CM - Note 10 - Use of Depositions in Remedial and Disciplinary Cases

In 2002, the 214th General Assembly passed an Authoritative Interpretation regarding the use of depositions in Remedial and Disciplinary Cases. GA (2002) p.67, 300, Item 04-13.

The Assembly stated that the Rules of Discipline do not intend the use of depositions as "discovery". The sections allowing for testimony by deposition are both found in provisions governing evidence at trials. (D-7.0205, D-11.0204). These sections are in the context of provisions governing the appearance and mode of testimony at a trial.

The rules of Discipline clarify the procedure for the taking of depositions in D-14.0304. The session or permanent judicial commission conducting a case has sole power and discretion to allow depositions or to decline to enable them. There is not a free, unlimited opportunity for parties in a case to conduct depositions of any and all potential witnesses. Weighing fairness, expense, legitimacy, validity, and practicality the session or commission may or may not exercise its power to appoint persons to take and record testimony. The party making application for depositions to be held may be required to show the necessity of recording testimony in this form. Depositions are not ordinarily required for the just and complete conduct of a case of judicial process.

Most often, depositions have been used as a means for recording testimony of witnesses who are unavailable to appear at the trial. The procedures for taking depositions ensure that all parties are entitled to be present and be permitted to cross-examine. D-14.0304b. Further, the session or permanent judicial commission determines any questions concerning the admissibility of statements made in deposition when the record of such testimony is offered as evidence. D-14.0304d. The 1994 GAPJC case, *PC (USA) v. Truscott*, bolsters this use of depositions when it limited the use of telephone testimony because of the inability of the PJC to note demeanor and reliability over the telephone. The case notes that if a party is unable to appear, the Rules provide for the use of depositions. The case does not address the use of affidavits or prior recorded testimony.

If a party wants to request that depositions be taken, the party has the option to utilize Form 45 for a Remedial Case or Form 18 for a Disciplinary Case.