The District of Columbia Bar

1707 L STREET, N.W., SIXTH FLOOR, WASHINGTON, D.C. 20036-4202
(202) 331-3883
Lawyer Referral and Information Service 331-4365

Memorandum

TO: Board of Governors
Section Chairpersons

FROM: Lynne M. Lester
Manager, Sections Office

DATE: September 10, 1986

SUBJECT: Expedited consideration of proposed public statement

During the last two months, the Sections Office has been unable to fill two vacancies, thus operating with only one full time staff person. Because of the severe shortage of staff, the enclosed public statement submitted by the Courts, Lawyers and the Administration of Justice Section, was unable to get out in a timely matter. Therefore, the Sections Office, and **not** the Section itself is requesting emergency consideration of the public statement.

Please call me if there are any questions.

Enclosure

cc: Katherine Mazzaferri

Manager for Sections shall help with the distribution, if requested, and shall forward a copy of the one-page summary to each member of the Board of Governors. In addition, the Manager for Sections shall draw up a list of all persons receiving the comment or statement, and he/she shall ascertain that appropriate distribution has been made and will assist in collecting the views of the distributees. If no request is made to the Manager for Sections within the seven-day period by at least three (3) members of the Board of Governors, or by majority vote of any steering committee or committee of the Bar, that the proposed amendment be placed on the agenda of the Board of Governors, the Section may submit its comments to the appropriate federal or state legislative or governmental body at the end of the seven-day period.

c(ii): "The Board of Governors may request, pursuant to sub-section (a)(iv), that the Section comments on proposed court rules change be placed on the Board agenda only if (a) the proposed court rule is so closely and directly related to the administration of justice that a special meeting of the Bar's membership pursuant to Rule VI, Section 2, or a special referendum pursuant to Rule VI, Section 1, should be called or (b) the proposed rule affects the practice of law--generally, the admission of attorneys, their discipline, or the nature of the profession,"

a(v): "Another Section or committee of the Bar may request that the proposed set of comments by a Section be placed on the Board's agenda only if such Section or committee believes that it has greater ot coextensive expertise in or jurisidiction over the subject matter, and only if (a) a short explanation of the basis for this belief and (b) an outline filed with both the Manager for Sections and the commenting Section's chairperson. The short explanation and outline or proposed alternate comments will be forwarded by the Manager for Sections to the Board members."

a(vi): Notice of the request that the statment bne placed on the board's agenda lodged with the Manager for Sections by any Board member may initially be telephobned to the Manager for Sections (who will then inform the commenting Section), but must be supplemented by a writen objection lodged within seven days of the oral objection.,"

c(iii): "If the comments of the Section on a proposed court rules change is placed on the agenda of the Board of Governors, the Board may adopt the comments and the Board's own views, in which case no mandatory disclaimer (see Guideline No. 14) need be placed on the comments. If the Board and the Sections differ on the proposal, each may submit its own views.

Please call me by 5:00 p.m., Friday, September 12, 1986 if you wish to have this matter placed on the Board of Governors' agenda for October 14, 1986

I may be reached at 331-3883.

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MEMORANDUM

TO: Board of Governors
Section Chairpersons

FROM: Lynne M. Lester
Manager, Sections Office

DATE: September 10, 1986 EMERGENCY CONSIDERATION REQUESTED

SUBJECT: Comments addressed to the D.C. Court of Appeals in opposition to the proposed amendment to Rule XI, Section 9 of the rules governing the Bar of the District of Columbia to provide that members of BPR, hearing committees, Bar Counsel and all assistants and employees shall be immune from disciplinary complaints

Pursuant to the Section Guidelines No. 13, Sections a and c, the enclosed public statement is being sent to you by Court Rules Committee, Courts, Lawyers and the Administration of Justice Section

a(iii): "No later than 12:00 noon on the seventh (7th) day before the statement is to be submitted to the legislative or governmental body, the Section will forward (by mail or otherwise) a one-page summary of the comments, (summary forms may be obtained through the Sections Office), the full text of the comments, and the full text of the legislative or governmental proposal to the Manager of Sections. The one-page summary woll be sent to the Chairperson(s) of each Section steering committee and any other D.C. Bar committee that appear to have an interest in the subject matter of the comments. A copy of the full text and the one-page summary will be forwarded to the Executive Director of the Bar, the President and President-Elect of the Bar, the Section's Board of Governors liaison, and the Chairperson and Vice-Chairperson of the Council of Sections. Copies of the full text will be provided upon request through the Sections Office. Reproduction and postage expenses will be incurred by whomever requested the full text (i.e., Section, Bar committee or Board of Governors account). The

COMMENT OF SECTION IV OF THE DISTRICT OF COLUMBIA BAR ON PROPOSED AMENDMENT TO RULE XI, SECTION 9 OF THE RULES GOVERNING THE D.C. BAR

Ellen Bass, Co-Chair
Arthur B. Spitzer
Richard B. Hoffman
Gerald P. Greiman
John T. Boese
Cornish F. Hitchcock
Jay A. Resnick

Steering Committee
Section IV

Randell Hunt Norton, Co-Chair
Thomas C. Papson, Co-Chair
Richard B. Nettler*
Cornish F. Hitchcock

Members of the Section's Committee on Court Rules Who Participated in this Comment

* Principal author

STANDARD DISCLAIMER

"The views expressed herein represent only those of the Courts, Lawyers, and the Administration of Justice Section of the D.C. Bar and not those of the D.C. Bar or of its Board of Governors."

COMMENTS ON PROPOSED AMENDMENT
TO RULE XI, SECTION 9 OF THE RULES GOVERNING
THE BAR OF THE DISTRICT OF COLUMBIA

The Court of Appeals proposes to amend Rule XI, section 9 of the Rules Governing the Bar of the District of Columbia to provide that members of the Board on Professional Responsibility, members of hearing committees, Bar Counsel and all assistants and employees shall be immune from disciplinary complaint. This comment on the proposal is submitted by the Courts, Lawyers and the Administration of Justice Section of the District of Columbia Bar and its Committee on Court Rules.

Rules XI already provides that the identified persons are immune from suit for any conduct in the course of their official duties. The Section is not convinced that the Court had the authority to provide such immunity from suit by rule. See In re C.A.P., 356 A.2d 335 (D.C. 1976); Haynes v. District of Columbia, 503 A.2d (D.C. 1986). But see In re Nace, 490 A.2d 1120 (D.C. 1986). In any event, the Section recommends that the Court refrain from amending Rules XI, section 9 to provide immunity from disciplinary action and instead make it clear that such officials do not enjoy immunity from discipline. Clearly, the amendment proposed is a response to this Court's holding in Nace that there is such immunity.

We are unaware of any policy reason for providing the proposed immunity from disciplinary action. Judges and attorneys are subject to disciplinary proceedings for their conduct (see, e.g., D.C. Code Sections 11-1526, 11-1527) and we believe that members of the Board on Professional Responsibility, Bar Counsel, members of hearing committees and other employees should be treated similarly. Moreover, the reasons for which judges are immune from suit certainly have not provided a basis for immunizing them from disciplinary action. See 28 U.S.C. § 372. We also note that by depriving aggrieved individuals of a local forum, the Court almost certainly ensures that there will be an increase in attempted use of the federal courts as a perceived remedy for individual complaints. After all, the Court cannot provide the disciplinary staff with immunity from suit in federal court; yet these matters are of local concern.

Neither the Model Standards for Lawyer Discipline and Disability Proceedings nor the Model Rules for Lawyer Disciplinary Enforcement provide for or suggest that lawyers employed or participating in the disciplinary system should be immune from complaint. The standards provide for immunity from civil liability "for all acts in the course of their official duties" and the commentary adds, "Conduct on the

part of agency personnel which is not authorized or exceeds assigned duties is not protected." ABA/BNA Lawyers' Manual on Professional Conduct, standard 3.10, at 01:508-509. The rules provide civil immunity "from suit for any conduct in the course of their official duties." Id., Rule 12, at 01:609.

In closing, we believe that the fair administration of justice counsels against immunizing the members of the disciplinary staff from being subjected to disciplinary action where warranted.