



S O L O &  
S M A L L  
P R A C T I C E  
S E C T I O N

April 19, 2021

Honorable Justices  
The Supreme Court  
State of Washington

Re: Solo & Small Practice Section Comment on proposed Rules for Discipline and Incapacity

On behalf of the over 900+ members of the Solo and Small Practice Section, we would like to provide comment on the proposed rules for Discipline and Incapacity. In that regard, our Section leadership offers the following feedback.

The Solo & Small Practice Section is opposed to the proposed Rules for Discipline and Incapacity (RDI) for the following reasons:

1. The rules have not been drafted with input from the lawyers being subjected to them.
  - a. Members of the Bar were not represented in the drafting work group. General members of the Bar were not invited to participate in reviewing the rules at any stage in the drafting process, yet these rules could be used to take away their livelihood. Members of the Solo & Small Practice Section have strong opinions about these changes and should have an opportunity to meaningfully participate in the drafting of the rules, not just to make comments at the end.
  - b. The rules were drafted by the Office of Disciplinary Counsel (ODC). As others have noted, this is like the prosecutor writing the rules of criminal procedure.
  - c. The stated purpose of the drafting work group was to “streamline the rules and create system efficiencies”. To this end, the proposed RDI remove various rights of appeal and protections that were afforded respondents under the existing Rules for Enforcement of Lawyer Conduct (ELC), e.g.:
    - i. Right to appeal ODC’s decision to withhold information from Respondent. ELC 5.1(c)(3)(B)
    - ii. Right to appeal ODC’s decisions on whether to defer an investigation pending related civil or criminal litigation. ELC

- 5.3(d)(2).
- iii. Disciplinary counsel subject to contempt for wrongful release of information. RDI 3.1(d); ELC 3.2(f).
- d. Confusingly, some avenues of quickly reaching a final decision available under the ELC are absent under the RDI:
- i. The RDI allow reopening of a closed decision, in essence meaning that complaints are never finally adjudicated. RDI 5.11.
  - ii. An admonition was not a sanction under the ELC but is a sanction under the RDI. Previously, respondents may have accepted the result of an admonition, but now will be further incentivized to oppose such a result.
2. The Bar has not studied the demographics of respondents to determine if the rules have a disproportionate impact on particular groups or individuals. The Solo & Small Practice section is concerned that the proposed rules will have a disparate impact on lawyers in small or solo practices. The Bar should examine the impact that the ELC currently has on its members before making such significant changes.
  3. Diversity of the hearing officers is removed. By switching to using paid adjudicators, the RDI system necessarily removes the diversity of volunteer hearing officers that is accomplished under the existing ELC. A panel of volunteer hearing officers allows for racial, geographic, firm size and practice area diversity. The rules should promote more diversity of hearing officers, not less.
  4. The rules should be written in a way that increases equity and fairness to members. GR 12.1(j) specifically includes the objective in regulating the practice of law to promote “diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.”

Solo & Small Practice members are a diverse group of attorneys that face many challenges in running their law practices that larger firms do not. The rules should be written in a way that promotes the most fairness to diverse respondents, not to help the ODC clear its caseload faster. The Solo & Small Practice Section understands and respects the Court’s desire to modernize the rules governing lawyer discipline. We simply request that this be done in a fair and equitable manner with participation by lawyers from a diverse range of practices.

Respectfully submitted,



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SSPS Chair

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WSBA Solo and Small Practice Section Members