

ELC 3.4
RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

(a) Disclosure of Information. Except as prohibited by rule 3.2(e), court order, or other law, the grievant, respondent lawyer, or any witness may disclose any information in their possession regarding a disciplinary matter.

(b) Investigative Disclosure. The Association may disclose otherwise confidential information as necessary to conduct the investigation, 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) Release Based upon Lawyer's Waiver. Upon a written waiver by a lawyer, except as prohibited by rule 3.2(e), the Association may release the status of otherwise confidential disciplinary or disability proceedings and provide otherwise confidential information to any person or entity authorized by the lawyer to receive the information.

(d) Response to Inquiry or False or Misleading Statement.

(1) Except as prohibited by rule 3.2(e), the Executive Director or Chief Disciplinary Counsel, or a designee of either of them, may release otherwise confidential information:

(A) to respond to specific inquiries about matters that are in the public domain; or

(B) if necessary to correct a false or misleading public statement.

(2) A respondent must be given notice of a decision to release information under this section unless the Executive Director or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public or compromise an ongoing investigation.

(3) A decision regarding release of information is final and is not subject to further review.

(e) Discretionary Release. The Executive Director or the Chief Disciplinary Counsel may authorize the general or limited release of any confidential information when it appears necessary to protect the interests of clients or other persons, the public, or the integrity of the disciplinary process, except as prohibited by rule 3.2(e). A respondent must be given notice of a decision to release information under this section before its release unless the Executive Director or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public, or that the delay caused by giving the respondent notice would be detrimental to the integrity of the disciplinary process. A decision regarding release of information is final and is not subject to further review.

(f) Statement of Concern.

(1) Authority. The Chief Disciplinary Counsel has discretion to file a statement of concern with the Clerk when deemed necessary to protect members of the public from a substantial threat, based on information from a pending investigation into a lawyer's apparent ongoing serious misconduct not otherwise made public by these rules. The statement may not disclose information protected by rule 3.2(e).

(2) Procedure.

(A) On or before the date it is filed, a copy of the statement of concern must be served under rule 4.1 on the lawyer about whom the statement of concern has been made. The statement of concern is not public information until 14 days after service.

(B) The lawyer may at any time appeal to the Chair to have the statement of concern withdrawn.

(C) If an appeal to the Chair is filed with the Clerk under rule 4.2(a) within 14 days of service of the statement of concern, the statement of concern is not public information unless the Chair so orders and becomes public information upon issuance of the Chair's order.

(D) The Chair's decision is not subject to further review.

(E) The Chief Disciplinary Counsel may withdraw a statement of concern at any time.

(g) Release to Judicial Officers. Any state or federal judicial officer may be advised of the status of a confidential disciplinary grievance about a lawyer appearing before the judicial officer in a representational capacity and, except as prohibited by rule 3.2(e), may be provided with requested confidential information if the grievance is relevant to the lawyer's conduct in a matter before that judicial officer. The judicial officer must maintain the confidentiality of the matter.

(h) Cooperation with Law Enforcement and Disciplinary Authorities. Except as prohibited by rule 3.2(e), information or testimony may be released to authorities in any jurisdiction authorized to investigate alleged criminal or unlawful activity, judicial or lawyer misconduct, or disability.

(i) Release to Lawyers' Fund for Client Protection. Information relating to applications pending before the Lawyers' Fund for Client Protection Board may, except as prohibited by rule 3.2(e), be released to the LFCP Board. The LFCP Board must treat such information as confidential unless this title or the Executive Director or the Chief Disciplinary Counsel authorizes release.

(j) Other Counsel. Conflicts review officers, special disciplinary counsel, adjunct disciplinary counsel, Association counsel, counsel for a petitioner under rule 8.9(d), counsel appointed under rule 8.10, and any lawyer representing the Association in any matter have access to any otherwise confidential disciplinary information necessary to perform their duties.

(k) Chief Hearing Officer and Disciplinary Selection Panel. The chief hearing officer and the Disciplinary Selection Panel shall have access to any otherwise confidential disciplinary information necessary to perform their duties. The chief hearing officer shall be given notice when any grievance is filed against a hearing officer and of the disposition of that grievance. Confidential information provided under the terms of this rule shall not be further disseminated except as may be otherwise allowed under these rules.

(l) Release to Board of Governors or Officers. The Chief Disciplinary Counsel may authorize release of otherwise confidential information to the Board of Governors or officers of the Association as necessary to carry out their duties under these rules, except as prohibited by rule 3.2(e), but the Board of Governors or officers of the Association must maintain its confidentiality.

(m) Release to Practice of Law Board. Information obtained in an investigation relating to possible unauthorized practice of law may, except as prohibited by rule 3.2(e), be released to the Practice of Law Board. The Practice of Law Board must maintain the confidentiality of the information unless the Executive Director or the Chief Disciplinary Counsel authorizes release.

[Adopted effective January 1, 2014.]
