



# WSBA

## Board of Governors

**Douglas C. Lawrence**  
Governor, 8th District

phone: 206-626-6000  
fax: 206-464-4196  
e-mail: doug.lawrence@stokeslaw.com

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To: Board of Governors

Re: WSBA Discipline Committee - Summary Of Initial Recommendations from  
November 15, 2006 Meeting

The WSBA Discipline Committee met at the WSBA offices on November 15 to discuss the Report on the Lawyer Regulation System that was issued by the ABA in August of this year. The purpose of the meeting was to consider the recommendations that were made and determine those recommendations that the Committee felt warranted further study. The Committee also took this opportunity to identify other possible revisions to the lawyer regulatory system that warranted further discussion. This memo summarizes the Committee's preliminary recommendations

### SUMMARY OF RECOMMENDATIONS

#### STRUCTURE

**ABA Recommendation 1:** The Supreme Court's Oversight Of The Washington Discipline System Should Be Emphasized

A. The Court Should Appoint An Independent Administrative Oversight Committee For The Discipline System

B. Appointment of Disciplinary Counsel and Oversight Of That Office

**COMMITTEE RECOMMENDATION** - The Committee does not recommend that an independent oversight committee be established; however, the Committee does believe this issue should be studied to determine what checks and balances might be implemented to ensure that the Board of Governors and the Executive Director are not able to improperly influence the discipline system.

**ABA Recommendation 2:** The Number Of Review Committee Members Should Be Increased

**COMMITTEE RECOMMENDATION** - The Committee does not believe the number of Review Committee members needs to be increased, but the Committee does believe standards should be developed. The Committee wants the inclusion of possible recusal rules to be considered, and wants clear guidelines to be established for when the pro tem committee should be activated to help alleviate backlogs.

**ABA Recommendation 3:** Quality Issues At The Hearing Officer Level Of The System Should Be Addressed

**COMMITTEE RECOMMENDATION** - The Committee does want this issue reviewed, with particular attention to be given to issues of timeliness, scheduling, judicial demeanor and experience. The Committee recommends consideration of extending the initial terms of new Hearing Officers to give an adequate evaluation period, and believes that procedures for the removal of Hearing Officers should be established.

**ABA Recommendation 4:** The Appellate Process Before The Disciplinary Board Should Be Streamlined

**COMMITTEE RECOMMENDATION** - The Committee wants to study this issue with a focus on mandatory appeal issues.

**ABA Recommendation 5:** Volunteers In The Disciplinary System Should Receive More Intensive And Mandatory Formal Training

**COMMITTEE RECOMMENDATION** - The Committee believes that more formal training should be provided and that the issue should be studied. Consideration should be given to adding materials from the judicial college

**ABA Recommendation 6:** The Discipline System Should Have Adequate Technology Resources

**COMMITTEE RECOMMENDATION** - This Committee believes that there is a clear need for additional technological assistance. Consideration needs to be given to the integration of the technology needs of the Disciplinary Board, ODC, the Hearing Officers and WSBA while maintaining the necessary confidentiality and independence among the parties.

**ABA Recommendation 7:** Improved Scheduling Practices Will Lessen Delay At The Hearing Level

**COMMITTEE RECOMMENDATION** - This issue is to be studied in conjunction with Recommendation 3 above.

**ABA Recommendation 8:** The Administrative Oversight Committee and Director Of Lawyer Discipline Should Consider Staffing Needs

**COMMITTEE RECOMMENDATION** - The Committee believes that this is a continuing focus and does not have to be separately studied.

## **PROCEDURAL RULES**

**ABA Recommendation 9:** The Court Should Repeal Rule 5.1(d) Of The Rules For Enforcement Of Lawyer Conduct, Entitled “Grievant Duties”

**COMMITTEE RECOMMENDATION** - The Committee believes that both Rule 5.1(c) (Grievant’s Rights) and 5.1(d) contain provisions that should be modified or deleted. These Rules need to be studied to determine what changes should be made.

**ABA Recommendation 10:** The Court Should Amend Rule 5.3(a) Of The Rules For Enforcement Of Lawyer Conduct To Eliminate The Washington State Bar Association’s Role in Opening Grievances

**COMMITTEE RECOMMENDATION** - This issue should be studied in conjunction with Recommendation 1.

**ABA Recommendation 11:** Diversion Contracts Should Be Limited To Terms Agreed To By Disciplinary Counsel And The Respondent

**COMMITTEE RECOMMENDATION** - The Committee does not believe this issue needs to be reviewed as diversion contracts are agreed to by both disciplinary counsel and the respondent.

**ABA Recommendation 12:** The Court Should Amend Rule 7.1 Of The Rules For Enforcement Of Lawyer Conduct To Eliminate Disciplinary Board Involvement In Terminations Of Interim Suspensions Based On Criminal Convictions

**COMMITTEE RECOMMENDATION** - The Committee believes that Rule 7.1 should be reviewed. This should include consideration if disciplinary counsel should be required to file a petition for interim suspension in all cases.

**ABA Recommendation 13:** The Court Should Amend Rule 7.2 Of The Rules For Enforcement Of Lawyer Conduct To Streamline Other Interim Suspension Procedures

**COMMITTEE RECOMMENDATION** - The Committee believes this Rule should be considered for possible amendment. The review process should include participation by respondents' counsel.

**ABA Recommendation 14:** The Court Should Amend The Rules For Enforcement Of Lawyer Conduct Relating To Disability Inactive Status

**COMMITTEE RECOMMENDATION** - The Committee does not believe that the Rules relating to oversight need amendment, but does believe that these rules should be better coordinated with the interim suspension rules and for that reason warrant review.

**ABA Recommendation 15:** The administrative oversight committee and disciplinary counsel's office should develop for court approval, standards for the appointment of counsel for respondents in disability proceedings and a roster of volunteer counsel to serve in that capacity

**COMMITTEE RECOMMENDATION** - The Committee feels that this is an important issue which warrants review. The primary need is for more qualified counsel to participate in the program. The study should consider if the current compensation system is adequate, or if other modifications need to be made to ensure the availability of qualified counsel for respondents.

**ABA Recommendation 16:** Discipline On Consent Should Be Encouraged At All Stages Of Proceedings

**COMMITTEE RECOMMENDATION** - A very large percentage of cases are already resolved by stipulation, however the process itself is very cumbersome and often stipulated resolutions are rejected. There are several factors leading to these results, and the Committee believes the issue needs study to determine alternative approaches.

**ABA Recommendation 17:** The Court Should Repeal Rule 9.3 Of The Rules For Enforcement Of Lawyer Conduct Relating To Resignations In Lieu Of Disbarment

**COMMITTEE RECOMMENDATION** - The Committee believes this issue does not warrant review as it has recently been considered.

**ABA Recommendation 18:** Prior Discipline Should Be Considered Only After A Finding Of Misconduct

**COMMITTEE RECOMMENDATION** - The Committee believes this issue should be reviewed with the participation of respondents' counsel.

**ABA Recommendation 19:** Respondents Held In Default Should Continue To Receive Notices

**COMMITTEE RECOMMENDATION** - The Committee does not believe this issue requires any further review.

**ABA Recommendation 20:** Review of Disciplinary Board Reports And Recommendations By The Court Should Be Discretionary In All Disciplinary Cases

**COMMITTEE RECOMMENDATION** - The Committee believes that there is merit to having all matters subject to discretionary review. This issue should be reviewed.

## I. SANCTIONS

**ABA Recommendation 21:** The Court's Role In Enhancing Consistency in Sanction Recommendations

**COMMITTEE RECOMMENDATION** - The Committee believes this issue should be reviewed. The Committee believes particular consideration should be given to the sanctions that should be available, and the standards by which sanctions are determined. Consideration should also be given to the possible elimination of admonitions.

**ABA Recommendation 22:** The Disciplinary Board and the Court Should Administer Reprimands

**COMMITTEE RECOMMENDATION** - This issue should be addressed in conjunction with the consideration of Recommendation 1.

**ABA Recommendation 23:** The Court Should Eliminate The Imposition of Admonition After Hearings on Formal Charges

**COMMITTEE RECOMMENDATION** - This issue should be addressed in conjunction with Recommendation 21.

**ABA Recommendation 24:** The Court Should Consider Amending Rule 14.2 Of The Rules For Enforcement Of Lawyer Conduct To Clarify That A Lawyer Disbarred, Suspended Or On Disability Inactive Status Cannot Work In A Law Office Or As A Paralegal

**COMMITTEE RECOMMENDATION** - The Committee feels this issue does warrant review. This should include consideration of possible notification requirements to law firms that are associated with a lawyer who is disbarred, suspended (including administrative suspensions) or on disability inactive status.

- A. **ABA Recommendation 25:** The Court Should Amend 13.8 To Provide Greater Detail Regarding the Imposition Of Probation And To Set Forth Specific Requirements For The Monitoring and Revocation of Probation

**COMMITTEE RECOMMENDATION** - A lawyer is placed on probation only in conjunction with other disciplinary proceedings, and for this reason the Committee does not believe there is a need for additional detail to be given relating to the probation; however, the Committee does feel that this issue should be considered in conjunction with Recommendation 21.

#### **PREVENTION MECHANISMS**

- B. **ABA Recommendation 26:** The Court Should Institute Mandatory Arbitration of Lawyer/Client Fee Disputes

**COMMITTEE RECOMMENDATION** - The Committee believes this recommendation should be studied further.

- C. **ABA Recommendation 27:** The Court Should Adopt a Rule Providing for Written Notice to Claimants of Payment in Third Party Settlements.

**COMMITTEE RECOMMENDATION** - The Committee believes this issue should be considered in conjunction with Recommendation 26.

#### **OTHER ISSUES**

**COMMITTEE RECOMMENDATION** - There are several additional changes associate with the Rules for the Enforcement of Lawyer Conduct that the Committee recommends for further consideration. They will be studied in conjunction with the Recommendations above.

## **PROPOSED GROUPINGS FOR STUDY**

### **TASK FORCE 1:**

Recommendations 1, 10, 22

**ABA Recommendation 1:** The Supreme Court's Oversight Of The Washington Discipline System Should Be Emphasized

**ABA Recommendation 10:** The Court Should Amend Rule 5.3(a) Of The Rules For Enforcement Of Lawyer Conduct To Eliminate The Washington State Bar Association's Role in Opening Grievances

**ABA Recommendation 22:** The Disciplinary Board and the Court Should Administer Reprimands

### **TASK FORCE 2:**

Recommendations 2, 3, 5, 6, 7, 15

**ABA Recommendation 2:** The Number Of Review Committee Members Should Be Increased

**ABA Recommendation 3:** Quality Issues At The Hearing Officer Level Of The System Should Be Addressed

**ABA Recommendation 5:** Volunteers In The Disciplinary System Should Receive More Intensive And Mandatory Formal Training

**ABA Recommendation 6:** The Discipline System Should Have Adequate Technology Resources

**ABA Recommendation 7:** Improved Scheduling Practices Will Lessen Delay At The Hearing Level

**ABA Recommendation 15:** The Administrative Oversight Committee And Disciplinary Counsel's Office Should Develop For Court Approval, Standards For The Appointment Of Counsel For Respondents In Disability Proceedings And A Roster Of Volunteer Counsel To Serve In That Capacity

### **TASK FORCE 3:**

Recommendations 4, 9, 12, 16, 18, 20, General Rule Changes

**ABA Recommendation 4:** The Appellate Process Before The Disciplinary Board Should Be Streamlined

**ABA Recommendation 9:** The Court Should Repeal Rule 5.1(d) Of The Rules For Enforcement Of Lawyer Conduct, Entitled “Grievant Duties”

**ABA Recommendation 12:** The Court Should Amend Rule 7.1 Of The Rules For Enforcement Of Lawyer Conduct To Eliminate Disciplinary Board Involvement In Terminations Of Interim Suspensions Based On Criminal Convictions

**ABA Recommendation 16:** Discipline On Consent Should Be Encouraged At All Stages Of Proceedings

**ABA Recommendation 18:** Prior Discipline Should Be Considered Only After A Finding Of Misconduct

**ABA Recommendation 20:** Review of Disciplinary Board Reports And Recommendations By The Court Should Be Discretionary In All Disciplinary Cases

### **General Rule Changes**

#### **TASK FORCE 4:**

Recommendations 13, 14, 21, 23, 24, 25

**ABA Recommendation 13:** The Court Should Amend Rule 7.2 Of The Rules For Enforcement Of Lawyer Conduct To Streamline Other Interim Suspension Procedures

**ABA Recommendation 14:** The Court Should Amend The Rules For Enforcement Of Lawyer Conduct Relating To Disability Inactive Status

**ABA Recommendation 21:** The Court’s Role In Enhancing Consistency in Sanction Recommendations

**ABA Recommendation 23:** The Court Should Eliminate The Imposition of Admonition After Hearings on Formal Charges

**ABA Recommendation 24:** The Court Should Consider Amending Rule 14.2 Of The Rules For Enforcement Of Lawyer Conduct To Clarify That A Lawyer Disbarred, Suspended Or On Disability Inactive Status Cannot Work In A Law Office Or As A Paralegal

**ABA Recommendation 25:** The Court Should Amend 13.8 To Provide Greater Detail Regarding the Imposition Of Probation And To Set Forth Specific Requirements For The Monitoring and Revocation of Probation

**TASK FORCE 5:**

Recommendations 26, 27

**ABA Recommendation 26:** The Court Should Institute Mandatory Arbitration of Lawyer/Client Fee Disputes

**ABA Recommendation 27:** The Court Should Adopt a Rule Providing for Written Notice to Claimants of Payment in Third Party Settlements.