

WSR 24-04-026

AGENDA

DEPARTMENT OF  
LABOR AND INDUSTRIES

[Filed January 29, 2024, 1:55 p.m.]

The department of labor and industries (L&I) prepares a semi-annual rules development agenda in January and July each year to inform the public of expected upcoming rule changes. Pursuant to RCW 34.05.314, the agenda is filed with the office of the code reviser for publication in the Washington State Register. This report details current and anticipated rule-making activities for L&I. This agenda is for informational purposes and the noted dates of anticipated rule-making actions are estimates. There may be additional rule-making activities not anticipated at this time, such as to implement new state laws, meet federal requirements, or other circumstances.

L&I encourages the public to be involved in the rule-making processes by attending public hearings and submitting comments regarding rules. Rule-making information is available on the L&I website at <https://www.lni.wa.gov/rulemaking-activity/>. To stay informed of our progress and be notified of any changes, please sign up for email notifications <https://public.govdelivery.com/accounts/WADLI/subscriber/new>. Under General, select "Rules Update."

Please contact Maggie Leland at 360-902-4504 or [Maggie.Leland@Lni.wa.gov](mailto:Maggie.Leland@Lni.wa.gov) if you have any questions.

**KEY :**

CR: "Code reviser" on the rule-making forms, which are produced by the office of the code reviser for use by all state agencies.

CR-101: Preproposal statement of inquiry filed under RCW 34.05.310.

CR-102: Proposed rule-making notice filed under RCW 34.05.320 or 34.05.340.

CR-103: Rule-making order permanently adopting a rule, and filed under RCW 34.05.360 and 34.05.380.

CR-105: Expedited rule-making proposal filed under RCW 34.05.353.

RCW: Revised Code of Washington.

WAC: Washington Administrative Code.

WSR: Washington State Register official filing reference number given by the office of the code reviser when a notice is filed.

**Semi-Annual Rules Development Agenda  
January 1 - June 30, 2024**

WAC CHAPTER	RULE SUBJECT	PURPOSE AND SCOPE OF RULE MAKING	Preproposal Notice (CR-101) Filing Date and WSR #	Proposed Rule (CR-102 or CR-105) Filing Date and WSR #	Permanent Rule (CR-103) Filing Date and WSR #	AGENCY CONTACT
<b>Division: Division of Occupational Safety and Health (DOSH)</b>						
296-62 296-155	Lead	This rule making is in response to a petition and a series of stakeholder meetings. This rule making was initiated to update existing lead standards in both general industry and construction in light of increasing evidence of the hazards associated with occupational lead exposure.	4/19/16 16-09-092	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758

WAC CHAPTER	RULE SUBJECT	PURPOSE AND SCOPE OF RULE MAKING	Preproposal Notice (CR-101) Filing Date and WSR #	Proposed Rule (CR-102 or CR-105) Filing Date and WSR #	Permanent Rule (CR-103) Filing Date and WSR #	AGENCY CONTACT
296-52	Safety standards for possession, handling, and use of explosives	The purpose of this rule making is to update the safety standards concerning explosives in order to reflect technological advancements in explosives over the past 10 to 30 years, and better align with federal regulations. Focus areas will likely include definitions, licensing, storage, background check requirements, public disclosure, and transportation, among other sections.	1/23/18 18-03-162	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Occupational exposures to infectious or contagious diseases (ESSB 5092 implementation)	The purpose of this rule making is to implement the requirements of 2021's ESSB 5092, section 220(8), to establish occupational health protections related to infectious diseases to ensure the state has general guidelines to follow in the case of an infectious disease outbreak. This would include when there is an outbreak subject to a public health emergency under a national or state-declared state of emergency.	5/13/21 21-11-051	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
296-155	Trenching rescue and excavation plan	The purpose of this rule making is to require employers to develop and implement a written excavation plan detailing appropriate risk analysis and rescue planning prior to beginning any work that requires a protective system (generally defined as any excavation four feet or deeper that is not in stable, solid rock).	6/22/21 21-13-140	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
296-155	Cranes, rigging, and personnel lifting	The purpose of this rule making is to amend the safety standards for cranes and derricks in construction, due in part to the federal Occupational Safety and Health Administration (OSHA) updating their standards. This rule making is also intended to provide clarity on L&I's interpretation of requirements related to crane decertification and reinstatement. In addition, state-initiated amendments will also be considered to address other areas in chapter 296-155 WAC relating to cranes that either need to be updated based on current industry practice or clarifying some of the language to maintain safety and health protections for employees. Due to OSHA updating their standard, prior rule-making preproposals regarding these subjects initiated in 2018 and 2019 were withdrawn under WSR 21-14-078 and 21-14-079.	7/6/21 21-14-080	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758

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296-56	Longshore and waterfront operations and restrooms in ports and railyards (SHB 1706 implementation)	The purpose of this rule making is to align the standard with SHB 1706 (RCW 70.54.480), passed by the legislature in 2022, regarding drayage truck operators access to restrooms when operating in or on a port or rail yard property. New requirements will include access to restrooms and dedicated space for lactation. This rule making will also better align chapter 296-56 WAC with OSHA requirements for marine terminals in 29 C.F.R. 1917, Subpart A.	9/6/22 22-18-081	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
286-305	Safety standards for firefighters	The purpose of this rule making is to consider rule making for WAC 296-305-03002 Hazardous materials, after receiving a rule petition. As requested in the petition, the rule making will consider updating rule language about the appropriate selection of chemical, biological, radiological, and nuclear (CBRN) ensembles and using the statement of standard for the National Institute for Occupational Safety and Health CBRN self-contained breathing apparatus testing. L&I will also consider updating WAC 296-305-04001 Respiratory equipment protection, which has guidance for breathing air quality for firefighters. The reference to ANSI/CGA G6-1, Commodity Specification for Air, needs to be updated to fix a typo in the standard number.	2/28/23 23-06-068	1/23/24 24-03-149	Anticipate filing 4/16/23	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Voluntary use of personal protective equipment (PPE)	The purpose of this rule making is to consider permanent rule making to allow the voluntary use of PPE when workers feel the need to protect themselves from noise, dust, or possible infectious or contagious diseases. The voluntary use of PPE must not introduce hazards to the work environment and facial coverings must not interfere with an employer's security requirements.	3/22/23 23-07-139	Anticipate filing 3/5/24	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Safety standards for quotas at warehouse distribution centers (2SHB 1762 implementation)	The purpose of this rule making is to implement 2023's 2SHB 1762, codified under chapter 49.84 RCW, which addresses protections for employees at warehouse distribution centers who are subject to quotas. In part, chapter 49.84 RCW includes requirements enforced under the Washington Industrial Safety and Health Act, chapter 49.17 RCW.	10/11/23 23-21-059	Anticipate filing 3/5/24	Anticipate filing 5/21/24	Ryan Allen DOSH Standards Program 360-902-4758

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296-880	Unified safety standards for fall protection	The purpose of this rule making is to amend sections of rule in order to be at least as effective as OSHA under the Washington state plan and to provide additional worker protections. This rule making will consider changes to sections of the current rule that address leading edge work, safety monitor system requirements, and roofing activity on low pitched roofs.	N/A	Anticipate filing 2/6/24 (CR-105)	Anticipate filing 4/30/24	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Training and certification program— Application of fire-resistant materials (SHB 1323 implementation)	Rule making is anticipated to implement the provisions of SHB 1323 (chapter 145, Laws of 2023) related to requiring a training and certification program for individuals who apply fire-resistant materials.	Anticipate filing 2/6/24	Anticipate filing 9/3/24	Anticipate filing 11/19/24	Ryan Allen DOSH Standards Program 360-902-4758
296-45	Requiring automated external defibrillators for high voltage work (HB 1542 implementation)	Rule making is anticipated to implement the provisions of 2023's HB 1542 related to requiring automated external defibrillators to be available and accessible when work is being performed on high voltage lines and equipment.	N/A	Anticipate filing April 2024 (CR-105)	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
296-900	Daily penalties for violating an order of immediate restraint (OIR) (ESHB 1097 implementation)	Rule making is anticipated to implement the provisions of 2021's ESHB 1097 related to daily penalties for violating an OIR, including establish inspection procedures and enforcement policies related to calculating penalties when OIR and/or red tags are placed; and provide guidance on how to correctly calculate penalties arising from the placement of an OIR or a red tag.	To be determined	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Prevent musculoskeletal injuries and disorders in certain risk classifications (ESSB 5217 implementation)	Rule making is anticipated to implement the provisions of 2023's ESSB 5217 related to regulating certain industries and risk classifications to prevent musculoskeletal injuries and disorders. ESSB 5217 directs L&I to annually publish a list of industries and risk classes eligible for rule making based on the criteria in ESSB 5217 and a high priority list of those most likely to be selected for new rules. This rule making will cover one industry or risk class from the high priority list published in November 2023.	To be determined	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
296-27	Improving illness and injury tracking	Rule making is anticipated to update Washington's rule regarding illness and injury tracking and reporting to align with recent updates from OSHA.	To be determined	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758

Division: Field Services and Public Safety

WAC CHAPTER	RULE SUBJECT	PURPOSE AND SCOPE OF RULE MAKING	Preproposal Notice (CR-101) Filing Date and WSR #	Proposed Rule (CR-102 or CR-105) Filing Date and WSR #	Permanent Rule (CR-103) Filing Date and WSR #	AGENCY CONTACT
296-150F	Factory assembled structures: Factory-built housing and commercial structures (implementation of E3SHB 1257, HB 1486, ESSB 5383)	The purpose of this rule making is to update the rule regarding factory-built housing and commercial structures, to include panelized construction. This rule making will include intent to make the rule related to E3SHB 1257 Energy efficiency, HB 1486 Delegation of authority, and ESSB 5383 Tiny homes.	7/2/19 19-14-106	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
296-400A	Plumber certification rule—Phase 3	The purpose of this rule making is to consider amendments under the plumber certification rule in order to implement the legislative changes made within 2020's Plumbing Act (chapter 153, Laws of 2020, SB 6170), updates to continuing education, training programs, and other necessary updates to the plumbing rule.	1/18/22 22-03-073	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
296-46B	Electrical rule (code adoption)	The purpose of this rule making is to amend the rule based on the 2023 edition of the National Fire Protection Agency (NFPA) 70, the National Electrical Code (NEC), and other related codes for electrical. The electrical program reviewed the existing rule and 2023 NEC (NFPA 70-2023) to update the rule for consistency with the latest national safety standards and industry practice. The 2023 edition of the code presents the latest comprehensive regulations for electrical wiring, overcurrent protection, grounding, and installation of equipment.	4/4/23 23-08-066	12/5/23 23-24-084	Anticipate filing 2/20/24	Meagan Edwards Field Services and Public Safety 360-522-0125
296-150P 296-150R 296-49A	Factory assembled structures (FAS) (SB 5089 and HB 1514 implementation)	The purpose of this rule making is to consider amendments to implement HB 1514 (chapter 78, Laws of 2023) and SB 5089 (chapter 36, Laws of 2023). The changes would affect L&I's FAS advisory board, and distributing inspection insignia to manufacturers of recreational vehicles. L&I is also reviewing the FAS advisory board rule, chapter 296-49A WAC, to consider updates, clarification, housekeeping, and other amendments.	9/19/23 23-19-075	Anticipate filing 3/19/24	To be determined	Meagan Edwards Field Services and Public Safety 360-522-0125
296-104	Boiler rule and fee increases (fiscal year 2025)	The purpose of this rule making is to amend the boiler rule to, in part, ensure it is consistent with national boiler and unfired pressure vessel safety standards and industry practice. The changes affect safety codes, installer and clearance requirements, and fees for boilers and pressure vessels.	10/10/23 23-21-043	1/2/24 24-02-070	Anticipate filing 4/16/24	Meagan Edwards Field Services and Public Safety 360-522-0125

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296-200A	Contractor registration (2SHB 1534 Implementation—Phase 2)	The purpose of this rule making is to amend the contractor registration rule to implement 2SHB 1534 (chapter 213, Laws of 2023), which helps strengthen protections for consumers in the construction industry. Provisions of the law take effect July 1, 2024.  The amendments affect the definitions, penalty and bond amounts, and fees for general and specialty contractors. The amendments are also necessary to support operating expenses of the contractor registration program.	10/10/23 23-21-052	Anticipate filing 2/20/24	Anticipate filing 4/30/24	Alicia Curry Field Services and Public Safety 360-902-6244
296-46B	Electrical fees increase (fiscal year 2025)	The purpose of this rule making is to increase the electrical fees by the fiscal growth factor of 6.40 percent. The fee increase is the maximum allowed by the state office of financial management for fiscal year 2025. A fee increase is needed to support increased operating expenses for inspections and other electrical program services, as the current fee levels are insufficient to cover current electrical program expenses.  This rule making also proposes removing the fee for printed copies of the electrical laws and rule. The electrical program will no longer be providing printed copies, as electronic versions are available online for customers.	10/31/23 23-22-104	12/19/23 24-01-113	Anticipate filing 3/19/24	Meagan Edwards Field Services and Public Safety 360-522-0125
296-200A	Contractor registration—Classification updates	The purpose of this rule making is to consider updates to the definitions for specialty contractor classifications.	To be determined	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
<b>Division: Fraud Prevention and Labor Standards</b>						
To be determined	Labor standards for quotas at warehouse distribution centers (2SHB 1762 implementation)	The purpose of this rule making is to implement 2023's 2SHB 1762, codified under chapter 49.84 RCW, which addresses protections for employees at warehouse distribution centers who are subject to quotas.	10/11/23 23-21-058	Anticipate filing 3/5/24	Anticipate filing 5/21/24	Reed Simock Fraud Prevention and Labor Standards 360-480-3237
296-127	Prevailing wage—Housekeeping	The purpose of this rule making is to update five rule sections to bring them into alignment with the statutes they help to interpret and enforce. Minor amendments planned for the following: WAC 296-127-010(9), 296-127-019, 296-127-140, 296-127-160, and 296-127-320.	N/A	Anticipate filing 3/5/24 (CR-105)	Anticipate filing 5/7/24	Reasa Pearson Fraud Prevention and Labor Standards 360-999-7226
296-128	Subminimum wage certificates	The purpose of this rule making is to repeal sections of rule related to issuing subminimum wage certificates to individuals with disabilities because the underlying statute, RCW 49.46.170, is no longer in effect. Repealing WAC 296-128-055 through 296-128-090.	N/A	To be determined (CR-105)	To be determined	Bridget Osborne Fraud Prevention and Labor Standards 360-902-5552
<b>Division: Insurance Services</b>						

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296-17 296-17A	Employment covered by RCW 51.32.187 (Department of Energy (DOE) Hanford site contractors)	The purpose of this rule making is to allow contractors of the United States DOE working at the Hanford site to have their contractors and subcontractors covered under the state fund.  L&I filed continuances on October 27 and November 6, 2020, ultimately extending the comment period to February 1, 2021, under WSR 20-22-038 and 20-23-017. The CR-102 proposal was withdrawn (WSR 21-04-019) due to the need for more stakeholder involvement and coordination. L&I will continue working with stakeholders to refine the proposed rule amendments for potential future rule making.	3/3/20 20-06-060	9/22/20 20-19-132 (withdrawn) 10/27/20 20-22-038 11/6/20 20-23-017	To be determined	Jo Anne Attwood Employer Services 360-902-4777
296-17 296-17A	Reporting and classification amendments for 2025	The purpose of this rule making is to implement clear rule writing to ensure staff and customers can easily understand and apply the workers' compensation insurance classification and reporting rules.  Classification development studied some subclassifications for potential reduction in number, and reviewed classification and reporting rules for improvement and clarification.	Anticipate filing 5/21/24	Anticipate filing 8/20/24	Anticipate filing 11/19/24	Jo Anne Attwood Employer Services 360-902-4777
296-17 296-17B	Industrial insurance premium rates 2025	The purpose of this rule making is to establish the premium rates and experience rating parameters for calendar year 2025.	Anticipate filing 6/18/24	Anticipate filing 9/17/24	Anticipate filing 11/27/24	Jo Anne Attwood Employer Services 360-902-4777
296-23	Naturopathic physician services	The purpose of this rule making is to update billing and coding requirements for naturopathic physicians to support consistency with other payers and other attending provider types.	11/21/23 23-23-156	Anticipate filing 2/6/24	Anticipate filing 5/21/24	Megan Lemon 360-902-5161 Tina Vorse 360-902-5934 Health Services Analysis
296-20 296-23	Medical aid rules —Conversion factors	The purpose of this rule making is to update rates for most professional health care services for injured workers, which are published annually in the medical aid rules and fee schedules.	12/5/23 23-24-080	Anticipate filing 3/19/24	Anticipate filing May 2024	Megan Lemon 360-902-5161 Marc Hobbs 360-902-4244 Health Services Analysis
296-20	Physician assistant billing procedure	The purpose of this rule making is to remove the requirement that physician assistants be paid 90 percent of the fee schedule value for procedures they perform and instead allow them to be paid up to the maximum fee listed on the fee schedule.	Anticipate filing 6/4/24	Anticipate filing 8/20/24	Anticipate filing 10/22/24	Megan Lemon 360-902-5161 Marc Hobbs 360-902-4244 Health Services Analysis

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296-23	Independent medical examination (IME) recording notification process and accompanying person	The purpose of this rule making is to amend the rule to define the recording notification process for when a worker wants to record IMEs requested by L&I and self-insured employers. SHB 1068 (chapter 166, Laws of 2023) allows a worker to audio and visually record an IME, and includes an observer may be present for all examinations with the worker. The updated statute, RCW 51.36.070, requires L&I create sections in rule defining the notification process the worker must follow when they want to record an IME. WAC 296-23-362 needs to be updated as the statute removed the prohibition against having an observer attend a mental health independent medical examination.	6/20/23 23-13-096	1/2/24 24-02-068	Anticipate filing 3/26/24	Suzy Campbell Legal Services 360-902-5003
296-14	Pension discount rate 2024	The purpose of this rule making is to lower the pension discount rate (PDR) to better align with the rate of return for long-term treasuries for self-insured pensions. The PDR is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. This rule making proposes to lower the PDR for self-insured employers from 5.6 to 5.5 percent effective April 1, 2024.	8/1/23 23-16-116	10/17/23 23-21-085	1/2/24 24-02-069	Suzy Campbell Legal Services 360-902-5003
296-20	Psychologists as attending providers on mental health only claims (HB 1197 implementation)	The purpose of this rule making is to implement HB 1197 (chapter 171, Laws of 2023). This rule making will add language that clarifies that psychologists can be the attending provider on mental health only claims and other technical amendments to support that change.	To be determined	To be determined	To be determined	Jami Lifka Office of the Medical Director 360-902-4941 Jami.Lifka@Ln i.wa.gov
296-17B	Retrospective rating for workers' compensation insurance	This rule making will address extending requirements for businesses that enroll in individual retro plans and revise enrollment requirements for businesses under common majority ownership.	11/5/13 13-22-071	To be determined	To be determined	Rachelle Bohler Retrospective Rating 360-902-5967
296-17B	Retrospective rating for workers' compensation insurance— Common ownership (pilot)	This pilot rule making will consider/allow exceptions to the retroactive rating program's current common ownership rule (WAC 296-17B-770) as written.	8/5/15 15-16-132	To be determined	To be determined	Rachelle Bohler Retrospective Rating 360-902-5967

WAC CHAPTER	RULE SUBJECT	PURPOSE AND SCOPE OF RULE MAKING	Preproposal Notice (CR-101) Filing Date and WSR #	Proposed Rule (CR-102 or CR-105) Filing Date and WSR #	Permanent Rule (CR-103) Filing Date and WSR #	AGENCY CONTACT
296-15	Self-insured good faith and fair dealing (SHB 1521 implementation)	The purpose of this rule making is to implement SHB 1521 (chapter 293, Laws of 2023), which adds additional applications of the duty of good faith and fair dealing, as well as criteria for determining appropriate penalties for violations. Good faith and fair dealing in this context refers to the administration of workers' compensation benefits. The rule sections on this subject seek to protect the best interests of impacted workers by ensuring they are free from coercion or other unfair practices regarding industrial insurance benefits that may be due to them. This rule making will establish a "good faith and fair dealing" standard for self-insured employers and their third-party administrators.	9/5/23 23-18-076	Anticipate filing 2/20/24	Anticipate filing 4/30/24	Nicole Mitchell Self-Insurance 360-902-6833

WSR 24-05-001

HEALTH CARE AUTHORITY

[Filed February 7, 2024, 2:08 p.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 24-0019 Remove MAT DATA 2000 Waiver Requirement.

Effective Date: April 1, 2024.

Description: The health care authority (HCA) intends to submit SPA 24-0019 to align with the provisions of section 1262 of the Consolidated Appropriations Act, 2023, by removing the requirement for a Drug Addiction Treatment Act of 2000 (DATA) waiver for prescribing practitioners from the medicaid state plan. Under DATA 2000, qualifying practitioners were required to obtain waivers to dispense certain schedule III - V narcotic medications, such as buprenorphine, used in maintenance or detoxification treatment (medication-assisted treatment). Section 1262 of the Consolidated Appropriations Act, 2023, enacted on December 29, 2022, removes this requirement.

At this time, HCA does not have sufficient data to determine whether SPA 24-0019 will have an effect on the annual aggregate expenditures/reimbursement/payment for providers dispensing narcotic medications such as buprenorphine for maintenance or detoxification treatment.

A copy of SPA 24-0019 is available for review. HCA would appreciate any input or concerns regarding this SPA. To request a copy of the SPA or submit comments, please contact the person named below by March 11, 2024 (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

CONTACT: Andrea Allen, Occupational Nurse Consultant, 626 8th Avenue S.E., Olympia, WA 98504, phone 360-725-1819, TRS 711, email [andrea.allen@hca.wa.gov](mailto:andrea.allen@hca.wa.gov).

WSR 24-05-007

NOTICE OF PUBLIC MEETINGS

COMMISSION ON

HISPANIC AFFAIRS

[Filed February 8, 2024, 12:29 p.m.]

Due to unforeseen circumstances beyond our control, the Washington state commission on Hispanic affairs must cancel its upcoming public board meeting:

Public board meeting, on Friday, February 9, 2024, at 10:00 - 11:00 p.m., via Zoom is **CANCELLED**.

WSR 24-05-008
RULES OF COURT
STATE SUPREME COURT
[February 7, 2024]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1563
RPC 1.2—SCOPE OF )
REPRESENTATION AND )
ALLOCATION OF AUTHORITY )
BETWEEN CLIENT AND LAWYER, )
COMMENT 18 AND RPC 8.4— )
MISCONDUCT, COMMENT 8 )

The Washington State Bar Association, having recommended the suggested amendments to RPC 1.2—Scope of Representation and Allocation of Authority Between Client and Lawyer, Comment 18 and RPC 8.4—Misconduct, Comment 8, and the Court having approved the suggested amendments for publication on an expedited basis;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published expeditiously for comment 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 30, 2024. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of February, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET
Suggested Amendments to
RULES OF PROFESSIONAL CONDUCT (RPC)
Rules 1.2 and 8.4

A. Proponent: Washington State Bar Association

B. Spokespersons:

Hunter M. Abell, President, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

Terra Nevitt, Executive Director, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

Monte Jewell, Chair, Committee on Professional Ethics, Project DVORA/Jewish Family Service of Seattle, 1601 16th Avenue, Seattle, WA 98122

Jeanne Marie Clavere, Senior Professional Responsibility Counsel, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

**C. Purpose:** These suggested revisions to the "Special Circumstances" Comments to RPC 1.2 and RPC 8.4 would replace existing language that focuses on lawyer counsel about cannabis. The new broader language protects lawyer counsel and assistance to clients about conduct the lawyer reasonably believes is permitted under Washington laws (for example laws related to reproductive health care and gender-affirming care as well as cannabis), even if that guidance might be viewed as violating the laws of another jurisdiction.

#### **Background**

In 2022, the Office of the Attorney General communicated concerns to the WSBA Board of Governors and suggested revisions to the "Special Circumstances" Comments to RPC 1.2 and RPC 8.4. That office recommended adjustments to RPC 1.2 and 8.4 aimed at addressing situations in which a Washington lawyer gives assistance on reproductive rights that is treated by a prosecutor in another jurisdiction as possible criminal activity. An example would be advising a health care provider, a parent, or minor child, practicing, or residing in another state, about providing, or obtaining an abortion or gender-affirming care in Washington where such care violate the laws in the other jurisdiction. In such a scenario, a family member, political group, member of the public, opposing party, or prosecutor might file one or more disciplinary grievances against the Washington lawyer.

Attorneys general and prosecutors in some jurisdictions already are acting to zealously enforce statutes criminalizing access to reproductive health services and gender affirming care. In jurisdictions that criminalize reproductive health care and assistance to patients/clients, law enforcement routinely investigates these "crimes" using digital evidence. Washington lawyers thus have credible concerns that law enforcement outside of Washington will investigate conduct associated with guidance given by Washington attorneys on Washington reproductive rights law. In addition, Washington lawyers should not expect that abortion-ban statutes enacted outside Washington state would include express exceptions for communications between lawyers and clients.

Two primary RPCs are involved here.

RPC 1.2(d) states:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Comment [18] to Washington's RPC 1.2 currently addresses "Special Circumstances Presented by Washington's Marijuana Laws," as follows:

[18] Under Paragraph (d), a lawyer may counsel a client regarding Washington's marijuana laws and may assist a client in conduct that the lawyer reasonably believes is permitted by those laws. If Washington law conflicts with federal or tribal law, the lawyer shall also advise the client regarding the related federal or tribal law and policy.

RPC 8.4(b) states that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects ..."

Comment [8] to Washington's RPC 8.4 currently states:

[8] A lawyer who counsels a client regarding Washington's marijuana laws or assists a client in conduct that the lawyer reasonably

believes is permitted by those laws does not thereby violate RPC 8.4. See also RPC 1.2 Washington Comment [18].

**Recommendation**

At their August 12, 2023, meeting, the WSBA Board of Governors approved a suggestion from the Committee on Professional Ethics that the Washington Supreme Court revise the "special circumstances" Comments to RPC 1.2 and RPC 8.4. The replacement Comments would include broader language encompassing more than just guidance on Washington's cannabis laws. The Comments to be replaced were adopted in 2014 (updated in 2018 and 2023) to provide clarification to Washington lawyers who advise clients on Washington cannabis laws that their counsel is not in violation of the RPCs, notwithstanding the fact that cannabis is a controlled substance under federal law and many tribal laws. This proposal recognizes that the issues of criminalized reproductive care and gender-affirming care in other states presents similarly fundamental, practical, and urgent questions under the RPCs for members of the Washington Bar.

Redline and clean versions of the suggested rules are attached for consideration.

**D. Hearing:** A hearing is not requested.

**E. Expedited Consideration:** Expedited consideration is not requested.

**F. Supporting Material:**

- Exhibit A: Suggested Amendment to Comment [18] to RPC 1.2, redline and clean versions.
- Exhibit B: Suggested Amendment to Comment [8] to RPC 8.4, redline and clean versions.

**Exhibit A**

**Suggested Amendment to Comment [18] to RPC 1.2, redline version:**

*Additional Washington Comments [14-1718]*

*Special Circumstances Presented by Washington's Marijuana Laws Involving Advice and Assistance About Washington Laws*

[18] Under Paragraph (d), a lawyer may counsel a client regarding ~~Washington's marijuana~~ Washington laws and may assist a client in conduct that the lawyer reasonably believes is permitted under those laws (for example and without limitation, Washington laws related to reproductive health care services, gender-affirming care, or cannabis). If Washington law conflicts with federal law, ~~or tribal law, or the law of another jurisdiction,~~ the lawyer shall also advise the client regarding the ~~related federal or tribal law and policy~~ conflicting laws or recommend that the client seek the advice of a lawyer with established competence in the field in question. See Comment 1 to Rule 1.1. If a lawyer counsels or assists a client regarding Washington's laws in these circumstances, that conduct, and the predominant effect of the conduct, shall be deemed to occur in Washington for purposes of these Rules.

**Exhibit B**

**Suggested Amendment to Comment [8] to RPC 8.4, redline version:**

*Washington Comment [8] to Rule 8.4*

A lawyer who counsels a client regarding Washington laws ~~Washington's marijuana laws~~ or assists a client in conduct that the lawyer reasonably believes is permitted by those laws (for example and without limitation, Washington laws related to reproductive health care

services, gender-affirming care, or cannabis), does not thereby violate RPC 8.4. See also Washington Comment [18] to RPC 1.2.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the state supreme court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 24-05-009
RULES OF COURT
STATE SUPREME COURT
[February 7, 2024]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1564
RPC 6.1—PRO BONO PUBLICO )
SERVICE )

Attorney Kevin Flannery, having recommended the suggested amendments to RPC 6.1—Pro Bono Publico Service, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(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 April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of February, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

Cover Sheet for Proposed Amendment to RPC 6.1

Proponent

Kevin Flannery, WSBA #54890

Spokesperson

Kevin Flannery, WSBA #54890

Contact Information for Spokesperson

kflannery@stollberne.com

Purpose of the Proposed Amendment

RPC 6.1 sets a non-mandatory, aspirational benchmark for Washington lawyers to provide pro bono publico service and defines the ways in which lawyers may provide that service. The rule also establishes a mechanism for the Washington State Bar Association to honor lawyers who provide a certain amount of pro bono publico service.

This proposed amendment would broaden the scope of the rule such that pro bono publico service also encompasses a lawyer's provision of court-appointed representation to a person entitled to counsel at public expense, regardless of whether the lawyer is paid to accept and carry forth the appointment. The proposed amendment would also make a more technical edit to replace an outdated phrase with more inclusive language when referring to individuals affected by domestic violence.

The court should adopt this proposed amendment for three related reasons.

First, Washington is experiencing an urgent crisis in recruiting and retaining public defense attorneys. Experienced public defenders are leaving public defense because of excessive caseloads and difficult working conditions. When no qualified attorney is available to provide court-appointed representation, cases—and lives—languish.<sup>1</sup> Moreover, Washington's existing caseload limits under the Standards for Indigent Defense will very likely need to be reconsidered—and substantially reduced—in light of a new comprehensive workload study that was recently completed.<sup>2</sup> To address both the current shortage of public defense attorneys and the likely need for additional public defense attorneys in the near future, the court and the bar association must encourage more lawyers working in private practice to provide court-appointed representation. This proposed amendment to RPC 6.1 would place a modicum of substance behind that encouragement and formally communicate to the private bar the need for lawyers to engage in public defense work.

Second, providing court-appointed representation is meaningful legal work that can have positive, life-changing effects for the client, their families, and the community. RPC 6.1 exists to help prod lawyers to represent more than just wealthy interests. The rule tells lawyers that they should aspire to spend at least a minimum number of hours per year advocating for those with limited means. Representing indigent Washingtonians facing criminal charges, involuntary civil commitment, family separation, or other deprivations of liberty belongs in this category of work. The fact that an appointed attorney is paid (and can therefore—thankfully—make out a living and continue to take future appointments) does not change or detract from the nature of the representation as a public service.

Third, ethics rules generally prohibit full-time line defenders from providing pro bono publico service and gaining a commendation.<sup>3</sup> Attorneys who provide court appointed representation in criminal and juvenile offender cases are bound by the Standards for Indigent Defense. Standard 3.2 provides that "[t]he caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation," and Standard 3.4 sets maximum caseloads for full-time public defense attorneys. Public defense attorneys must also comply with RPC 1.1 and RPC 1.3, which require that they provide competent and diligent representation. As Comment [2] to RPC 1.3 puts it, "A lawyer's workload must be controlled so that each matter can be handled competently." In practice, these overlapping professional responsibility requirements generally prohibit full-time public defense attorneys from providing any other legal services, including those contemplated by paragraphs (a)(1)-(2) and (b)(1)-(2). Additionally, while undertaking system-improvement efforts under paragraph (b)(3) may not conflict with a public defense attorney's obligation under Standard 3.4 to numerically limit the number of cases that they handle, system-improvement efforts will still add work to a workload that unquestionably "must be controlled" to ensure that clients receive competent and constitutionally guaranteed effective representation. Comment [2] to RPC 1.3. In other words, full-time public defense attorneys—already stretched too thin—will rarely have the time to dedicate to activities under paragraph (b)(3). The consequence is that a full-time public defense attorney appearing on behalf of dozens or even hundreds of poor and marginalized Washingtonians each

year will never receive a commendation under RPC 6.1. This proposed amendment fixes that anomaly.

As a final note, no one should think that the court's adoption of this proposed amendment to RPC 6.1 will solve Washington's public defense crisis. Adoption of this proposed amendment is only a very small step, among many more to come, that are necessary to bring balance and dignity to a legal system that has historically treated public defense as the dregs of legal work.

Hearing

A hearing is not requested.

Expedited Consideration

Expedited consideration is requested, given the urgency of the public defense crisis.

- <sup>1</sup> See, e.g., Ralph Schwartz, *9 Sit in Whatcom County Jail Without Lawyers*, CASCADIA DAILY NEWS (May 12, 2023), <https://www.cascadiadaily.com/news/2023/may/12/9-sit-in-whatcom-county-jail-without-lawyers/>.
- <sup>2</sup> See Nicholas M. Pace et al., *National Public Defense Workload Study*, RAND CORPORATION (2023), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RRA2500/RRA2559-1/RAND\\_RRA2559-1.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RRA2500/RRA2559-1/RAND_RRA2559-1.pdf); see also *National Study Underlines Urgency to Update State's Defense Standards After 50 Years*, WASHINGTON STATE BAR ASSOCIATION (Sept. 13, 2023), <https://www.wsba.org/news-events/media-center/media-releases/national-study-underlines-urgency-to-update-state-s-defense-standards-after-50-years-sept.-13-2023>.
- <sup>3</sup> When read in isolation, paragraph (a)(1)'s definition of pro bono publico service appears to cover court appointed representation because clients who receive counsel at public expense are people of limited means who do not pay legal fees. The rule's comments make clear that such a reading is incorrect, however. In particular, Comment [1] and Comment [4] clarify that the phrase "without fee or expectation of fee" in paragraph (a) means that the attorney must enter into the representation expecting to work for free on behalf of the client without any third party, such as the government, paying for the attorney's service. And Comment [15] indicates that legal work for wages—such as the day-to-day court-appointed representation provided by public defense attorneys employed by counties—is excluded from RPC 6.1's definition of pro bono publico service.

**RPC 6.1**

**PRO BONO PUBLICO SERVICE**

Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of pro bono publico service per year. In fulfilling this responsibility, the lawyers should:

(a) provide legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and or

(b) provide pro bono publico service through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession; or

(c) accept appointments by the court for which a fee is expected and provide representation to individuals who are entitled to counsel at public expense.

Pro bono publico service may be reported annually on a form provided by the WSBA. A lawyer rendering a minimum of fifty (50) hours of pro bono publico service shall receive commendation for such service from the WSBA.

**Comments**

[1] **[Washington revision]** Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of their legal career, each lawyer should render on average per year, at a minimum, the number of hours set forth in this Rule. ~~Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.~~

[2] **[Washington revision]** Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means or organizations primarily representing such persons. The variety of these activities should facilitate participation by government lawyers, even when restrictions may exist on their engaging in the outside practice of law.

[3] **[Washington revision]** Persons eligible for legal services under paragraphs (a)(1) are those who qualify for services provided by a qualified legal services provider (see Washington Comment [14]) and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford legal services. Legal services under paragraphs (a)(1) and (2) include those rendered to individuals or to organizations such as homeless shelters, battered women's centers for individuals affected by domestic violence, and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee to qualify as pro bono publico service under paragraph (a)(1) and (2), the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of those paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono under those paragraphs if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section those paragraphs. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] **[Washington revision]** A lawyer's responsibility under this Rule can be fulfilled ~~either~~ through the activities described in paragraph (a)(1) and (2), or in a through the variety of ways as set forth in paragraph (b), or through the acceptance of paid court appointments as set forth in paragraph (c).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection

claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b) (2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. ~~Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.~~

[8] **[Washington revision]** Paragraph (b) (3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving in a volunteer capacity on bar association committees or on boards of pro bono or legal services programs, taking part in Law Week activities, acting as an uncompensated continuing legal education instructor, an uncompensated mediator or arbitrator and engaging in uncompensated legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] **[Reserved.]**

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

#### **Additional Washington Comments (13-168)**

[13] Washington's version of this Rule differs from the Model Rule. Washington's Rule 6.1 specifies an aspirational minimum of thirty hours of pro bono publico legal services per year rather than fifty, but provides for presentation of a service recognition award to those lawyers reporting to the WSBA a minimum of fifty hours. Unlike the Model Rule, paragraph (a) of Washington's Rule does not specify that the majority of the pro bono publico legal service hours should be provided without fee or expectation of fee. And Washington's Rule does not include the final paragraph of the Model Rule relating to voluntary contributions of financial support to legal services organizations. The provisions of Rule 6.1 were taken from former Washington RPC 6.1 (as amended in 2003).

[14] For purposes of this Rule, a "qualified legal services provider" is a not-for-profit legal services organization whose primary purpose is to provide legal services to low-income clients.

~~[15] Pro bono publico service does not include services rendered for wages or other compensation by lawyers employed by qualified legal services providers (as that term is defined in Washington Comment [14]), government agencies, or other organizations as part of their employment.~~ **[Reserved.]**

[16] The amount of time spent rendering pro bono publico services should be calculated on the same basis that lawyers calculate their time on billable matters. For example, if time spent traveling to a client meeting or to a court hearing is considered to be part of the time for which a paying client would be billed, it is appropriate to include such time in calculating the number of pro bono publico service hours rendered under this Rule.

[17] Paragraph (c) recognizes the critical importance of the timely delivery of legal services through the provision of a court-appointed lawyer to individuals who are entitled to counsel at public expense. Without lawyers to provide court-appointed representation, the integrity of the legal system—as well as the public's confidence in the bar and the judiciary—is intolerably threatened.

[18] Lawyers who provide court-appointed representation should be commended. In particular, some lawyers are ethically prohibited from taking on additional legal work, such as the pro bono legal services under paragraphs (a) (1)-(2) or (b) (1)-(2), by the Rules of Professional Conduct and the Standards for Indigent Defense because they work full-time providing court-appointed representation. Those lawyers should still be recognized as providing pro bono publico service, regardless of the fact that they are paid to provide court-appointed representation.

WSR 24-05-010
RULES OF COURT
STATE SUPREME COURT
[February 7, 2024]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1565
RAP 17.7—OBJECTION TO RULING )
—REVIEW OF DECISION ON )
MOTION; RAP 18.13— )
ACCELERATED REVIEW OF )
DISPOSITIONS IN JUVENILE )
OFFENSE PROCEEDINGS; AND RAP )
18.13A—ACCELERATED REVIEW )
OF JUVENILE DEPENDENCY )
DISPOSITION ORDERS, ORDERS )
TERMINATING PARENTAL RIGHTS, )
DEPENDENCY GUARDIANSHIP )
ORDERS, AND ORDERS ENTERED )
IN DEPENDENCY AND )
DEPENDENCY GUARDIANSHIP )
PROCEEDINGS )

Attorney Catherine Smith, having recommended the suggested amendments to RAP 17.7—Objection to Ruling—Review of Decision on Motion; RAP 18.13—Accelerated Review of Dispositions in Juvenile Offense Proceedings; and RAP 18.13A—Accelerated Review of Juvenile Dependency Disposition Orders, Orders Terminating Parental Rights, Dependency Guardianship Orders, and Orders Entered in Dependency and Dependency Guardianship Proceedings, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(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 April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of February, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

Proposed Change to RAP 17.7 Cover Page

Name of Proponent: Catherine W. Smith
Smith Goodfriend, P.S.
1619 8th Avenue North
Seattle, WA 98109
cate@washingtonappeals.com

Spokesperson: Catherine W. Smith

**Purpose:** To shorten and make uniform the time to move to modify all appellate court commissioners' rulings. The reasons the rule should be changed are explained in more detail in the attached article from the September 2023 King County Bar Bulletin, *always Appealing: RAP 17.7*.

**Hearing:** The proponent does not believe a hearing on the proposed rule change is necessary.

**Expedited Consideration:** The proponent does not believe expedited consideration is necessary.

**always Appealing: RAP 17.7**

**Posted on:** Sep 1, 2023

**Bar Bulletin Blog:** General

The clerks and commissioners of our state's appellate courts are responsible for much of the day-to-day operation of the court. Issues concerning, among others, perfection of the record, stays, extensions of time, overlength briefing, and the amount of cost and fee awards are handled by these "lower court" personnel in each of the three divisions of the Court of Appeals and in the state Supreme Court.

The "lower courts" generally do a wonderful job of keeping the wheels of appellate justice running smoothly. The commissioners also perform an important gate-keeping role in deciding whether discretionary review should be granted under RAP 2.3(b) of a trial court decision that is not appealable as a matter of right—a decision which requires close analysis of the substantive law governing the challenged decision.

Any appellate court commissioner or clerk ruling is subject to de novo review by a panel of elected judges, just as a commissioner's decision in the superior court is subject to de novo review by an elected superior court judge. The relevant rule is RAP 17.7. Unlike the revision provisions, which limit the record to that before the commissioner, there are no formal limitations on additional information being provided to the panel—although it is best practice, generally, to keep to the record before the commissioner.

When RAP 17.7 was first promulgated in 1976, a party had 10 days to move to modify a ruling of the clerk or commissioner, just as a motion for revision must be made within 10 days. Since 1994, however, "[a]n aggrieved person may object to a ruling of a commissioner or clerk . . . not later than 30 days after the ruling is filed." The reasons for this change are anachronistic, have long outlived their purpose, and the rule is ripe for change.

This time limit for filing a motion to modify was expanded to 30 days because of the suggestion of an attorney in Port Orchard. The WSBA Rules Committee agreed with the concerns raised that "[b]y the time the ruling is received by counsel, there may only be seven days to contact the client, prepare the motion to modify, and get it filed." The comments continued:

This places a difficult burden on counsel both in criminal cases (if the client is incarcerated) and in civil cases (if a business client, for example is out of town).

RAP 17.7 Drafters' Comment, 1994 Amendment, reproduced in 3 Washington Practice.

Although I had my doubts even at the time, at least on the civil side (we DID have fax machines in 1994!), these concerns may have been valid when the rule was changed in 1994. But they have long outlived their whatever deficiencies in the U.S. Mail system that was used for

service in the mid-1990s may have been the reason for the rule change. Virtually all rulings are now transmitted instantaneously to the parties; lawyers admitted to practice in Washington must use the appellate courts' internet portal, and anyone can register and set up a free account for filing and service through the portal. And because a motion to modify is not subject to RAP 18.8's restrictions on extensions of time on notices of appeal and petitions for review, if for some reason a shorter time limit does not give a party sufficient time to prepare a motion to modify, a party could ask for additional time.

There are many good reasons to shorten the time in which a motion to modify must be filed. First, many of the rulings subject to the rule are purely administrative and do not affect a substantial right of a party. But because any ruling is subject to modification, and review de novo by a panel of judges, practitioners and parties intent on using the rules for improper purposes can effect at least some uncertainty about the ruling simply by filing a motion to modify within 30 days. The party opposing a motion to modify then has only 10 days to respond, and the moving party another three days to reply, adding another two weeks to the delay.

Further, there is no articulated mechanism for a panel's consideration of motions to modify. The appellate judges do not generally sit together on any sort of formal motions calendar. Two months or more can go by before a motion to modify is denied—as they usually are.

In addition, when the ruling is one of some substantive significance, such as a grant of discretionary review, the long delay can cause the parties to be in the position of being obligated to perfect the record, and even brief on the merits, while there is some question whether review will in fact be accepted. And when review is denied, the same two-month period of uncertainty whether the case will go forward remains.

There is an easy fix to the rule, and one that could make the RAPs less complicated to follow. Recognizing that speedier resolution of disposition in juvenile offense and dependency proceedings was necessary, the rules governing those types of decisions, RAP 18.13 and RAP 18.13A, require any motion to modify a commissioner's decision terminating review be filed within 15 days. If the time to file all motions to modify were changed to 15 days, it is possible that not only RAP 17.7(b), but RAP 18.13 (c) (1), RAP 18.13A (j) (2), could be rescinded.

I'll be proposing this rule change this month.

*Catherine W. Smith is a principal in Smith Goodfriend. She founded the Washington Appellate Lawyers Association and is a Past President of the American Academy of Appellate Lawyers. She can be reached at [cate@washingtonappeals.com](mailto:cate@washingtonappeals.com).*

#### RAP 17.7

#### OBJECTION TO RULING—REVIEW OF DECISION ON MOTION

**(a) Motion to modify.** An aggrieved person may object to a ruling of a commissioner or clerk, including transfer of the case to the Court of Appeals under rule 17.2(c), only by a motion to modify the ruling directed to the judges of the court served by the commissioner or clerk. Except as set forth in subsection (b), the motion to modify the ruling must be served on all persons entitled to notice of the original motion and filed in the appellate court not later than ~~30~~ 15 days after the ruling is filed. A motion to the Justices in the Su-

preme Court will be decided by a panel of five Justices unless the court directs a hearing by the court en banc.

~~(b) RAP 18.13 and RAP 18.13A. A motion to modify a Court of Appeals commissioner's ruling terminating review of a motion for accelerated review filed pursuant to RAP 18.13 or RAP 18.13A is governed by the provisions of those rules.~~

#### References

Form 20, Motion To Modify Ruling.

[Adopted effective July 1, 1976; Amended effective September 1, 1994; September 1, 2018.]

#### Proposed Change to RAP 18.13 Cover Page

**Name of Proponent:** Catherine W. Smith

Smith Goodfriend, P.S.

1619 8th Avenue North

Seattle, WA 98109

[cate@washingtonappeals.com](mailto:cate@washingtonappeals.com)

**Spokesperson:** Catherine W. Smith

**Purpose:** This subsection of the rule is no longer necessary if the time to move to modify all commissioners' rulings is reduced to 15 days, as proposed in proposed changes to RAP 17.7.

**Hearing:** The proponent does not believe a hearing on the proposed rule change is necessary.

**Expedited Consideration:** The proponent does not believe expedited consideration is necessary.

#### RAP 18.13

##### ACCELERATED REVIEW OF DISPOSITIONS IN JUVENILE OFFENSE PROCEEDINGS

**(a) Generally.** Dispositions in a juvenile offense proceeding beyond the standard range for such offenses shall be reviewed on the merits by accelerated review as provided in this rule.

**(b) Accelerated Review by Motion.** The accelerated review of the disposition shall be done by motion. The motion must include (1) the name of the party filing the motion; (2) the offense in a juvenile offense proceeding; (3) the disposition of the trial court; (4) the standard range for the offense; (5) a statement of the disposition urged by the moving party; (6) copies of the clerk's papers and a written verbatim report of those portions of the disposition proceeding that are material to the motion; (7) an argument for the relief the party seeks; and (8) a statement of any other issues to be decided in the review proceeding.

#### ~~(c) Motion Procedure Controls.~~

~~(1) Unless otherwise specified in this rule, the motion procedure, including a party's response, is governed by Title 17.~~

~~(2) A motion to modify a Court of Appeals commissioner's ruling terminating review of a motion for accelerated review filed pursuant to RAP 18.13 must be served on all persons entitled to notice of the original motion and filed in the appellate court not later than 15 days after the commissioner's ruling is filed in the Court of Appeals. An answer to the motion to modify should be filed not later than 15 days after the motion to modify is filed. A party should not file a reply to an answer unless requested by the appellate court.~~

**(d) Accelerated Review of Other Issues.** The decision of issues other than those relating to the juvenile offense disposition may be accelerated only pursuant to rules 18.8, 18.12, or 18.13A.

**(e) Supreme Court Review.** A decision by the Court of Appeals on accelerated review that relates only to a juvenile offense disposition

is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rules 13.3(e) and 13.5A.

**(f) Schedule.** The accelerated review shall include a schedule for filing the record on review, the motion, response, and reply, and setting oral argument.

[Adopted effective July 1, 1976; Amended effective July 1, 1978; September 1, 1991; September 1, 1997; December 24, 2002; September 1, 2006; October 2, 2008; September 1, 2018.]

### Proposed Change to RAP 18.13A Cover Page

**Name of Proponent:** Catherine W. Smith

Smith Goodfriend, P.S.

1619 8th Avenue North

Seattle, WA 98109

[cate@washingtonappeals.com](mailto:cate@washingtonappeals.com)

**Spokesperson:** Catherine W. Smith

**Purpose:** This subsection of the rule is no longer necessary if the time to move to modify all commissioners' rulings is reduced to 15 days, as proposed in proposed changes to RAP 17.7.

**Hearing:** The proponent does not believe a hearing on the proposed rule change is necessary.

**Expedited Consideration:** The proponent does not believe expedited consideration is necessary.

#### RAP 18.13A

#### ACCELERATED REVIEW OF JUVENILE DEPENDENCY DISPOSITION ORDERS, ORDERS TERMINATING PARENTAL RIGHTS, DEPENDENCY GUARDIANSHIP ORDERS, AND ORDERS ENTERED IN DEPENDENCY AND DEPENDENCY GUARDIANSHIP PROCEEDINGS

**(a) Generally.** Juvenile dependency disposition orders and orders terminating parental rights under chapter 13.34 RCW, dependency guardianship orders under chapter 13.36 RCW, and interim orders entered in dependency and dependency guardianship cases when discretionary review has been granted, may be reviewed by a commissioner on the merits by accelerated review as provided in this rule. Review from other orders entered in juvenile dependency and termination actions are not subject to this rule. The provisions of this rule supersede all other provisions of the Rules of Appellate Procedure to the contrary, and this rule shall be construed so that appeals from juvenile dependency disposition orders and orders terminating parental rights under chapter 13.34 RCW, dependency guardianship orders under chapter 13.36 RCW, and interim orders entered in dependency and dependency guardianship cases when discretionary review has been granted shall be heard as expeditiously as possible.

**(b) Notice of Appeal—Filing with Appellate Court.** The notice of appeal must be filed with the trial court in compliance with Title 5 of these rules. Notwithstanding the other provisions of this rule, a timely notice of appeal shall be accepted for filing. A copy of the notice of appeal with proof of service should be filed with the appellate court by the appellant at the time it is filed with the trial court.

**(c) Motion for Order of Indigency.** Parties seeking review at public expense must file a motion for order of indigency in the trial court. Any order of indigency should be filed contemporaneously with the notice of appeal.

**(d) Consolidation.** When one or more appellants seek review of more than one dependency dispositional order, order terminating paren-

tal rights, or dependency guardianship order arising from cases tried together, each appellant may file a single statement of arrangements and a single designation of clerk's papers under the lowest trial court cause number. The appellate court normally will consolidate the appeals for purposes of review.

**(e) Statement of Arrangements.** A statement of arrangements should be filed contemporaneously with the notice of appeal or within seven days after discretionary review is accepted. The party seeking review should arrange for the transcription of an original and one copy of the verbatim report of proceedings. If the proceeding being reviewed was recorded electronically, transcription of the recordings shall be completed by a court-approved transcriber in accordance with the procedures developed by the Administrative Office of the Courts. An indigent party should provide the court reporter, transcriber, or court administrator a copy of the order of indigency. A non-indigent party should arrange for payment for the transcription of the report. The party seeking review must file with the trial and appellate courts and serve the statement of arrangements on all parties of record and all named court reporters and file proof of service with the appellate court. The party must indicate the date that the report of proceedings was ordered, the financial arrangements which have been made for payment of transcription costs, the name of each court reporter or other person authorized to prepare the report of proceedings who will be preparing a transcript, the hearing dates, and the trial court judge. If the party seeking review does not intend to provide a report of proceedings, a statement to that effect should be filed in lieu of a statement of arrangements and served on all parties of record. See Form 15B.

**(f) Report of Proceedings.** The preparation and filing of reports of proceedings in appeals under this rule take precedence over all other appeal records. The format of the verbatim report of proceedings is governed by rule 9.2 (e) and (f). The filing and service of the report of proceedings is governed by rule 9.5, except that any motion for extension of time to file the report of proceedings must be accompanied by an affidavit from the court reporter or other person authorized to prepare the report of proceedings demonstrating exceptional circumstances. Extensions otherwise will be denied and sanctions may be imposed.

**(g) Designation and Filing of Clerk's Papers.** The party seeking review should file a designation of clerk's papers with the trial and appellate courts contemporaneously with the notice of appeal or within seven days after discretionary review is accepted. In appeals under this rule, the entire trial court file shall be designated as clerk's papers to be transmitted to the appellate court. All of the exhibits filed in the trial court shall also be designated and transmitted to the appellate court. When discretionary review is granted under this rule, the contents of the clerk's papers shall be governed by RAP 9.6(b). In cases appropriate for consolidation under subsection (d) of this rule, a designation of clerk's papers need only request the preparation of a single trial court file. The clerk shall prepare and transmit the clerk's papers as set forth in rules 9.7 and 9.8, except that a copy of the clerk's papers and the exhibits shall be provided to appellate counsel. The clerk should give priority to the preparation and filing of clerk's papers in appeals under this rule. See Form 15C.

**(h) Briefing.** Unless directed otherwise in a ruling granting discretionary review of an interim order entered in dependency and de-

pendency guardianship cases, parties shall file briefs in accordance with rules 10.3, 10.4, and 18.17.

**(i) Time for Filing Briefs.**

(1) Brief of Appellant. The brief of an appellant should be filed with the appellate court within 30 days after the report of proceedings is filed with the trial court; or, if the record on review does not include a report of proceedings, within 30 days after the party seeking review has received an index of clerk's papers and exhibits. Appellant shall append to the brief a copy of the trial court's findings of fact and conclusions of law.

(2) Brief of Respondent. The brief of a respondent should be filed with the appellate court within 30 days after service of the brief of appellant. When there is more than one appellant, the respondent may file one brief in response to all appellants.

(3) Reply Brief. A reply brief of an appellant should be filed with the appellate court within 15 days after service of the brief of respondent unless the court orders otherwise.

(4) Other Briefs. The appellate court may, on its own motion or on motion of a party, authorize or direct the filing of briefs on the merits other than those listed in this rule.

(5) Briefs in Consolidated Cases. In consolidated cases, a party may (i) join with one or more other parties in a single brief, or (ii) file a separate brief and adopt by reference any part of the brief of another.

~~**(j) Motion procedure controls.**~~

~~(1) Unless otherwise specified in this rule, the motion procedure, including a party's response is governed by Title 17.~~

~~(2) A motion to modify a Court of Appeals commissioner's ruling terminating review of a motion for accelerated review filed pursuant to RAP18.13A must be served on all persons entitled to notice of the original motion and filed in the appellate court not later than 15 days after the commissioner's ruling is filed in the Court of Appeals. An answer to the motion to modify should be filed not later than 15 days after the motion to modify is filed. A party should not file a reply to an answer unless requested by the appellate court.~~

**(k) Supreme Court Review.** A decision by the Court of Appeals on accelerated review that relates only to juvenile dependency dispositional orders or orders terminating parental rights is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rules 13.3(e) and 13.5A.

**(l) Termination Appeals—Notice of Intent to Deliver Consent to Adoption.** When an order terminating parental rights is under review, the Department of Social and Health Services or supervising agency having the right to consent to an adoption should serve a written notice of its intent to deliver consent to adoption. The notice of intent should specify the intended delivery date, and should be served on all parties to the appeal and on anyone appointed to represent the interests of the child, no fewer than 30 days before the intended delivery date. A copy of the notice of intent and a proof of service should be filed in the appellate court. After service of the notice of intent, any party may move the court in which the appeal is pending to stay the order terminating parental rights, but only to the extent it authorized consent to adoption. The department or supervising agency should not deliver its consent to adoption if any party seeks a stay before the intended delivery date, pending a ruling on the motion to stay. The appellate court will hear the motion to stay on an expedited

basis. Any stay of enforcement shall terminate upon issuance of the mandate as provided in Rule 12.5, unless otherwise directed by the appellate court. See Form 15D.

[Adopted October 2, 2008; Amended effective April 3, 2012; September 1, 2014; November 20, 2018; December 3, 2019; September 1, 2021.]

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the state supreme court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 24-05-011
RULES OF COURT
STATE SUPREME COURT
[February 7, 2024]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO GR ) NO. 25700-A-1566
12.2 (c)(2)—WASHINGTON STATE )
BAR ASSOCIATION: PURPOSES, )
AUTHORIZED ACTIVITIES, AND )
PROHIBITED ACTIVITIES )

The Board of Governors of the Washington State Bar Association, having recommended the suggested amendments to GR 12.2 (c) (2)—Washington State Bar Association: Purposes, Authorized Activities, and Prohibited Activities, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(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 April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of February, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET
Suggested Additions and Amendments to
GENERAL RULES
Rule 12.2(c)(2)
Submitted by the Board of Governors of the Washington State Bar Association

A. Name of Proponent: Washington State Bar Association, Board of Governors

B. Spokespersons:

Hunter Abell, President, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

Terra Nevitt, Executive Director, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

C. Purpose: The purposes of this recommended rule change are (1) to eliminate the confusion between the language in GR 12.2(c)(2) and the U.S. Supreme Court's later language in Keller v. California State Bar, 496 U.S. 1, 110 S. Ct. 2228, 110 L.Ed 112 (1990); and (2) to de-

crease barriers to the WSBA effectively accomplishing its mission, as identified by its Equity and Disparity Work Group.

### **Background**

GR 12.2 sets forth the purposes of the Washington State Bar Association, including specification of activities that are expressly authorized and prohibited. The suggested amendment modifies and clarifies the section of GR 12.2 that sets forth the "Activities Not Authorized" for the Washington State Bar Association.

The WSBA Board of Governors created the Equity and Disparity Work Group in June 2020 with the goal of reckoning with the harsh reality that laws, policies, and procedures in the legal system have historically led to disparate and inequitable results that disproportionately harm people of color. The Work Group reviewed rules, regulations, and laws related to the practice of law and administration of justice with the purpose of identifying those that impede real justice and fairness and proposing solutions that mitigate harm caused by unjust rules and procedures.

The Equity and Disparity Work Group, led by former WSBA Governor Alec Stephens, identified GR 12.2 (c) (2) as one such rule. Fraught with confusing and undefined terms, the rule has impeded the WSBA from comprehensively pursuing its mission, having become an unintended barrier to some otherwise appropriate WSBA decisions and actions. WSBA member Laura Sierra served as chair of the subcommittee focused on GR 12.2 (c) (2) that developed this recommended change.

GR 12.2 (c) (2) currently states that the Washington State Bar Association will not take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice. The rules do not define any of the operative words: "political," "social issues," "related to or affect the practice of law," and "relate to or affect the administration of justice." Since its enactment, the WSBA has routinely analyzed organizational decisions, positions, and actions through the lens of GR 12.2 (c) (2) to ensure that the WSBA is not acting beyond its rule-defined authorization. But distinguishing the activities authorized by the rule from those that are prohibited has proven to be difficult. For example, GR 12.2 (b) (17) specifically authorizes the WSBA to maintain a legislative presence to inform members of new and proposed laws and to inform public officials about the organization's positions and concerns." Presumably most or all legislation addresses political or social issues. But repeated efforts to analyze whether legislation relates to or affects the practice of law or the administration of justice has shown the standard to be difficult to apply to actual decisions about whether the WSBA can take positions on such legislation. The Work Group identified examples of subject matters—including criminal law, civil rights laws, and environmental laws, among others—that do not manifestly relate to or affect the practice of law or the administration of justice, particularly if those concepts are interpreted narrowly. The process of navigating the GR 12.2 (c) (2) prohibitions has led to contentious and arguably inconsistent decision-making in such situations, meaning that the WSBA has been less effective in its pursuit of this portion of the WSBA mission.

The current language of GR 12.2 (c) (2) was adopted in 1987 in response to a lawsuit in California challenging integrated bar activities on First Amendment grounds. Three years later, the U.S. Supreme Court issued *Keller v. California State Bar*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed 112 (1990). *Keller* limited integrated state bar asso-

ciation activities to those germane to regulating the legal profession or improving the quality of the legal service available to the people of the state. *Keller*, 496 U.S. 1, at 13-14 (holding only germane bar activities are chargeable to members); see also *Lathrop v. Donohue*, 367 U.S. 820, 843, 81 S. Ct. 1826, 6 L. Ed. 1191 (1961).

As a result, in Washington State there are two similar but differently phrased standards that govern the appropriateness of the organization's decisions, positions, and actions. Under GR 12.2 (c)(2), WSBA cannot take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice. Under the First Amendment, the WSBA can only charge license fees for activities that are germane to regulating the legal profession or improving the quality of legal service available to the people of the State. Attempts to harmonize these standards have generated more confusion than reconciliation.

#### **Recommended Change**

The suggested amendment replaces the confusing and archaic GR 12.2 (c)(2) language with a reference to the ten regulatory objectives in GR 12.1 and the authorized purposes and activities listed in GR 12.2 (a) and (b). The revised GR 12.2 (c)(2) would prohibit the WSBA from taking positions on matters that do not relate to or affect the regulatory objectives of GR 12.1 or the purposes and authorized activities set forth in GR 12.2 (a) or (b). This will clarify and simplify the process of making decisions about what WSBA is prohibited from doing, since the Supreme Court has already delineated, with specificity, the objectives of regulating the profession, the purposes of the WSBA, and the activities that it is authorized to engage in.

Redline and clean versions of the amendments are attached.

**D. Hearing:** A hearing is not requested.

**E. Expedited Consideration:** Expedited consideration is not requested.

**F. Supporting Material:**

- None

#### GR 12.2

##### WASHINGTON STATE BAR ASSOCIATION: PURPOSES, AUTHORIZED ACTIVITIES, AND PROHIBITED ACTIVITIES

(a)-(b) [Unchanged.]

**(c) Activities Not Authorized.** The Washington State Bar Association will not:

- (1) Take positions on issues concerning the politics or social positions of foreign nations;
- (2) Take positions ~~on political or social issues which do not relate to or affect the practice of law or the administration of justice objectives of GR 12.1 or GR 12.2 (a) or (b);~~ or
- (3) Support or oppose, in an election, candidates for public office.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the state supreme court and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 24-05-012**

**POLICY STATEMENT**

**DEPARTMENT OF HEALTH**

[Filed February 8, 2024, 4:06 p.m.]

This memo serves as notice that the pharmacy quality assurance commission (commission) is rescinding the policy statement Regulatory Standards Applicable to Remote Dispensing Sites, which was filed on July 2, 2020, and published as WSR 20-15-011.

The department of health is rescinding this policy statement because rule making was completed allowing a pharmacy to extend its pharmacy license to a remote dispensing site where technology is used to dispense medications used for the treatment of opioid use disorder or its symptoms. The CR-103P was filed under WSR 24-01-098 and went into effect on January 18, 2024.

Individuals requiring information on this rule should contact Joshua Munroe, rules and legislative consultant, phone 360-502-5058, email PharmacyRules@doh.wa.gov.

Tami M. Thompson  
Regulatory Affairs Manager

**WSR 24-05-013**

**INTERPRETIVE STATEMENT**

**DEPARTMENT OF HEALTH**

[Filed February 8, 2024, 4:16 p.m.]

This memo serves as notice that the department of health, board of naturopathy (board) is rescinding the Interpretive Statement BON 21-01 regarding the continuing education pharmacology documentation, which was filed June 21, 2021, under WSR 21-13-113.

The board is rescinding this interpretive statement because the board has adopted amendments to WAC 246-836-080 Continuing competency program, that clarify what forms of documentation are acceptable to verify meeting the pharmacology continuing education requirements. Thus, the interpretive statement is no longer necessary.

Individuals requiring information on this rule should contact Rachel Phipps, program manager, phone 564-233-1277, email [naturopathy@doh.wa.gov](mailto:naturopathy@doh.wa.gov).

Tami M. Thompson  
Regulatory Affairs Manager

WSR 24-05-016

NOTICE OF PUBLIC MEETINGS

EMPLOYMENT SECURITY DEPARTMENT

(Agricultural and Seasonal Workforce Services Advisory Committee)

[Filed February 9, 2024, 8:49 a.m.]

Meeting Dates

February 2024 - January 2025

Third Wednesday at 1:00 p.m., unless otherwise indicated.

Date	Location	Notes
Wednesday, February 21, 2024	Zoom	^Virtual meeting 1-3 p.m.
Wednesday, March 20, 2024	In person Hybrid	Maple Park Olympia, Washington 1-5 p.m.
Wednesday, April 17, 2024	Zoom	^Virtual meeting 1-3 p.m.
Wednesday, May 15, 2024	Zoom	^Virtual meeting 1-3 p.m.
Thursday <sup>1</sup> , June 20, 2024	In person Hybrid	***Union Gap WorkSource 1205 Ahtanum Ridge Drive Union Gap, WA 98903 1-5 p.m.
Wednesday, July 17, 2024	Zoom	^Virtual meeting 1-3 p.m.
Thursday <sup>2</sup> , July 25, 2024	Zoom	**^Virtual meeting 1-3 p.m.
Wednesday, August 21, 2024	Zoom	^Virtual meeting 1-3 p.m.
Wednesday, September 18, 2024	In person Hybrid	Union Gap WorkSource 1205 Ahtanum Ridge Drive Union Gap, WA 98903 1-5 p.m.
Wednesday, October 16, 2024	Zoom	^Virtual meeting 1-3 p.m.
Wednesday, November 20, 2024	In person Hybrid	Union Gap WorkSource 1205 Ahtanum Ridge Drive Union Gap, WA 98903 1-5 p.m.
Wednesday, December 18, 2024	None	No meeting in December
Wednesday, January 15, 2025	Zoom	^Virtual meeting 1-3 p.m.

<sup>1</sup> This meeting is on a Thursday in observance of Juneteenth (June 19, 2024).

<sup>2</sup> This meeting is an extra meeting added to assist with the 2024 Agricultural and Seasonal Workforce Services (ASWS) Report.

\*\* Extra meetings added.

\*\*\* Meeting dates moved.

**Per vote of ASWS advisory committee members, meetings are being recorded as of May 21, 2020, meeting.**

^ RECORDING DISCLAIMER: This meeting may be recorded. Please be advised that if the meeting is recorded, your image will be captured and recorded during the videoconference. Your participation in this videoconference equals consent to be recorded as required by law. Questions about the collection may be addressed to ASWS, 815 North Kellogg Street, Suite D, Kennewick, WA 99336.

**WSR 24-05-017**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
[Filed February 9, 2024, 9:52 a.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 department of social and health services.

**Economic Services Administration**  
**Division of Child Support (DCS)**

Document Title: DCS Administrative Policy (AP) 10.0.0: Information Security Definitions.

Subject: DCS AP 10.0.0.

Effective Date: February 7, 2024.

Document Description: This DCS AP ensures a common understanding of information security terms referenced in DCS policy.

To receive a copy of the interpretive or policy statements, contact Rachel Shaddox, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone 360-664-5073, TDD/TTY 360-753-9122, fax 360-664-5342, email Rachel.Shaddox@dshs.wa.gov, website <http://www.dshs.wa.gov/dcs/>.

**WSR 24-05-018**

**NOTICE OF PUBLIC MEETINGS**

**SOUTH PUGET SOUND**

**COMMUNITY COLLEGE**

[Filed February 9, 2024, 9:59 a.m.]

The following regular meeting of the board of trustees of South Puget Sound Community College District 24 has been rescheduled:

From: Tuesday, March 12, 2024, at 2:30-4:30 p.m., at 2011 Mottman Road S.W., Building 25-Boardroom, Olympia, WA 98512.

To: Tuesday, March 19, 2024, at 2:30-4:30 p.m., at 2011 Mottman Road S.W., Building 25-Boardroom, Olympia, WA 98512.

If you need further information, contact Diana Toledo, 360-596-5206, [dtoledo@spscc.edu](mailto:dtoledo@spscc.edu).

**WSR 24-05-020**  
**NOTICE OF PUBLIC MEETINGS**  
**GAMBLING COMMISSION**  
 [Filed February 9, 2024, 10:40 a.m.]

**2024 Commission Meetings Schedule**

January 11 and 12 Thursday and Friday	Gambling Commission Headquarters 4565 7th Avenue S.E. Lacey, WA (Hybrid)
February 8 and 9 Thursday and Friday	Liquor Cannabis Board 1025 Union Avenue S.E. Olympia, WA (Hybrid)
March 14 and 15 Thursday and Friday	Liquor Cannabis Board 1025 Union Avenue S.E. Olympia, WA (Hybrid)
*April 25 and 26 Thursday and Friday	Gambling Commission Headquarters 4565 7th Avenue S.E. Lacey, WA 98503 (Hybrid)
May 9 and 10 Thursday and Friday	Liquor Cannabis Board 1025 Union Avenue S.E. Olympia, WA (Hybrid)
June	NO MEETING
July 11 and 12 Thursday and Friday	Liquor Cannabis Board 1025 Union Avenue S.E. Olympia, WA (Hybrid)
August 8 and 9 Thursday and Friday	Liquor Cannabis Board 1025 Union Avenue S.E. Olympia, WA (Hybrid)
September 12 and 13 Thursday and Friday	TBD
*October 17 and 18 Thursday and Friday	TBD
November 14 and 15 Thursday and Friday	Liquor Cannabis Board 1025 Union Avenue S.E. Olympia, WA (Hybrid)
December	NO MEETING

Gambling commission meetings are typically held on the second Thursday and Friday of the month. Dates identified with an asterisk are scheduled later in the month due to conference schedules.

CONTACT: Julie Anderson, 360-486-3453, Julie.anderson@wsgc.wa.gov.

**WSR 24-05-021**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
[Filed February 9, 2024, 12:26 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 department of social and health services.

**Economic Services Administration**  
**Division of Child Support (DCS)**

Document Title: Policy Clarification Memo (PCM) 24-002: 2024 Change to the Self-Support Reserve.

Subject: 2024 Change to the self-support reserve.

Effective Date: February 7, 2024.

Document Description: This PCM explains the 2024 change to the self-support reserve amount.

To receive a copy of the interpretive or policy statements, contact Rachel Shaddox, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone 360-664-5073, TDD/TTY 800-833-6384, fax 360-664-5342, email Rachel.Shaddox@dshs.wa.gov, website <http://www.dshs.wa.gov/dcs/>.

WSR 24-05-025

**NOTICE OF PUBLIC MEETINGS**

**DEPARTMENT OF**

**ENTERPRISE SERVICES**

(Capitol Campus Design Advisory Committee)

[Filed February 12, 2024, 12:02 p.m.]

The capitol campus design advisory committee has changed the following regular meeting:

From: Thursday, February 22, 2024, at 10 a.m. - 12 p.m.

To: Friday, March 15, 2024, at 10 a.m. - 12 p.m.

If you need further information, contact Christopher Ferguson, department of enterprise services, 360-790-7758, Christopher.ferguson@des.wa.gov, des.wa.gov.

**WSR 24-05-026**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF TRANSPORTATION**  
 (Commuter Trip Reduction Board)  
 [Filed February 12, 2024, 1:25 p.m.]

Following is the schedule of regular meetings for the commuter trip reduction board for 2024:

<b>Date</b>	<b>Time</b>	<b>Location</b>
January 11, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>
February 8, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>
March 7, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>
April 4, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>
May 9, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>
June 6, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>
July 11, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>
September 5, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>
October 3, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>
December 5, 2024	10:00 a.m. - 12:00 p.m.	[Microsoft] Teams <a href="https://tdmboard.com/">https://tdmboard.com/</a>

If you need further information, contact Ricardo Gotla, ricardo.gotla@wsdot.wa.gov.

WSR 24-05-035  
NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF  
FISH AND WILDLIFE  
(Fish and Wildlife Commission)  
[Filed February 14, 2024, 7:22 a.m.]

FISH AND WILDLIFE COMMISSION 2023 MEETING CALENDAR

During the October 28, 2023, meeting, the commission approved the following dates and locations for the 2024 calendar.

Date	Meeting Type
January 25-27	Hybrid - Olympia
February 16	Web conference
March 14-16	Hybrid - Olympia
April 18-20	Hybrid - Olympia
May 17	Web conference
June 20-22	Hybrid - Vancouver
July 19	Web conference
August 8-10	Hybrid - Olympia
September 26-28	Hybrid - TBD
October 24-26	Hybrid - Olympia
November 15	Web conference
December 12-14	Hybrid - TBD

Commission meetings are open to the public. Meeting agendas, minutes, and recordings are available on the commission's website. Under meeting type, hybrid means both in person and virtual.

WSR 24-05-044

HEALTH CARE AUTHORITY

[Filed February 15, 2024, 11:39 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 24-0007 Behavioral and Community Health Aides - New SPA Number.

Effective Date: [No date provided by agency].

Description: The health care authority (HCA) previously published notices under WSR 22-20-065, 22-23-111, and 23-06-048 of the intent to submit an SPA to establish two new provider types in the medicaid state plan: Community health aides/practitioners and behavioral health aides/practitioners. Submission of an SPA was delayed until this year, necessitating renumbering the SPA as 24-0007. In addition to the two provider types listed, SPA 24-0007 will also add dental health aides.

As stated previously, this SPA is expected to increase the annual aggregate payment as it introduces new provider types to be reimbursed by medicaid. However, because these are new provider types, HCA has no data upon which to estimate a financial impact at this time.

SPA 24-0007 is in the development process; therefore, a copy is not yet available for review. HCA would appreciate any input or concerns regarding this SPA. To request a copy when it becomes available or submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

CONTACT: Lena Nachand, Office of Tribal Affairs, 626 8th Avenue S.E., Olympia, WA 98501, phone 360-622-1237, TRS 711, email [lena.nachand@hca.wa.gov](mailto:lena.nachand@hca.wa.gov), website <https://www.hca.wa.gov/about-hca/who-we-are/tribal-relations>.

WSR 24-05-047

**NOTICE OF PUBLIC MEETINGS**

**BENTON CLEAN AIR AGENCY**

[Filed February 15, 2024, 1:19 p.m.]

**Board of Directors**

**Meeting Schedule for Calendar Year 2024**

Meetings are held on the fourth Thursday of each month, with three noted exceptions, at 5:00 p.m., at the agency offices, 526 South Steptoe Street, Kennewick, WA 99336; and via Zoom.

January 25

February 22

March 28

April 25

May 23

June 27

July 25

August 22

Canceled

September 26

October 24

November 28

Canceled

December 19

Third Thursday

WSR 24-05-053

AGENDA

LIQUOR AND CANNABIS

BOARD

[Filed February 16, 2024, 3:13 p.m.]

2024 Semi-Annual Rule-Making Agenda

January 31 - June 30, 2024

Cannabis Rule Making						
NEGOTIATED RULE MAKING						
Rule Topic/Title	WAC Section	Drafter	Purpose for Rule Making	CR-101	CR-102	CR-103
THC bill implementation	314-55-010 314-55-080 314-55-095 314-55-102 314-55-105 314-55-106 314-55-109 314-55-560	Cassidy West	To modify chapter 314-55 WAC as necessary to align applicable rules with statutory requirements created, amended, or repealed by E2SSB 5367 (chapter 365, Laws of 2023). The legislation is related to the regulation of products containing THC.	June 21, 2023 WSR 23-13-129	Anticipate CR-102 in 1st quarter of 2024.	Anticipate adoption in 2nd quarter of 2024.
Social equity in cannabis (E2SSB 5080) implementation	314-55-010 314-55-570	Cassidy West	To modify WAC 314-55-010, 314-55-570, and other applicable sections of chapter 314-55 WAC to align rules with statutory requirements created, amended, or repealed by E2SSB 5080 (chapter 220, Laws of 2023). The legislation is related to expanding and improving the social equity in cannabis program.	November 8, 2023 WSR 23-23-062	Anticipate filing CR-102 in 2nd quarter of 2024.	Anticipate adoption in 2nd quarter of 2024.
Medical cannabis endorsements	314-55-020 314-55-080	Daniel Jacobs	To consider modifying WAC 314-55-020 and 314-55-080 to create a mechanism to rescind medical cannabis endorsements for cannabis retailers that do not meet the regulatory requirements. The liquor and cannabis board (board) accepted a rule petition in 2023 to initiate the rule-making proceedings.	October 25, 2023 WSR 23-22-063	Anticipate filing CR-102 in 1st quarter of 2024.	Anticipate adoption in 2nd quarter of 2024.
Allowing certain minors (under 21) on producer and processor licensed premises	314-55-015	Denise Laflamme	To consider modifying WAC 314-55-015 to allow persons under the age of 21 on the licensed premises producers and processors under certain, limited conditions. The board accepted a rule petition in 2022 to initiate the rule-making proceedings.	Anticipate filing CR-101 in 1st quarter of 2024.	Anticipate filing CR-102 in 2nd quarter of 2024.	Anticipate adoption in 2nd quarter of 2024.

Cannabis Rule Making						
NEGOTIATED RULE MAKING						
Rule Topic/Title	WAC Section	Drafter	Purpose for Rule Making	CR-101	CR-102	CR-103
Flexible payment terms for wholesale cannabis transactions	314-55-115	Jeff Kildahl	To consider modifying WAC 314-55-115 to allow payments for wholesale cannabis transactions to be made within three days of delivery, including the day of delivery, instead of prior to or at the time of delivery, as currently required. The board accepted a rule petition in 2023 to initiate the rule-making proceedings.	Anticipate filing CR-101 in 1st quarter of 2024.	Anticipate filing CR-102 in 2nd quarter of 2024.	Anticipate adoption in 2nd quarter of 2024.
Vendor, educational, and internal quality control sampling	314-55-095	Cassidy West	To consider modifying WAC 314-55-095 to review and update vendor, educational, and internal quality control sampling. The board accepted a rule petition in 2022 to initiate the rule-making proceedings.	March 1, 2023 WSR 23-06-079	Anticipate filing CR-102 in 1st quarter of 2024.	Anticipate adoption in 2nd quarter of 2024.
Cannabis advertising	314-55-155	Cassidy West	To consider modifying WAC 314-55-155 to update the cannabis advertising requirements including, but not limited to, clarifying and technical updates to existing rules.	August 31, 2022 WSR 22-18-057	Anticipate filing CR-102 in 2nd quarter of 2024.	Anticipate adoption in 3rd quarter of 2024.

Alcohol Rule Making						
NEGOTIATED RULE MAKING						
Rule Topic/Title	WAC Section	Drafter	Purpose for Rule Making	CR-101	CR-102	CR-103
Alcohol delivery and take out endorsements (SSB 5448), and MAST 13 permit privileges	314-03-035 314-03-200 314-03-205 315-03-500 314-03-505 314-03-510 314-03-600 314-11-040 314-17-015	Daniel Jacobs	Modified WAC 314-17-015 and other sections of Title 314 WAC as necessary to allow MAST 13 permit holders to open and pour beer or wine in areas where minors are not prohibited. Modified Title 314 WAC to align rules with the statutory requirements that were created, amended, or repealed by SSB 5448 (chapter 279, Laws of 2023). The legislation is related to liquor licensee privileges for the delivery of alcohol.	July 19, 2023 WSR 23-05-116	December 6, 2023 WSR 23-24-100	January 31, 2024 WSR-24-04-042
Trade areas	314-02-1071	Daniel Jacobs	Modify WAC 314-02-1071 to address the historical omission of recognizing tribal sovereignty and return oversight of licensed alcohol entities on tribal land to tribes.	May 24, 2024 WSR 23-11-160	January 3, 2024 WSR 24-02-094	Anticipate adoption in 1st quarter of 2024.

Alcohol Rule Making						
NEGOTIATED RULE MAKING						
Rule Topic/Title	WAC Section	Drafter	Purpose for Rule Making	CR-101	CR-102	CR-103
Prohibited conduct	314-11-050	Daniel Jacobs	To consider modifying WAC 314-11-050 to modernize the requirements related to the types of conduct prohibited on premises with a liquor license.	February 14, 2024 WSR-24-042	Anticipate CR-102 in 2nd quarter of 2024.	Anticipate adoption in 2nd quarter of 2024.
Tobacco and Vapor Products Rule Making						
EXPEDITED RULE MAKING						
Rule Topic/Title	WAC Section	Drafter	Purpose of Rule Making	CR-105	CR-103	
Penalties for selling tobacco products to minors	314-35-075	Denise Laflamme	Amend WAC 314-35-075 to implement section 4 of ESSB 5365 (chapter 398, Laws of 2023). The legislation increases monetary penalties the board can impose on licensed retailers under RCW 70.155.100 for violations of RCW 26.28.080 pertaining to selling or giving cigarette, tobacco, or vapor products to persons under 21 years of age.	January 17, 2024 WSR 24-03-089	Anticipate adoption in 1st quarter of 2024.	
General Rule Making						
EXPEDITED RULE MAKING						
Rule Topic/Title	WAC Section	Drafter	Purpose of Rule Making	CR-105	CR-103	
Update acronym used to reference the Washington state liquor and cannabis board	Title 314 WAC	Jeff Kildahl	Amend Title 314 WAC as necessary to change the acronym used to reference the board from "WLCB" to "LCB."	Anticipated filing CR-105 in 1st quarter of 2024.	Anticipate adoption in 2nd quarter of 2024.	

**WSR 24-05-060**  
**NOTICE OF PUBLIC MEETINGS**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**  
(Sentencing Guidelines Commission)  
[Filed February 20, 2024, 9:37 a.m.]

**MEETING SCHEDULE FOR 2024**

In accordance with RCW 42.30.075, Open Public Meetings Act, the following schedule of regular meetings in 2024 for the sentencing guidelines commission is submitted for publication in the Washington State Register.

Date	Time	Location
January 12, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
February 9, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
March 8, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
April 12, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
May 10, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
June 14, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
July 12, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
August 9, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
September 13, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
October 11, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
November 8, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom
December 13, 2024	9 a.m.	1500 Jefferson Street S.E., Olympia/online via Zoom

Meeting times and location are subject to change. Current meeting information can be found on the sentencing guidelines commission website <https://sgc.wa.gov/sentencing-guidelines-commission/meetings>.

If you need further information, contact Keri-Anne Jetzer, P.O. Box 43124, Olympia, WA 98504-3124, phone 360-688-8511, Keri-Anne.Jetzer@ofm.wa.gov, <https://sgc.wa.gov/sentencing-guidelines-commission>.