

WSR 13-11-050
RULES OF COURT
STATE SUPREME COURT

[May 10, 2013]

IN THE MATTER OF THE ADOPTION OF) ORDER
 NEW GR 31.1 - ACCESS TO ADMINISTRA-) NO. 25700-A-
 TIVE RECORDS) 1022

The Court having considered a proposed new General Rule (GR) 31.1 - Access to Administrative Records and having considered the written public comments, and

The Court having made substantial revisions to the proposed rule in response to the public comments, and

The Court having approved new GR 31.1 for publication for an expedited 90-day period for the receipt of further comments;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), new proposed GR 31.1 as shown below is to be published for an expedited 90-day period for comments in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar, and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-mail by no later than August 26, 2013. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Denise.Foster@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 10th day of May, 2013.

For the Court

Madsen, C.J.

CHIEF JUSTICE

Background Statement

Proposed New Rule
GENERAL RULES (GR)

GR 31.1 - Access to Administrative Records

Purpose:

Overview. Proposed GR 31.1 is a revised version of a proposal that was most recently published for comment in September 2012. After reviewing those public comments, the Supreme Court has made many revisions to the proposal. Due to the significance and scope of the changes, the Supreme Court is republishing the proposal for the receipt of further comments.

Background for proposal. The proposed rule has been published twice before for public comments, once in June 2011 and once in September 2012. Each time the rule has been republished for further comments due to the extent of the changes that the rule has undergone in response to the comments that have been received.

Information about the first version of the proposed rule, published for comment in June 2011, can be found at http://www.courts.wa.gov/court_rules/?fa=court_rules_proposedRuleDisplay&ruleId=258. Information at this link includes the text of the original proposal, a background as to the need for the rule, an overview of its major provisions, and the comments that were received.

Information about the second version of the proposed rule, published for comment in September 2012, can be found at http://www.courts.wa.gov/court_rules/?fa=court_rules_proposedRuleDisplay&ruleId=285. Included there is the text of the second proposal, a background statement including a list of the more notable changes made since the first proposal, and the comments that were received.

An overview of the proposed rule as a whole can be found at these earlier links. The following section summarizes the most recent changes that have been made to the proposed rule.

Summary of the revisions contained in the current proposed rule. The current proposal involves many changes from the second proposal. These changes most notably include:

- Documents about judges' meetings. The previous version had provided a blanket exemption from disclosure for any document that was prepared for use at a meeting of judges. This blanket exemption has now been removed, so that such documents would be treated like any other "deliberative process" document - they are exempt until a final decision is made on the final policy decision that is discussed in the document, but then become open to public access. The current version also adds a new comment reminding courts and agencies that they may exercise their discretion to disclose meeting minutes that do not contain confidential information. See section (l)(2).
- Chambers records—Electronic documents stored on external servers. Comment language has been added clarifying that electronic documents that a judge's chambers stores on an external server are still under the control of the chambers for purposes of qualifying as chambers records (chambers records are not open to public access). See the comment for section (m)(1).
- Electronic documents that are stored on judicial employees' personal electronic devices. Comment language is added indicating that courts and judicial agencies will need to consider adopting policies regarding the use by judicial employees of their personally owned electronic devices to conduct official business. See the comment to section (c)(1).
- Review of visiting judge's records-review decision. Under the rule, a records requester who is dissatisfied with a court or agency's records decision has two ways to seek review, one of which involves informal review by a visiting judge or other outside decision-maker. Under the previous version, the informal decision by the visiting judge or outside decision-maker was final and not subject to further review. In the current version, the Informal decision

by the visiting judge or outside decision-maker is subject to further review via a writ filed in superior court. Language is also added clarifying that the review decisions by a visiting judge are part of the judicial function. See section (d)(4)(2).

- Requests that involve harassment, intimidation, security threats, or criminal activity. These are now grounds for denying a records request. In the previous version, these were instead grounds for seeking a court injunction. See section (c)(7).
- Certified Professional Guardian records. The standards for public access to records of the Certified Professional Guardian Board have been revised to allow for greater access to records concerning grievances filed against certified professional guardians. See section (l)(12).
- Bad faith decisions. The current version no longer has a provision on bad faith decisions. The previous version had set forth the penalties that exist under other rules and statutes for decisions that are made in bad faith. Because these are already addressed elsewhere, they are not being restated in this rule.
- Fees for access to records. The current version allows courts and judicial agencies to require prepayment of fees and allows them to require a deposit in an amount up to the estimated cost of providing requested copies. See section (h).
- Presumption of public access. This presumption has been moved from the interior of the rule into the opening section for greater visibility. See section (a).
- Appointment of defense experts. The current version narrows the exemption in the rule for records related to the appointment of defense experts in criminal cases. Under the new version, the exemption applies only until the underlying case is concluded in the courts, and routine payment records will now be open to public access if they do not contain confidential information. See section (l)(6).
- "Deliberative process" documents. The rule has been clarified to state directly that the exemption for documents that discuss pending policy decisions is time-limited; once a final decision is made on the issue that is being discussed in a document, the document becomes open to public access. See section (l)(3).

GENERAL RULE 31.1

ACCESS TO ADMINISTRATIVE RECORDS

GENERAL PRINCIPLES

(a) Policy and Purpose. Consistent with the principles of open administration of justice as provided in article I, section 10 of the Washington State Constitution, it is the policy of the judiciary to facilitate access to administrative records. A presumption of access applies to the judiciary's administrative records. Access to administrative records, however, is not absolute and shall be consistent with exemptions for personal privacy, restrictions in statutes, restrictions in court rules, and as required for the integrity of judicial decision-

making. Access shall not unduly burden the business of the judiciary.

(b) Overview of Public Access to Judicial Records.

There are three categories of judicial records.

(1) Case records are records that relate to in-court proceedings, including case files, dockets, calendars, and the like. Public access to these records is governed by GR 31, which refers to these records as "court records," and not by this GR 31.1. Under GR 31, these records are presumptively open to public access, subject to stated exceptions.

(2) Administrative records are records that relate to the management, supervision, or administration of a court or judicial agency. A more specific definition of "administrative records" is in section (i) of this rule. Under section (j) of this rule, administrative records are presumptively open to public access, subject to exceptions found in sections (j) and (l) of this rule.

(3) Chambers records are records that are controlled and maintained by a judge's chambers. A more specific definition of this term is in section (m) of this rule. Under section (m), chambers records are not open to public access.

PROCEDURES FOR ADMINISTRATIVE RECORDS

(c) Procedures for Records Requests.

(1) COURTS AND JUDICIAL AGENCIES TO ADOPT PROCEDURES. Each court and judicial agency must adopt a policy implementing this rule and setting forth its procedures for accepting and responding to administrative records requests. The policy must include the designation of a public records officer and must require that requests for access be submitted in writing to the designated public records officer. Best practices for handling administrative records requests shall be developed under the authority of the Board for Judicial Administration.

COMMENT: When adopting policies and procedures, courts and judicial agencies will need to carefully consider many issues, including the extent to which judicial employees may use personally owned computers and other media devices to conduct official business and the extent to which the court or agency will rely on the individual employee to search his or her personally owned media devices for documents in response to a records request. For judicial officers, documents on personal media devices may still qualify as chambers records, see section (m) of this rule.

(2) PUBLICATION OF PROCEDURES FOR REQUESTING ADMINISTRATIVE RECORDS. Each court and judicial agency must prominently publish the procedures for requesting access to its administrative records. If the court or judicial agency has a website, the procedures must be included there. The publication shall include the public records officer's work mailing address, telephone number, fax number, and e-mail address.

(3) INITIAL RESPONSE. Each court and judicial agency must initially respond to a written request for access to an administrative record within five working days of its receipt. The response shall acknowledge receipt of the request and include a good-faith estimate of the time needed to respond to the request. The estimate may be later revised, if necessary. For purposes of this provision, "working days" mean days that the court or judicial agency, including a part-time municipal court, is open.

(4) **COMMUNICATION WITH REQUESTER.** Each court and judicial agency must communicate with the requester as necessary to clarify the records being requested. The court or judicial agency may also communicate with the requester in an effort to determine if the requester's need would be better served with a response other than the one actually requested.

(5) **SUBSTANTIVE RESPONSE.** Each court and judicial agency must respond to the substance of the records request within the timeframe specified in the court's or judicial agency's initial response to the request. If the court or judicial agency is unable to fully comply in this timeframe, then the court or judicial agency should comply to the extent practicable and provide a new good faith estimate for responding to the remainder of the request. If the court or judicial agency does not fully satisfy the records request in the manner requested, the court or judicial agency must justify in writing any deviation from the terms of the request.

(6) **EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS.** If a particular request is of a magnitude that the court or judicial agency cannot fully comply within a reasonable time due to constraints on the court's or judicial agency's time, resources, and personnel, the court or judicial agency shall communicate this information to the requester. The court or judicial agency must attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the court's or judicial agency's response, which may include a schedule of installment responses. If the court or judicial agency and requester are unable to reach agreement, then the court or judicial agency shall respond to the extent practicable and inform the requester that the court or judicial agency has completed its response.

(7) **RECORDS REQUESTS THAT INVOLVE HARASSMENT, INTIMIDATION, THREATS TO SECURITY, OR CRIMINAL ACTIVITY.** A court or judicial agency may deny a records request if it determines that: the request was made to harass or intimidate the court or judicial agency or its employees; fulfilling the request would likely threaten the security of the court or judicial agency; fulfilling the request would likely threaten the safety or security of judicial officers, staff, family members of judicial officers or staff, or any other person; or fulfilling the request may assist criminal activity.

(d) Review of Records Decision.

(1) **NOTICE OF REVIEW PROCEDURES.** The public records officer's response to a public records request shall include a written summary of the procedures under which the requesting party may seek further review.

(2) **DEADLINE FOR SEEKING INTERNAL REVIEW.** A record requester's petition under section (d)(3) seeking internal review of a public records officer's decision must be submitted within 90 days of the public records officer's decision.

(3) **INTERNAL REVIEW WITHIN COURT OR AGENCY.** Each court and judicial agency shall provide a method for review by the judicial agency's director, presiding judge, or judge designated by the presiding judge. For a judicial agency, the presiding judge shall be the presiding judge of the court that oversees the agency. The court or judicial agency may also establish intermediate levels of review. The court or judicial agency shall make publicly available the applicable forms. The review proceeding is informal and summary. The review

proceeding shall be held within five working days. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

(4) **EXTERNAL REVIEW.** Upon the exhaustion of remedies under section (d)(3), a record requester aggrieved by a court or agency decision may obtain further review by choosing between the two alternatives set forth in subsections (i) and (ii) of this section (d)(4).

(i) **REVIEW VIA CIVIL ACTION IN COURT.** The requesting person may use a judicial writ of mandamus, prohibition, or certiorari to file a civil action in superior court challenging the records decision.

COMMENT: Subsection (i) does not create any new judicial remedies, but merely recognizes existing procedures for initiating a civil action in court.

(ii) **INFORMAL REVIEW BY VISITING JUDGE OR OTHER OUTSIDE DECISION MAKER.** The requesting person may seek informal review by a person outside the court or judicial agency. If the requesting person seeks review of a decision made by a court or made by a judicial agency that is directly reportable to a court, the outside review shall be by a visiting judicial officer. If the requesting person seeks review of a decision made by a judicial agency that is not directly reportable to a court, the outside review shall be by a person agreed upon by the requesting person and the judicial agency. In the event the requesting person and the judicial agency cannot agree upon a person, the presiding superior court judge in the county in which the judicial agency is located shall either conduct the review or appoint a person to conduct the review. The review proceeding shall be informal and summary. The decision resulting from the informal review proceeding may be further reviewed in superior court pursuant to a writ of mandamus, prohibition, or certiorari. Decisions made by a judge under this subsection (ii) are part of the judicial function.

(iii) **DEADLINE FOR SEEKING EXTERNAL REVIEW.** A request for external review must be submitted within 30 days of the issuance of the court or judicial agency's final decision under section (d)(3).

(e) Monetary Awards Not Allowed. Attorney fees, costs, civil penalties, or fines may not be awarded under this rule.

(f) Persons Who Are Subjects of Records.

(1) Unless otherwise required or prohibited by law, a court or judicial agency has the option of notifying a person named in a record or to whom a record specifically pertains, that access to the record has been requested.

(2) A person who is named in a record, or to whom a record specifically pertains, may present information opposing the disclosure to the applicable decision maker under sections (c) and (d).

(3) If a court or judicial agency decides to allow access to a requested record, a person who is named in that record, or to whom the record specifically pertains, has a right to initiate review under subsections (d)(3)-(4) or to participate as a party to any review initiated by a requester under subsections (d)(3)-(4). If either the record subject or the record requester objects to informal review under subsection (d)(4)(ii), such alternative shall not be available. The deadlines that apply to

a requester apply as well to a person who is a subject of a record.

(g) Court and Judicial Agency Rules. Each court may from time to time make and amend local rules governing access to administrative records not inconsistent with this rule. Each judicial agency may from time to time make and amend agency rules governing access to its administrative records not inconsistent with this rule.

(h) Charging of Fees.

(1) A fee may not be charged to view administrative records.

(2) A fee may be charged for the photocopying or scanning of administrative records. If another court rule or statute specifies the amount of the fee for a particular type of record, that rule or statute shall control. Otherwise, the amount of the fee may not exceed the amount that is authorized in the Public Records Act, Chapter 42.56 RCW.

(3) The court or judicial agency may require a deposit in an amount not to exceed the estimated cost of providing copies for a request. If a court or judicial agency makes a request available on a partial or installment basis, the court or judicial agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed within 30 days, the court or judicial agency is not obligated to fulfill the balance of the request.

(4) A fee not to exceed \$30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.

COMMENT: The authority to charge for research services is discretionary, allowing courts to balance the competing interests between recovering the costs of their response and ensuring the open administration of justice. The fee should not exceed the actual costs of response.

(5) A court or judicial agency may require prepayment of fees.

APPLICATION OF RULE FOR ADMINISTRATIVE RECORDS

This rule applies to all administrative records, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record.

(i) Definitions.

(1) "Access" means the ability to view or obtain a copy of an administrative record.

(2) "Administrative record" means a public record created by or maintained by a court or judicial agency and related to the management, supervision, or administration of the court or judicial agency.

COMMENT: The term "administrative record" does not include any of the following: (1) "court records" as defined in GR 31; (2) chambers records as set forth later in this rule; or (3) an attorney's client files that would otherwise be covered by the attorney-client privilege or the attorney work product privilege.

(3) "Court record" is defined in GR 31.

(4) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(5) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however consti-

tuted, or any other organization or group of persons, however organized.

(6) "Public record" includes any writing, except chambers records and court records, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any court or judicial agency regardless of physical form or characteristics. "Public record" also includes meta-data for electronic administrative records.

(7) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

COMMENT: E-mails and telephone records are included in this broad definition of "writing."

(j) Administrative Records—General Right of Access. Court and judicial agency administrative records are open to public access unless access is exempted or prohibited under this rule, other court rules, federal statutes, state statutes, court orders, or case law. To the extent that records access would be exempt or prohibited if the Public Records Act applied to the judiciary's administrative records, access is also exempt or prohibited under this rule. To the extent that an ambiguity exists as to whether records access would be exempt or prohibited under this rule or other enumerated sources, responders and reviewing authorities shall be guided by the Public Records Act, Chapter 42.56 RCW, in making interpretations under this rule. In addition, to the extent required to prevent a significant risk to individual privacy or safety interests, a court or judicial agency shall delete identifying details in a manner consistent with this rule when it makes available or publishes any public record; however, in each instance, the justification for the deletion shall be provided fully in writing.

(k) Entities Subject to Rule.

(1) This rule applies to the Supreme Court, the Court of Appeals, the superior courts, the district and municipal courts, and the following judicial branch agencies:

(i) All judicial organizations that are overseen by a court, including entities that are designated as agencies, departments, committees, boards, commissions, task forces, and similar groups;

(ii) The Superior Court Judges' Association, the District and Municipal Court Judges' Association, and similar associations of judicial officers and employees; and

(iii) All subgroups of the entities listed in this section (k)(1).

COMMENT: The elected court clerks and their staff are not included in this rule because (1) they are covered by the Public Records Act and (2) they do not generally maintain the judiciary's administrative records that are covered by this rule.

(2) This rule applies to the Office of Civil Legal Aid and the Office of Public Defense.

(3) This rule does not apply to the Washington State Bar Association. Public access to the Bar Association's records is governed by [a proposed General Rule 12.4, pending before the Supreme Court].

(4) A judicial officer is not a court or judicial agency.

COMMENT: This provision protects judges and court commissioners from having to respond personally to public records requests. Records requests would instead go to the court's public records officer.

(5) An attorney or entity appointed by a court or judicial agency to provide legal representation to a litigant in a judicial or administrative proceeding does not become a judicial agency by virtue of that appointment.

(6) A person or agency entrusted by a judicial officer, court, or judicial agency with the storage and maintenance of its public records, whether part of a judicial agency or a third party, is not a judicial agency. Such person or agency may not respond to a request for access to administrative records, absent express written authority from the court or judicial agency or separate authority in court rule to grant access to the documents.

COMMENT: Judicial e-mails and other documents sometimes reside on IT servers, some are in off-site physical storage facilities. This provision prohibits an entity that operates the IT server from disclosing judicial records. The entity is merely a bailee, holding the records on behalf of a court or judicial agency, rather than an owner of the records having independent authority to release them. Similarly, if a court or judicial agency puts its paper records in storage with another entity, the other entity cannot disclose the records. In either instance, it is the court or judicial agency that needs to make the decision as to releasing the records. The records request needs to be addressed by the court's or judicial agency's public records officer, not by the person or entity having control over the IT server or the storage area. On the other hand, if a court or judicial agency archives its records with the state archivist, relinquishing by contract its own authority as to disposition of the records, the archivist would have separate authority to disclose the records. Because of this rule's broad definition of "public record", this paragraph (6) would apply to electronic records, such as e-mails (and their meta-data) and telephone records, among a wide range of other records.

(I) Exemptions. In addition to exemptions referred to in section (j), the following categories of administrative records are exempt from public access:

(1) Requests for judicial ethics opinions;

(2) Minutes of meetings held exclusively among judges, along with any staff;

COMMENT: Meeting minutes do not always contain information that needs to be withheld from public access. Courts have discretion whether to release meeting minutes, because an exemption from this rule merely means that a document is not required to be disclosed. Disclosure would be appropriate if the document does not contain information of a confidential, sensitive, or protected nature. Courts and judicial agencies are encouraged to carefully consider whether some, or all, of their meeting minutes should be open to public access. Adopting a local rule on this issue would assist the public in knowing which types of minutes are accessible and which are not.

(3) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this rule, except that a specific record is not exempt when publicly cited by a court or agency in connection with any court or agency action. This exemption applies to a record only while a final decision is pending on the issue that is being addressed in that record; once the final decision has been made, the record is no longer covered by this exemption.

(4) Evaluations and recommendations concerning candidates seeking appointment or employment within a court or judicial agency;

COMMENT: Paragraph (4) is intended to encompass documents such as those of the Supreme Court's Capital Counsel Committee, which evaluates attorneys for potential inclusion on a list of attorneys who are specially qualified to represent clients in capital cases.

(5) Personal identifying information, including individuals' home contact information, Social Security numbers, driver's license numbers, and identification/security photographs;

(6) Documents related to an attorney's request for a trial or appellate court defense expert, investigator, or other services, any report or findings submitted to the attorney or court or judicial agency by the expert, investigator, or other service provider, and the invoicing of the expert, investigator or other service provider during the pendency of the case in any court. Payment records are not exempt, provided that they do not include medical records, attorney work product, information protected by attorney-client privilege, information sealed by a court, or otherwise exempt information;

(7) Documents, records, files, investigative notes and reports, including the complaint and the identity of the complainant, associated with a court's or judicial agency's internal investigation of a complaint against the court or judicial agency or its contractors during the course of the investigation. The outcome of the court's or judicial agency's investigation is not exempt;

(8) Family court evaluation and domestic violence files when no action is legally pending;

(9) Family court mediation files; and

(10) Juvenile court probation social files.

(11) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans, the disclosure of which would have a substantial likelihood of threatening the security of a judicial facility or any individual's safety.

(12) The following records of the Certified Professional Guardian Board:

(i) Investigative records compiled by the Board as a result of an investigation conducted by the Board as part of the application process, while a disciplinary investigation is in process under the Board's rules and regulations, or as a result of any other investigation conducted by the Board while an investigation is in process. Investigative records related to a grievance become open to public inspection once the investigation is completed.

(ii) Deliberative records compiled by the Board or a panel or committee of the Board as part of a disciplinary process.

(iii) A grievance shall be open to public access, along with any response to the grievance submitted by the professional guardian or agency, once the investigation into the grievance has been completed or once a decision has been made that no investigation will be conducted. The name of the professional guardian or agency shall not be redacted from the grievance.

CHAMBERS RECORDS

(m) Chambers Records. Chambers records are not administrative records and are not subject to disclosure.

COMMENT: Access to chambers records could necessitate a judicial officer having to review all records to protect against disclosing case sensitive information or other information that would intrude on the independence of judicial decision-making. This would effectively make the judicial officer a de facto public records officer and could greatly interfere with judicial functions.

(1) "Chambers record" means any writing that is created by or maintained by any judicial officer or chambers staff, and is maintained under chambers control, whether directly related to an official judicial proceeding, the management of the court, or other chambers activities. "Chambers staff" means a judicial officer's law clerk and any other staff when providing support directly to the judicial officer at chambers.

COMMENT: Some judicial employees, particularly in small jurisdictions, split their time between performing chambers duties and performing other court duties. An employee may be "chambers staff" as to certain functions, but not as to others. Whether certain records are subject to disclosure may depend on whether the employee was acting in a chambers staff function or an administrative staff function with respect to that record.

Records may remain under chambers control even though they are stored elsewhere. For example, records relating to chambers activities that are stored on a judge's personally owned or workplace-assigned computer, laptop computer, cell phone, and similar electronic devices would still be chambers records. As a further example, records that are stored for a judicial chambers on external servers would still be under chambers control to the same extent as if the records were stored directly within the chambers. However, records that are otherwise subject to disclosure should not be allowed to be moved into chambers control as a means of avoiding disclosure.

(2) Court records and administrative records do not become chambers records merely because they are in the possession or custody of a judicial officer or chambers staff.

COMMENT: Chambers records do not change in character by virtue of being accessible to another chambers. For example, a data base that is shared by multiple judges and their chambers staff is a "chambers record" for purposes of this rule, as long as the data base is only being used by judges and their chambers staff.

IMPLEMENTATION AND EFFECTIVE DATE

(n) Best Practices. Best practice guidelines adopted by the Supreme Court may be relied upon in acting upon public requests for documents.

(o) Effective Date of Rule.

(1) This rule goes into effect on _____, and applies to records that are created on or after that date.

COMMENT: A delayed effective date will be used to allow time for development of best practices, training, and implementation.

(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test. The Public Records Act, Chapter 42.56 RCW, does not apply to judicial records, but it may be used for non-binding guidance.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-12-003**INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY**

[Filed May 22, 2013, 2:07 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA**Legal and Administrative Services**

Document Title: Provider Notice #13-34.

Subject: Outpatient hospital services.

The agency made extensive changes to the MPG to: Improve clarity, add updated policy for sleep studies, and add PA requirements for new drugs billed under misc. CPT codes or product-specific CPT codes. For a complete list of changes, refer to the "What Has Changed" table in the Outpatient Hospital Services Medicaid Provider Guide.

For additional information, contact Amber Lougheed, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail amber.lougheed@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 13-12-007**RULES COORDINATOR
RECREATION AND CONSERVATION
OFFICE**

[Filed May 23, 2013, 9:54 a.m.]

Pursuant to RCW 34.05.312, Sarah Gage has been designated as the new rules coordinator for the recreation and conservation office. She is replacing Dominga Soliz, who will no longer be with the agency.

Ms. Gage's contact information is Recreation and Conservation Office, P.O. Box 40917, Olympia, WA 98501-0917, phone (360) 902-3027, fax (360) 902-3026, Sarah.Gage@rco.wa.gov.

Kaleen Cottingham
Director

WSR 13-12-013**NOTICE OF PUBLIC MEETINGS
OFFICE OF
CIVIL LEGAL AID**

(Civil Legal Aid Oversight Committee)

[Filed May 24, 2013, 10:29 a.m.]

NOTICE OF MEETING CHANGE

Please be advised that the quarterly meeting of the civil legal aid oversight committee previously scheduled to be conducted in-person on June 14, 2013, will now be conducted by telephonic conference call on Friday, June 14, 2013, from 10:00 a.m. to 11:00 a.m.

What: Quarterly Meeting of the Civil Legal Aid Oversight Committee
When: Friday, June 14, 2013
Time: 10:00 a.m. - 11:00 a.m.
Where: Telephone Conference Call
1-866-244-8528
Passcode: 871231

October 8, 2013
November 12, 2013

Mount Vernon Campus
Whidbey Island Campus
1900 S.E. Pioneer Way
Oak Harbor, WA 98277

December 2013 - No regular meeting is scheduled.

January 14, 2014
February 11, 2014
March 11, 2014
April 8, 2014
May 13, 2014

Mount Vernon Campus
Mount Vernon Campus
Mount Vernon Campus
Mount Vernon Campus
Whidbey Island Campus
1900 S.E. Pioneer Way
Oak Harbor, WA 98277
Mount Vernon Campus

This is an open meeting. Persons with disabilities or special needs who require assistance participating in this meeting should contact James Bamberger, Director, Office of Civil Legal Aid, P.O. Box 41183, Olympia, WA 98504-1183, (360) 704-4135, jim.bamberger@ocla.wa.gov.

Materials will be provided electronically to oversight committee members, liaisons and other interested persons prior to the meeting and will be posted on the oversight committee's web page.

WSR 13-12-020
RULES OF COURT
STATE SUPREME COURT

[May 23, 2013]

WSR 13-12-018
INTERPRETIVE AND POLICY STATEMENT
DEPARTMENT OF REVENUE

[Filed May 24, 2013, 2:27 p.m.]

INTERPRETIVE STATEMENT ISSUED

The department has issued ETA 3050.2013. This excise tax advisory (ETA) explains the public utility (PUT), business and occupation (B&O), and retail sales tax reporting responsibilities for various services commonly provided by dump truck operators.

A copy of this document is available via the internet at Recent Rule and Interpretive Statements, Adoptions, and Repeals.

Alan R. Lynn
Rules Coordinator

IN THE MATTER OF THE ADOPTION) ORDER
OF THE AMENDMENTS TO THE STAN-) NO. 25700-A-1023
DARDS FOR INDIGENT DEFENSE AND)
CERTIFICATION OF COMPLIANCE)
FORM FOR CrR 3.1 (d)(4), JuCR 9.2 (d)(1))
and CrRLJ 3.1 (d)(4))

WHEREAS under CrR 3.1 (d)(4), JuCR 9.2 (d)(1) and CrRLJ 3.1 (d)(4), and the Certification of Compliance Form, public defense attorneys are required to certify that they comply with the applicable Standards for Indigent Defense Services on a quarterly basis; and

WHEREAS the implemented quarterly certification schedule is October 1, January 1, April 1, and July 1; and

WHEREAS the Certification of Compliance Form at Section 2(d), Caseload, and Section 2(e), Specific Qualifications, identify effective dates of September 1, 2013 rather than October 1, 2013; and

WHEREAS the effective date for Standards for Indigent Defense 3.4, Caseload Limits, should be in conformance with the certification schedule;

Now, therefore, it is hereby

ORDERED:

That the effective dates of Certification of Compliance Form Section 2(d) and Section 2(e) be changed to October 1, 2013.

IT IS FURTHER ORDERED

That the effective date for Standards for Indigent Defense 3.4 be changed to October 1, 2013, EXCEPT for misdemeanor caseload limits, which have an effective date of January 1, 2015.

DATED at Olympia, Washington this 23 day of May, 2013.

WSR 13-12-019
NOTICE OF PUBLIC MEETINGS
SKAGIT VALLEY COLLEGE

[Filed May 24, 2013, 2:54 p.m.]

The Skagit Valley College board of trustees, at their May 14, 2013, meeting, approved the following meeting dates for 2013-2014. Unless otherwise noted, all meetings will be held the second Tuesday of the month, at the Mount Vernon Campus, Multipurpose Room, 2405 East College Way, Mount Vernon, WA 98273, and will begin at 4:30 p.m.

July 2013-June 2014
Board Meeting Dates

Table with 2 columns: Date, Location. Rows include July 2013 (no meeting), August 2013 (no meeting), and September 11, 2013 (Wednesday) at Mount Vernon Campus.

For the Court

Madsen, C.J.
CHIEF JUSTICE

CERTIFICATION OF COMPLIANCE

[New]

For criminal and juvenile offender cases, a signed Certification of Compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

SEPARATE CERTIFICATION FORM

_____ Court of Washington	
for _____	
State of Washington	No.
Plaintiff	CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CrR 3.1/CrRLJ 3.1/JuCR 9.2
vs.	

Defendant	

The undersigned attorney hereby certifies:

1. Approximately _____% of my total practice time is devoted to indigent defense cases.

2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:

a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.

b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.

c. **Investigators:** I have investigators available to me and will use investigation services as appropriate, in compliance with Standard 6.1.

d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases. [Effective ~~September~~ October 1, 2013 for felony and juvenile offender caseloads; effective January 1, 2015 for misdemeanor caseloads: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]

e. **Specific Qualifications:** I meet the specific qualifications in Standard 14.2, Sections B-K. [Effective ~~September~~ October 1, 2013.]

Defendant's Lawyer, WSBA No. _____ Date _____

Standard 3.4. Caseload Limits. The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

- 150 Felonies per attorney per year; or

- 300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year; or
- 250 Juvenile Offender cases per attorney per year; or
- 80 open Juvenile Dependency cases per attorney; or
- 250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court case at a time plus a limited number of non-death-penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2; or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. (The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full-time attorneys.

Standard 3.4 adopted effective ~~September~~ October 1, 2013, EXCEPT paragraph 3, misdemeanor caseload limits, adopted effective January 1, 2015.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-12-021

HEALTH CARE AUTHORITY

[Filed May 28, 2013, 2:43 p.m.]

AMENDED NOTICE

Title or Subject: Medicaid State Plan Amendment 13-11.

Effective Date: April 1, 2013.

Description: The health care authority previously published its intention to submit Medicaid State Plan Amendment (SPA) 13-11 "to remove an out-of-date Supplemental Rebate Agreement (SRA) for drugs approved in SPA 02-001, as well as out-of-date references to SRAs associated with SPAs 03-024 and 08-001, which were removed from the medicaid state plan with CMS approval on December 16, 2011." The agency wishes to amend the above information as follows: SPA 13-11 will remove outdated SRAs associated with SPAs 02-001 and 03-024 and the accompanying cross-references, and keep the reference associated with SPA 08-001. The CMS approval received on December 16, 2011, did not officially remove the SRAs associated with SPAs 03-024 and 08-001 from the medicaid state plan. SPA 13-11 will officially remove those SRAs. Removing the SRAs and the cross-references will have no impact on federal, state, provider, or manufacturer expenditures because the SRAs are not in use.

For additional information, contact Charles Agte, Pharmacy, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1301, TDD/TTY 1-800-848-5429, fax (360) 725-2141, e-mail charles.agte@hca.wa.gov.

WSR 13-12-022

NOTICE OF PUBLIC MEETINGS

WINE COMMISSION

[Filed May 28, 2013, 2:51 p.m.]

2013 SCHEDULE OF COMMISSIONER BOARD MEETINGS

As of May 22, 2013

Below are the 2013 meeting dates for the Washington wine commission board:

- Friday, January 11 Seattle
- Friday, February 8 Three Rivers Convention Center
Conference Rooms G & H
Kennewick
2:30 p.m. to 5:00 p.m.
- Friday, March 15 El Gaucho Bellevue
Seven Hills Room
450 108th Avenue N.E.
Bellevue
9:00 a.m. to 5:00 p.m.
Extended meeting to include after-
noon board workshop.
- Friday, April 12 Richland
- Friday, May 10 Seattle
- Friday, June 7 Walter Clore Wine & Culinary Cen-
ter Vineyard Pavilion
Prosser
9:00 a.m. to 12:00 p.m.
- Friday, July 12 Washington State
Apple Commission
Conference Room
2900 Euclid Avenue
Wenatchee
(509) 663-9600
9:00 a.m. to 12:00 p.m.
- August 9 Seattle
- Friday, September 13 Richland
- October No meeting
- November No meeting
- Friday, December 13 Chateau Ste. Michelle Manor House
Woodinville
9:00 a.m. to 5:00 p.m.
Extended meeting to include after-
noon board workshop.

All meetings (except otherwise noted, above) begin at 9:00 a.m. and end at 12:00 p.m. The locations for the Richland and Seattle meetings are as follows (unless noted differently, above):

WSU Tri-Cities
2710 University Drive
Room CIC 210

Richland, WA 99354-1671
Switchboard: (509) 372-7000

Washington State Wine Commission
1201 Western Avenue
Suite 450
Seattle, WA 98101-3402
Phone: (206) 667-9463

WSR 13-12-030

**INTERPRETIVE STATEMENT
DEPARTMENT OF REVENUE**

[Filed May 29, 2013, 11:39 a.m.]

INTERPRETIVE STATEMENT ISSUED

ETA 3043.2013

Low-density light and power utility deduction

The department of revenue has revised Excise Tax Advisory 3043 (ETA 3043). This advisory explains the public utility tax deduction provided by RCW 82.16.053 to qualifying power and light businesses.

RCW 82.16.053 requires that the department determine the state average electric power rate each year and inform taxpayers of this rate. This rate is used by the power and light business to compute the amount of the deduction. The revised ETA 3043 updates the information to provide the rate to be used for the period of July 2013 through June 2014.

A copy of this document is available via the internet at Recent Rule and Interpretive Statements, Adoptions, and Repeals.

Alan R. Lynn
Rules Coordinator

WSR 13-12-034

**NOTICE OF PUBLIC MEETINGS
BATES TECHNICAL COLLEGE**

[Filed May 29, 2013, 1:37 p.m.]

Following is the schedule of regular meetings for the Bates Technical College board of trustees for fiscal year 2013-14:

Date	Time	Location
July 23, 2013	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
September 24, 2013	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
October 29, 2013	3:00 p.m.	Bates Central Campus 2320 South 19th Street Tacoma, WA 98405
November 19, 2013	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405

Date	Time	Location
December 17, 2013	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
January 28, 2014	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
February 25, 2014	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
March 25, 2014	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
April 29, 2014	3:00 p.m.	Bates South Campus 2201 South 78th Street Tacoma, WA 98409
May 27, 2014	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
June 24, 2014	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405

If you need further information contact Bates Technical College (Attn: Geof Kaufman), 1101 South Yakima Avenue, Tacoma, WA 98405-4895, office (253) 680-7180, fax (253) 680-7171, gkaufman@bates.ctc.edu, www.bates.ctc.edu.

WSR 13-12-035
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed May 29, 2013, 2:49 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #13-36.

Subject: Prescription drug: Maximum allowable cost (MAC) update.

Effective for dates of service on and after July 1, 2013, HCA will implement the following changes to the prescription drug program:

1. New additions to the MAC list.
2. MAC adjustments.
3. MAC deletions.

For additional information, contact Amber Loughheed, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail amber.loughheed@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 13-12-042
HEALTH CARE AUTHORITY

[Filed May 30, 2013, 3:50 p.m.]

NOTICE

Title or Subject: TAKE CHARGE Family Planning Waiver Renewal.

Effective Date: Upon approval by the Centers for Medicare and Medicaid Services (CMS).

Description: TAKE CHARGE family planning services are available to men and women with incomes at or below two hundred fifty percent of the federal poverty level, with a goal of reducing unintended pregnancy.

The objectives of TAKE CHARGE are:

- Decrease the number of unintended pregnancies;
- Increase the use of contraceptive methods;
- Increase the availability of family planning services for low-income men and women; and
- Raise the providers' awareness regarding the importance of client-centered education, counseling, and risk reduction to increase successful use of contraceptive methods.

The TAKE CHARGE program is for both men and women. To be eligible, an applicant must:

- Be a United States citizen;
- Be a resident of Washington state;
- Have an income at or below two hundred fifty percent of the federal poverty level;
- Apply voluntarily for family planning services at the office or clinic of a TAKE CHARGE provider; and
- Need family planning services but have no family planning coverage through a medicaid program.

Clients who are pregnant, sterilized, in the military on active duty, or incarcerated are not eligible for TAKE CHARGE. Covered services for women:

- An initial or annual comprehensive family planning preventive medicine visit with some limited STD screening.
- Cervical, vaginal, and breast cancer screening at the time of the annual exam or as medically necessary.
- Office visits directly related to a family planning problem, when medically necessary.
- FDA-approved prescription and nonprescription contraceptives.
- Sterilization.

Covered services for men:

- FDA-approved nonprescription contraceptive methods, including condoms and spermicides.
- Education and counseling for risk reduction for those men whose female partners are at risk for unintended pregnancy.
- Vasectomy.

If you would like to provide official written comments or would like more information regarding the TAKE CHARGE waiver renewal, please contact the person named below by June 30, 2013.

For additional information, contact Maureen Considine, ARNP, TAKE CHARGE Family Planning, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1652, TDD/TTY 1-800-848-5429, fax (360) 664-4371, e-mail address Maureen.considine@hca.wa.gov.

WSR 13-12-043
RULES COORDINATOR
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed May 31, 2013, 7:36 a.m.]

By this letter the department of enterprise services designates Jack Zeigler to serve as the agency's rules coordinator. Jack's contact information is Strategic Planning and Policy Manager, Department of Enterprise Services, P.O. Box 41401, Olympia, WA 98504-1401, phone (360) 407-9209, fax (360) 407-9176, e-mail jack.zeigler@des.wa.gov.

Joyce Turner
 Director

WSR 13-12-064
NOTICE OF PUBLIC MEETINGS
STATE BOARD OF HEALTH

[Filed June 4, 2013, 1:42 p.m.]

2013 Board/Council Meeting Schedule
 Approved by the board November 14, 2012
 Approved by the council December 6, 2012

	Meeting Date	Location
Board	Wednesday January 9, 2013	Great Wolf Lodge Confer- ence Center 20500 Old Highway 99 S.W. Centralia, WA 98531
Council	Wednesday February 13, 2013	Department of Health Point Plaza East Room 152/153 310 Israel Road S.E. Tumwater, WA 98501
Board	Wednesday March 13, 2013	Department of Health Point Plaza East Room 152/153 310 Israel Road S.E. Tumwater, WA 98501
Board	Wednesday April 10, 2013	No meeting held
Council	Wednesday May 8, 2013	Mount Zion Baptist Church Fellowship Hall 1634 19th Avenue Seattle, WA 98122

	Meeting Date	Location
Board	Thursday June 13, 2013	Campbell's Resort 104 West Woodin Avenue Chelan, WA 98816
Board	Wednesday July 10, 2013	Hold date - meet only if necessary
Board	Wednesday August 14, 2013	Hold date - meet only if necessary
Council	Wednesday September 11, 2013	Department of Health Point Plaza East Room 152/153 310 Israel Road S.E. Tumwater, WA 98501
Board	Wednesday October 9, 2013	Department of Health Point Plaza East Room 152/153 310 Israel Road S.E. Tumwater, WA 98501
Board	Wednesday November 13, 2013	Department of Health Point Plaza East Room 152/153 310 Israel Road S.E. Tumwater, WA 98501
Council	Wednesday December 11, 2013	Location to be determined

Start time is 9:30 a.m. unless otherwise specified. Time and locations subject to change as needed. See our web site at www.sboh.wa.gov for the most current information.

WSR 13-12-065
NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION

[Filed June 4, 2013, 2:01 p.m.]

The following revised dates are for our November and December commission meetings:

Commission Meetings

November 21, 2013 9:30 a.m.	Conference Call	711 South Capitol Way Suite 402 Olympia, WA 98504
December 19, 2013 9:30 a.m.	Conference Call	711 South Capitol Way Suite 402 Olympia, WA 98504

WSR 13-12-078
OFFICE OF
FINANCIAL MANAGEMENT

[Filed June 5, 2013, 9:35 a.m.]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-13 issue of the Register.

WSR 13-12-082
HEALTH CARE AUTHORITY

[Filed June 5, 2013, 11:45 a.m.]

NOTICE

Title or Subject: Public Notice.

Effective Date: July 1, 2013.

Description: Medicaid State Plan Amendments 13-19 and 13-20.

The state intends to submit Medicaid State Plan Amendments (SPA) 13-19 and 13-20. SPA 13-19 terminates the aging and disability services' chronic care management (CCM) program effective July 1, 2013, in Pierce, Kittitas, Yakima, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin counties. SPA 13-19 also terminates the CCM program in Washington's remaining counties effective October 1, 2013.

SPA 13-20 removes pages describing the aging and disability services' chronic care management program from the Medicaid state plan effective October 1, 2013. Contracts with CCM providers will be terminated in conjunction with the termination of the CCM program.

The state intends to provide a service comparable to CCM using health homes. The state is currently seeking approval from the Centers for Medicaid and Medicare Services to offer health home services in its Medicaid program. Health home services will be available to both managed care- and fee-for-service- eligible beneficiaries in all counties where CCM is currently available. Health home services are comparable to CCM services and all eligible CCM recipients will transition to these services. Recipients of health home services must meet the eligibility requirements for that program. Individuals currently receiving CCM services, who do not meet eligibility requirements to transition into health home services, will be offered assistance to complete their current health activation plans.

Please refer to WSR 13-08-022 published on March 27, 2013, for additional information about health homes.

For additional information, contact Candy Goehring, Home and Community Services, P.O. Box 45600, phone (360) 725-2562, TDD/TTY (360) 438-2634, fax (360) 586-9727, e-mail GoehrCS@dshs.wa.gov, web site <http://www.ada.dshs.wa.gov/professional/newfreedom/>.