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KANSAS PETITIONED TO OPEN ATTORNEY DISCIPLINE PROCESS

The Washington Legal Foundation (WLF) this week petitioned the Kansas Board for Discipline of Attorneys to amend its rules of disciplinary procedure to allow the public greater access to and participation in all aspects of the attorney discipline process. This is the 44th petition filed by WLF in its SCALES ("Stop the Collapse of America's Legal Ethics") project. WLF plans to file similar petitions over the next several months in other states where a significant portion of the attorney discipline process is conducted in secret.

WLF believes that secrecy in the attorney discipline process is arguably the single greatest threat to the public's confidence in the legal profession. As the authors of a recent American Bar Association (ABA) report on the subject stated, we are "convinced that secrecy in discipline proceedings continues to be the greatest single source of public distrust of lawyer disciplinary systems." The report concluded that, because of this distrust, "secrecy does great harm to the reputation of the profession." WLF believes that the public's suspicion that discipline meted out under the cloak of confidentiality can be neither fair nor vigorous is wholly understandable. Moreover, WLF noted, for attorneys who make their living in the very public American justice system to argue that they must be disciplined in secret rightly strikes the public as the height of hypocrisy.

To ensure the public greater access to the discipline process, both as a practical and theoretical matter, WLF's petition urged the Kansas Board for Discipline of Attorneys to recommend that the Supreme Court of Kansas to amend its Rules for Discipline of Attorneys to:

(1) allow the public access to all complaints filed against a lawyer from the time that a complaint is lodged with the Disciplinary Board (Board);

(2) require that, at least sixty (60) days before a hearing on a disbarred or suspended attorney's petition for reinstatement or readmission, the attorney publish a notice of the petition in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the attorney maintained an office at the time he was suspended or disbarred, and that the attorney notify the complainant(s) in the disciplinary proceeding that the attorney is applying for reinstatement or readmission and inform

the complainant(s) that they have sixty (60) days to raise objections or to support the attorney's petition.

The first provision is modeled after the procedures followed in Oregon, which grants the public access to all complaints filed against attorneys — both those that are dismissed as without merit or with an admonition to the attorney, and those that proceed to a formal hearing on the charges. Kansas rules currently presume that all disciplinary proceedings, reports, and records of disciplinary investigations are private. This rule does not allow the public to learn the nature of the allegations, even when those allegations are serious. WLF noted in its petition that the sole argument against opening the discipline process completely — the concern that attorneys' reputations will be damaged by frivolous complaints — has proven to be illusory. Officials in Oregon, where the open process has been in place for as long as twenty years, emphatically support the program and do not know of any attorney whose reputation has been undeservedly damaged.

The second recommendation by WLF is modeled after a rule contained in the ABA Model Rules of Professional Responsibility. It would make the discipline process more accessible to the public by giving all interested parties notice of and an adequate opportunity to participate in any readmission hearing.

WLF's SCALES project is a nationwide movement designed to eliminate abuse in America's civil justice system and improve the professional standards of America's lawyers. WLF petitions seeking public access to the attorney disciplinary process mark the fourth phase of the SCALES project. Earlier phases (which involved filing petitions in all 50 states) addressed attorney advertising, contingency fee agreements, and limitations on campaign contributions to judges by attorneys who practice before the judges. Numerous states have adopted recommended reforms outlined in the WLF petitions.

"The organized bar's reliance on secrecy is misguided. It hurts the public's opinion of lawyers," said WLF Senior Counsel for Litigation Affairs Shawn Gunnarson after filing the Kansas petition. "People are perfectly capable of telling the difference between meritorious and frivolous complaints, and all states should open the lawyer discipline process to public scrutiny."

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