose to do so.


WSBA formed a Special Committee for the Evaluation of the Rules of Professional Conduct in late 2002 to assess the advisability of adopting the ABA amendments in Washington. In October 204, the WSBA submitted its recommendations to the Supreme Court, which adopted most of the recommended Ethics 2003 amendments as proposed, though the Court did make a number of important changes. Significantly, the Court elected to adopt the ABA comments as an adjunct to the RPCs, though many
“Washington Comments” were adopted to supplement the ABA comments and elucidate differences between the Washington RPCs and the Model Rules.

As of 2007, all but three U.S. jurisdictions have adopted rules of ethics based on the ABA Model Rules.

**Discipline Rules part of the Rules for Admission:** In 1917, the Legislature established the State Board of Law Examiners, and it assigned the Board the task of enforcing “all laws and ethics relating to the duties of attorneys,” including hearing and evaluating complaints against lawyers. Laws of 1917, ch. 115, §§ 16-20, at 429-31. Admission fees were set at $25.00 and the annual registration fee was set to $1.00. Id. § 15 at 428 & § 23, at 431. Keep in mind that in this session, the Legislature also adopted the ABA Canons of Professional Ethics as the standard of ethics applicable to members of the bar.

The State Board of Law Examiners reviewed complaints against lawyers submitted by others and could initiate a complaint on its own motion. Id. § 17, at 429. Hearings were held before the Board and the prosecution was to be provided by the prosecuting attorney of the county in which the defendant resided or by the attorney general at the Board’s request. Id. § 18, at 430. In general, the resources of the court in the defendant’s county of residence were used for hearings. See Id.

By 1930, The Board of Law Examiners was still responsible for investigation of complaints. Rules for Admission to Practice, 159 Wash. lxxxv (1930). However, the 1930 rules specified that should the Board find a substantial basis for an ethical violation, the Board would file a Formal Complaint with the court. Id.

In 1933, the Legislature created the Washington State Bar Association and established the Board of Governors (BOG) to administer the new state agency. Laws of 1933, ch. 94, at 397-402. WSBA was made responsible for the admission and regulation of attorneys in the state. Id. The act set admission fees at $25.00 for lawyers not admitted to the bar in other states and $50.00 for all others. Id. § 11, at 400. Annual membership fees were set to $5.00. Id. § 9, at 400.

**Discipline Rules separated from Rules for Admission:** In 1938, the Rules for Discipline of Attorneys (RDA) were given their own section of the Court Rules, separate from the Rules for Admission to Practice. Rules for Discipline of Attorneys, 193 Wash. 85-a. Rule 11 adopted the ABA Canons of Ethics as the ethical code for Washington lawyers. The structure set by the new RDA for handling complaints against lawyers was geographically decentralized. The BOG was empowered to appoint Local Administration Committees (LAC) for each county. Larger counties were to have five-member LACs; smaller counties, three-member LACs. Smaller counties might be combined into districts for which three-member LACs would be appointed. The LACs were to informally investigate complaints and report to the BOG via the executive secretary. The LACs were also empowered to settle and dispose of trivial complaints.
Under the 1938 RDA, the BOG was empowered to appoint Trial Committees (TC) for each county along the same lines as the LACs (larger counties were to have five-member TCs etc.). Hearing panels were appointed from the TCs for each discipline case that made it past the LACs. A hearing panel was composed of two members of the TC for the county in which the defendant resided and one member of the BOG. BOG members were appointed to hearing panels outside of their own constituencies. Hearings were expressly not public.

In 1951, the Court Rules, published in a separate volume for the first time, contained amendments to the RDA. The amendments included a new Ground for Discipline: RDA 10(12) listed the new ground as “Membership in any party or organization knowing that it has as its purpose and object the overthrow of the United States Government by force or violence.” RDA 10(12), 38A Wn.2d 184. This provision remained in the disciplinary rules until 1975. 1951 also saw the adoption of Washington’s Canons of Professional Ethics as a set of rules independent from the ABA Canons. 34A Wn.2d 124 (1951).

The 1960 amendments to the RDA provided for a State Bar Counsel for the first time. State Bar Counsel replaced local prosecutors in the hearing process. RDA III, 57 Wn.2d 1. In 1965, a provision for automatic suspension for a felony conviction was added. RDA I, 66 Wn.2d xx.

**Disciplinary Board Appears in 1968:** In 1968, the Court adopted the Disciplinary Rules for Attorneys (DRA) to replace the RDA. 75 Wn.2d xx. DRA 2.4 established the Disciplinary Board (D-Board). 75 Wn.2d xxvi. Hearing Panels were now composed of two members from the local Trial Committee and one member of the D-Board; Local LACs now reported to the D-Board.

Note that for the first time, the ABA entered the realm of disciplinary procedure when it adopted the Clark Committee Report (*Problems and Recommendations in Disciplinary Enforcement*), subsequently incorporated into the ABA Suggested Guidelines for Rules of Disciplinary Enforcement. See American Bar Association, Model Rules for Lawyer Disciplinary Enforcement, at xi (2007 ed.) (Preface).

In 1972, the DRA were amended to provide for suspension or transfer to inactive status during the pendency of disciplinary proceedings. DRA, 81 Wn.2d 1100. Meanwhile, the Code of Professional Responsibility replaced the Canons of Professional Ethics. See 80 Wn.2d 1119 (1972).

In 1974, amendments to the DRA provided for inclusion, on an experimental basis, of lay members on the D-Board. 83 Wn.2d 1119. The experiment was a success, and the definition of the D-Board in the 1975 version of the DRA includes two lay members. DRA 2.4(1) 84 Wn.2d 1104 (1975). The Disciplinary Board has included lay members ever since.

In 1979 the ABA House of Delegates adopted *Standards for Lawyer Discipline and Disability Proceedings*, which was an effort to develop uniform standards for courts to

**Rules for Lawyer Discipline adopted:** In 1983, the Court adopted the Rules for Lawyer Discipline (RLD) to replace the DRA. The RLD centralized the administration of lawyer discipline. Under the new rules, the State Bar Counsel assumed the investigatory function formerly borne by the local LACs, including the power to dismiss non-meritorious complaints. The local Trial Committees were replaced by a list of Hearing Officers, centrally maintained by the BOG. The list included lawyers from around the state who agreed to serve when needed. Local Trial Committees had served at the pleasure of the BOG; Hearing Officers would serve for a term of three years.

The new RLD further separated the BOG from the disciplinary proceedings. RLD 2.2(b) stated specifically that the BOG had no right or responsibility to review decisions by the D-Board, except in the limited circumstance where the BOG approval was necessary to authorize Bar Counsel to seek review of a decision to the Supreme Court. RLD 2.2(b); RLD 7.3(c). The RLD also provided that a member of the D-Board who had served as a Hearing Officer on a specific case would be disqualified from any D-Board review of the decision in that case. RLD 6.7(b). The DRA had provided that a D-Board member would not be disqualified from participating in D-Board review of his or her decision in such a case.

The RLD allowed for costs to be recovered from sanctioned lawyers. Disciplinary counsel could file a cost statement including expenses for reasonable lawyers’ fees in the following amounts: $350 for cases with no D-Board review; $450 for cases with D-Board review, but no Supreme Court review; and $750 for cases reviewed by the Supreme Court.

The RLD also made lawyer discipline in Washington public. Under previous disciplinary rule systems, the public was excluded from disciplinary proceedings. Disbarments and suspensions were published, but censures were only published if a lawyer receiving the censure had been previously disbarred or suspended. RLD 11.1(c) made disciplinary proceedings public and RLD 11.2 (a) mandated the publication of reprimands and censures as well as suspensions and disbarments. Admonitions, however, were excluded from public scrutiny.

In 1985, the Court adopted the Rules of Professional Conduct (RPC) to replace the Code of Professional Responsibility. In 1987, the RLD were amended to reflect the adoption of the RPC.

In 1988, the RLD were amended to increase the time period a disbarred lawyer must wait to apply for reinstatement from 3 years to 5 years. RLD 9.1. 1988 also saw the addition of RLD 12.11 and 12.12, which brought Lawyer Assistance Program staff and Peer Counselors under the protection of rules limiting liability and preserving
confidentiality. In 1988, allowable expenses for lawyers’ fees for cases in which a lawyer was sanctioned were raised to: $500 for cases with no D-Board review; $750 for cases with D-Board review, but no Supreme Court review; and $1000 for cases reviewed by the Supreme Court.

Prior to 1989, default proceedings were expressly disallowed. If a defendant lawyer failed to file an Answer to a Formal Complaint and did not show up at his or her hearing, the Hearing Officer was allowed to make an adverse inference from that fact. Should a defendant lawyer show up at the hearing having not filed an Answer, the Hearing Officer could grant Bar Counsel’s request to present evidence at a later date. The 1989 amendments to the RLD provided for Bar Counsel to file a motion for default if a respondent lawyer did not file an Answer within 20 days of service of the Formal Complaint. The notice given to a potentially defaulting respondent lawyer would include the information that failure to file an Answer would represent an admission all allegations in the Formal Complaint. Should the motion be granted by the Hearing Officer, the defaulting lawyer would be given notice of such and no further notice of the proceedings would be required.

Note that in 1989, the ABA House of Delegates adopted the Model Rules for Lawyer Disciplinary Enforcement, which was its effort to transform the 1979 Standards for Lawyer Discipline and Disability Proceedings into a court rule format.

In 1991, the RLD were amended to make the respondent lawyer responsible for the costs of holding a non-cooperation deposition, in cases in which a respondent lawyer did not respond to requests for information during the investigation of a grievance. These costs included cost of service of the subpoena, court reporters fees, and reasonable attorneys’ fees of $200. The expenses allowed to be filed against sanctioned lawyers were raised to: $1000 for cases with no D-Board review; $1500 for cases with D-Board review, but no Supreme Court review; and $2000 for cases reviewed by the Supreme Court.

In 1993, after an ABA consultation team evaluated the lawyer discipline system in Washington, the ABA issued a Consultation Report of the Standing Committee on Professional Discipline making a number of recommendations for changes to the system.

In 1993, the title of State Bar Counsel was changed to Disciplinary Counsel. The term complaint was also replaced by the term grievance.

In 1997, admonitions, which had been designated as nonpublic information, were made public. See Former RLD 5.5A(f).

In 2001, the RLD were amended to add the Diversion Program as Title 14.

**RLD replaced with the ELC:** In 2002, the Court adopted the Rules for Enforcement of Lawyer Conduct (ELC) to replace the RLD. The ELC represent a thorough restructuring
of the rules with some modifications. RLD 1.1’s laundry list of “Grounds for Discipline” was replaced with ELC 1.1’s statement of the “Scope of Rules.” ELC 1.1 simply states that lawyers may be subject to discipline for violations of the RPC. See ELC 1.1. ELC 1.5 covers failure to abide by duties under the ELC by stating that a lawyer violates RPC 8.4(l) by violating duties imposed by the ELC.

The ELC also introduced two new players: the Conflicts Review Officer (CRO) and the Chief Hearing Officer (CHO). The CRO reviews grievances filed against disciplinary counsel, hearing officers, other lawyers employed by WSBA, and members of the D-Board. ELC 2.7. The Supreme Court appoints an active member of WSBA as the CRO for a three-year term. The CHO took over the responsibilities for appointing and training hearing officers, as well as monitoring and evaluating the performance of hearing officers, administering hearing officer compensation, and hearing pre-hearing motions when a hearing officer has not yet been assigned to a case.

One of the available disciplinary sanctions, the censure, was deleted in the ELC. The primary distinction between the censure and the reprimand was that reprimands were administered personally to the sanctioned lawyer by the Board of Governors. See Former RLD 5.5(b). After the elimination of the censure, the procedure for administering reprimands was amended effective September 1, 2005, so that a reprimand is administered by written statement signed by the WSBA President and served on the respondent lawyer. See ELC 13.4.

Another new feature of the ELC was the addition of Resignation in Lieu of Disbarment to the category of Resolutions without Hearing. A lawyer who does not wish to contest or defend against allegations of misconduct may resign. The effect of resignation in lieu of disbarment is permanent; a lawyer who has resigned in this manner may not petition for reinstatement. ELC 9.3. The maximum term of suspension was increased to three years. ELC 13.3.

ELC 10.14(e) specifically identified the evidence standards in the Administrative Procedures Act (APA) as the basis the evidence standards in the ELC and suggested the APA could be consulted for guidance in that area.

It is expected, as a result of the issuance in 2006 of the ABA Report on the Lawyer Regulation System in Washington State following a second evaluation by the ABA Standing Committee on Professional Discipline, WSBA will recommend in 2008 or 2009 that the Supreme Court adopt amendments to the ELC.ii

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ii In 2008, the WSBA convened the ELC Drafting Task Force to undertake a thorough review of the ELC and to make appropriate recommendations to the BOG and then to the Supreme Court. The ELC Drafting Task Force is currently in progress, and it is expected that the Task Force’s recommended
changes will be approved by the Supreme Court in 2013. Many of the Task Force’s proposed amendments to the ELC flow from recommendations made to the Washington Supreme Court by the ABA Standing Committee on Professional Discipline in its August 2006 *Washington: Report on the Lawyer Regulation System*. 
### Historical Timeline for the Adoption of the Rules of Disciplinary Procedure

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<thead>
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<th>Name of Rules</th>
<th>Details</th>
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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

STATE OF WASHINGTON,

CONTAINING

DECISIONS RENDERED DURING THE JANUARY AND MAY SESSIONS, 1891

EUGENE G. KREIDER,
REPORTER.

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1891