

WSR 23-08-001

AGENDA

DEPARTMENT OF HEALTH  
STATE BOARD OF HEALTH

[Filed March 22, 2023, 1:25 p.m.]

January 2023  
Rules Agenda

This report details current and anticipated rule-making activities for the department of health (DOH) and the state board of health (SBOH). If you have any questions regarding this report or DOH rule-making activities, please contact Tami Thompson at 360-628-0096. If you have any questions regarding SBOH rule-making activities, please contact Michelle Davis at 360-236-4105.

This agenda is for information purposes, and the anticipated rule-making actions are estimates. Any errors in this agenda do not affect the rules and rule-making notices filed with the office of the code reviser and published in the Washington State Register. There may be additional rule-making activities that cannot be forecasted as DOH and SBOH initiates rule making to implement new state laws, meet federal requirements, or meet unforeseen circumstances. See the "Key" below for explanations of terms and acronyms.

**KEY :**

Blank cells in tables mean the anticipated filing date is not known at the time this rules agenda is filed.

**CR:** "Code reviser" on the notice forms created 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 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.

**State Board of Health Rule Making**

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
SBOH	Chapter 246-282 WAC, Sanitary control of shellfish. SBOH is considering revisions to the chapter to modify harvest control requirements by setting more proactive measures to prevent illnesses and protect public health. The rule revision may also include updating definitions, seed size, and other technical and editorial changes as needed.	22-06-034				Dani Toepelt 360-890-6054 Jocelyn Jones 360-236-3020 Stuart Glasoe 360-236-4111
SBOH	WAC 246-500-055 Human remains reduced through natural organic reduction. SBOH is proposing administrative edits through exception rule making to correct typographical errors in the rule and clarify rule language without changing its intended effect.		23-04-100			Molly Dinardo 564-669-3455

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
SBOH	Chapter 246-650 WAC, Newborn screening. SBOH is considering adding ornithine transcarbamylase deficiency (OTCD) to the list of mandatory conditions for newborn screening conducted by DOH.	22-05-012				Molly Dinardo 564-669-3455
SBOH	Chapter 246-260 WAC, Water recreation facilities; and chapter 246-262 WAC, Recreational water contact facilities. SBOH will consider adopting requirements from the Centers for Disease Control and Prevention Model Aquatics Health Code, modifying the rules to keep pace with changing water recreation technologies, and to improve clarity and usability including possible consolidation of all water recreation rules into a single chapter.	17-01-048				Stuart Glasoe 360-236-4111 Ashlie Laydon
SBOH	Chapter 246-272A WAC, On-site sewage systems. SBOH is considering revisions to the chapter. Priority issues include local management plans, property sale inspections, treatment levels, ultraviolet disinfection, and licensing of operations and maintenance providers. SBOH may consider other technical and editorial changes as needed.	18-06-082				Stuart Glasoe 360-236-4111 Peter Beaton 360-236-4031

### Department of Health Rule Making

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
Board of Denturists	Chapter 246-812 WAC. The board of denturists is considering adopting health equity continuing education (CE) requirements.	23-02-009				Vicki Brown 360-236-4865
Board of Denturists	Chapter 246-812 WAC. The board of denturists is considering amending the infection control standards purpose statement in WAC 246-812-501 to ensure policies and procedures are maintained. The board is also considering establishing new sections of rules for requirements of prefabricated implant abutments.	22-05-084				Vicki Brown 360-236-4865
Board of Hearing and Speech	WAC 246-828-100 Over-the-counter hearing aids. The board of hearing and speech is considering amending WAC 246-828-100 Hearing instruments fitting and dispensing—Minimum standards of practice, to be consistent with the Food and Drug Administration finalized rule regarding the sale of over-the-counter hearing aids. The board may also consider clarifying or technical changes as needed.	23-04-023	Anticipate Filing			Kim-Boi Shaddock 360-236-2912
Board of Hearing and Speech	WAC 246-828-510. The board of hearing and speech is considering amending this rule to include health equity CE requirements.	23-04-022	Anticipate Filing			Kim-Boi Shaddock 360-236-2912

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
Board of Massage	Chapter 246-830 WAC. The board of massage is considering adopting health equity CE rules.	23-01-132				Megan Maxey 360-236-4945
Board of Massage	WAC 246-830-035 Licensing by endorsement for out-of-state applicants. DOH, in coordination with the board of massage, is examining and may consider amending this section of the massage therapist rules related to licensing by endorsement for out-of-state applicants.	Anticipate Filing				Megan Maxey 360-236-4945
Board of Massage	WAC 246-830-201, 246-830-485, 246-830-490, 246-830-500, and 246-830-510. Correcting massage exam names.	21-09-038	22-13-179 22-21-123 Supplemental	Anticipate Filing		Megan Maxey 360-236-4945
Board of Massage	WAC 246-830-035 Licensing by endorsement for out-of-state applicants. DOH, in coordination with the board of massage, is examining and may consider amending this section of the massage therapist rules related to licensing by endorsement for out-of-state applicants.	Anticipate Filing				Megan Maxey 360-236-4945
Board of Naturopathy	WAC 246-836-080 Continuing competency program. The board of naturopathy is considering amendments to the continuing education rules for naturopathic physicians to ensure that adequate quantity and quality of CE courses are available to meet requirements for each category. Topics that will be considered include pharmacology requirements, accredited organizations, and reporting clarification in response to several rule petitions. Additionally, amendments to address the legislative mandate to create a health equity continuing education requirement will be considered.	21-21-111	Anticipate Filing			Lana Crawford 564-669-1455
Board of Naturopathy	WAC 246-836-210 Authority to use, prescribe, dispense, and order. The board of naturopathy is considering rule making regarding the practice of nonsurgical cosmetic procedures in naturopathic practice, including education and training. The board is considering revising WAC 246-836-210 and creating a new section(s) of rule.	20-24-042	Anticipate Filing			Lana Crawford 564-669-1455
Board of Nursing Home Administrators	WAC 246-843-071 Application, 246-843-090 Administrator-in- training program, 246-843-130 Continuing education requirements, and 246-843-231 Temporary practice permits. The board of nursing home administrators is considering amending licensure, licensure renewal, health equity CE, and temporary practice permit rules.	23-03-119	Anticipate Filing			Kendra Pitzler 360-236-4723

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
Board of Nursing Home Administrators	Chapter 246-843 WAC. The board of nursing home administrators is considering creating a new section to establish a retired active status for licensed nursing home administrators and amending existing requirements to renew an expired license under WAC 246-843-180.	22-19-058	Anticipate Filing			Kendra Pitzler 360-236-4723
DOH, in collaboration with the Board of Nursing Home Administrators	WAC 246-843-990 Nursing home administrator fees and renewal cycle. DOH is opening this rule to establish a retired active status fee if that licensure status is first adopted by the board of nursing home administrators in a separate rule making.	22-13-184	Anticipate Filing			Kendra Pitzler 360-236-4723
Board of Optometry	WAC 246-851-090 through 246-851-230. The board of optometry will conduct a review of the CE and related rules to consider increasing the number of allowable online credits. The board may also make clarifications to existing rules and updates to citations as needed. Rule making may include creating new rule sections and repealing existing rule sections.	21-24-102	Anticipate Filing			Loralei Walker 360-236-4647
Board of Optometry	WAC 246-851-440 through 246-851-470. The board of optometry is considering updating health professional monitoring program terminology as required by SSB 5496 Health professional monitoring programs.	23-01-046	Anticipate Filing			Loralei Walker 360-236-4647
Board of Optometry	Chapter 246-851 WAC. The board of optometry is considering adopting health equity CE requirements.	23-01-076	Anticipate Filing			Loralei Walker 360-236-4647
Board of Osteopathic Medicine and Surgery	Chapter 246-853 WAC. The board of osteopathic medicine and surgery is considering adopting health equity CE requirements.	Anticipate Filing				Becky McElhiney 360-236-4766
Board of Osteopathic Medicine and Surgery	WAC 246-853-290, 246-853-300, 246-853-630, 246-853-640, 246-853-662, 246-853-750, and 246-853-990. The board of osteopathic medicine and surgery and DOH are proposing updates to remove references to osteopathic physicians' assistants in response to the repeal of chapters 246-854 and 246-855 WAC.				Anticipate Filing	Becky McElhiney 360-236-4766
Board of Osteopathic Medicine and Surgery	WAC 246-853-290, 246-853-300, 246-853-310, and 246-853-320. Substance abuse monitoring program for osteopathic physicians. The board of osteopathic medicine and surgery is proposing amendments to update rules regarding health profession monitoring programs to update language changes made by SSB 5496 (chapter 43, Laws of 2022).				Anticipate Filing	Becky McElhiney 360-236-4766

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
Board of Osteopathic Medicine and Surgery	WAC 246-853-650 Safe and effective analgesia and anesthesia administration in office-based settings. The board of osteopathic medicine and surgery is considering rule amendments in response to a rule petition requesting changes to the definition of the term "minimal sedation."	21-11-025	22-21-129	Anticipate Filing		Becky McElhiney 360-236-4766
Board of Osteopathic Medicine and Surgery	WAC 246-853-661 Exclusions. The board of osteopathic medicine and surgery is considering amendments to expand the types of patients who are exempt from certain provisions of rule when being prescribed opioid drugs. The board will consider the Washington medical commission's recently adopted rules to ensure consistency and alignment with best practices.	22-17-142	Anticipate Filing			Becky McElhiney 360-236-4766
Board of Physical Therapy	WAC 246-915A-010 Physical therapy compact. Updating reference to new compact rules.		23-03-106	Anticipate Filing		Allyson McIver 360-236-2878
Board of Physical Therapy	WAC 246-915-120 Foreign educated applicants. The board of physical therapy is considering updating internet-based test of English as a foreign language scoring requirements to bring them closer in alignment with the Federation of State Boards of Physical Therapy guidelines. The board is considering creating a pathway for foreign trained applicants who hold an active license and have been practicing in the United States for a certain period of time. Additionally, there are some minor edits needed to clarify the language of the rule without changing its effect.	22-17-143	Anticipate Filing			Allyson McIver 360-236-2878
Board of Physical Therapy	WAC 246-915-085. The physical therapy board is considering amending continuing education rules to include health equity continuing education.	23-01-047	Anticipate Filing			Allyson McIver 360-236-2878
Chiropractic Quality Assurance Commission	Chapter 246-808 WAC. The chiropractic quality assurance commission is considering adopting health equity CE requirements for chiropractors.	22-22-088				Betty Moe 360-236-2868
Chiropractic Quality Assurance Commission	WAC 246-808-201 and 246-808-215. The chiropractic quality assurance commission is considering adopting health equity CE requirements for chiropractic X-ray technicians.	Anticipate Filing				Betty Moe 360-236-2868
Chiropractic Quality Assurance Commission	WAC 246-808-010, 246-808-105 through 246-808-140, 246-808-180 through 246-808-190, 246-808-510, 246-808-535, and 246-808-801 through 246-808-830. Amending the chiropractic credentialing requirements.	23-05-053				Betty Moe 360-236-2868

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
Dental Quality Assurance Commission	WAC 246-817-440 Dental continuing education requirements and 246-817-445 Dental anesthesia assistant continuing education. Dental provider health equity CE requirements.	23-04-096	Anticipate Filing			Amber Freeberg 360-236-4893
Dental Quality Assurance Commission	WAC 246-817-801 Intent, 246-817-810 Definitions used relative to substance abuse monitoring, 246-817-820 Approval of substance abuse monitoring programs, and 246-817-830 Participation in approved substance abuse monitoring program. The dental quality assurance commission is proposing amendments to update rules regarding health profession monitoring programs in line with the passage of SSB 5496.				Anticipate Filing	Amber Freeberg 360-236-4893
Dental Quality Assurance Commission	WAC 246-817-701 through 246-817-790, administration of anesthetic agents for dental procedures. The dental quality assurance commission is considering amendments to update general requirements. In addition to general updates, the commission is also considering amendments to address 24-hour on-call availability after a complex dental procedure, on-site inspections for all dentists holding sedation permits, and creation of a pediatric sedation endorsement.	17-17-089	22-23-076 Withdrawn Anticipate Filing New CR-102			Amber Freeberg 360-236-4893
Dental Quality Assurance Commission	WAC 246-817-905 Exclusions. The dental quality assurance commission is considering adding residential habilitation centers to the list of opioid prescribing exclusions.	22-20-011	Anticipate Filing			Amber Freeberg 360-236-4893
DOH	Title 246 WAC, Crisis call center crisis hubs. DOH is considering creating a new chapter of rules to implement E2SHB 1477 (chapter 302, Laws of 2021). The rules will establish standards for designation of crisis call centers as crisis call center hubs within the 988 national suicide prevention and mental health crisis hotline system.	22-15-084				Michelle Izumizaki 360-236-2601 Ashley Noble 360-236-3776
DOH	Title 246 WAC, Establishing a new chapter relating to rapid health information network data reporting.	17-21-075	Anticipate Filing			Samantha Fuller 564-669-1964

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
DOH	<p>WAC 246-803-990, 246-809-990, 246-810-990, 246-815-990, 246-817-990, 246-817-99005, 246-828-990, 246-845-990, 246-915-990, 246-915-99005, 246-930-990, and 246-980-990, fee amendments for multiple professions. DOH is considering fee amendments for the following professions: Acupuncturist or acupuncture and Eastern medicine practitioner, licensed mental health counselor, licensed advanced social worker and licensed independent clinical social worker, certified counselor, certified adviser, registered agency affiliated counselor, dental hygienist, dentist, registered dental assistant, certified dental anesthesia assistant, licensed expanded function dental auxiliary, audiologist, speech-language pathologist, hearing aid specialist, speech-language pathology assistant, nursing pool operator, physical therapist, physical therapist assistant, sex offender treatment provider, affiliate treatment provider certificate, and home care aide. Additional updates may be considered to ensure clarity and consistency of fees that are standard across all professions.</p>	22-20-067	23-01-133	Anticipate Filing		Heather Cantrell 360-236-4637
DOH	<p>Chapter 246-08 WAC, Practice and procedure, rules regarding DOH adjudicative proceedings for declaratory orders; public record requests; agency indexes; and general agency administrative processes. DOH is reviewing existing rules within the chapter to identify amendments that may be necessary as a result of changes in statutes, changes in internal operations, opportunities to streamline processes to reduce regulatory burden without compromising public health and safety, and to provide clear, concise, and reasonable rules. This rule making excludes WAC 246-08-390 Acquisition, security, disclosure and destruction of health information and 246-08-400 How much can a health care provider charge for searching and duplicating health care records.</p>	19-16-114				Tami Thompson 360-628-0096
DOH	<p>Chapter 246-12 WAC. Advanced suicide education standards.</p>	21-04-054	Anticipate Filing			Jeff Wise 360-236-4987
DOH	<p>Chapter 246-70 WAC, Cannabis product compliance. DOH is opening this chapter to consider updating the term "marijuana" to "cannabis," examining the definition of compliant product, reviewing compliant product labeling, and aligning quality assurance standards with the Washington state liquor and cannabis board.</p>	22-23-001	Anticipate Filing			Shannon Angell 360-236-2820

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
DOH	Chapter 246-220 WAC, Radiation protection—General Provisions; chapter 246-221 WAC, Radiation protection standards; chapter 246-222 WAC, Radiation protection—Worker rights; chapter 246-224 WAC, Radiation protection—Radiation machine assembly and registration; chapter 246-225 WAC, Radiation protection—X-rays in the healing arts; and chapter 246-227 WAC, Radiation protection—Industrial X-ray. DOH will consider amending existing rules and may adopt a new chapter to establish radiation safety standards for the use of body scanners capable of detecting contraband contained under clothing and within body cavities, meeting applicable federal and state radiation and safety standards.	22-17-145				Ashlie Laydon 360-236-3000 Richard Montemarano 360-236-3238
DOH	Chapter 246-275 WAC, Establishing a new chapter for on-site nonpotable water systems.	21-17-04				Jocelyn Jones 360-236-3020
DOH	WAC 246-254-053 Radiation machine facility fees.	23-04-060				Nina Helpling 360-236-3065
DOH	WAC 246-282-990(4), Sanitary control of shellfish—Fees, annual paralytic shellfish poisoning testing fee redistribution	23-04-061				Peter Beaton 360-236-4031
DOH	WAC 246-320-010, 246-320-500, 246-320-505, 246-320-600, and other sections of chapter 246-320 WAC relevant to construction standards. DOH is considering amending the hospital licensing regulations to align with the current national construction standards.	Anticipate Withdrawal 18-17-045 Anticipate Filing New CR-101				Susan Upton 360-236-2948
DOH	Chapter 246-329 WAC, Childbirth centers. DOH is considering updates to clarify, consolidate, and modernize the chapter.	22-06-058	Anticipate Filing			John Hilger 360-236-2929
DOH	WAC 246-337-040 Construction review services requirements. DOH is considering updating residential treatment facility rules to reflect upcoming changes to the Washington state building code.	20-07-124				John Hilger 360-236-2929
DOH	WAC 246-341-0515 Personnel—Agency staff requirements. DOH is considering amending WAC 246-341-0515 and possible other sections in response to a rule petition requesting the addition of board certified psychiatric pharmacists in the definition of mental health professional.	Anticipate Filing				Julie Tomaro 360-236-2937
DOH	Chapter 246-341 WAC, Behavioral health agency licensing and certification; chapter 246-337 WAC, Residential treatment facility; and chapter 246-320 WAC, Hospital licensing regulations. Phase three of a multiphase project to modernize licensing and certification requirements.	Anticipate Filing				Julie Tomaro 360-236-2937



Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
DOH	Chapter 246-358, Temporary worker housing. DOH is considering revisions to increase protections for housing occupants from communicable diseases such as COVID-19.	20-19-047				Juan Gamez 360-236-3074 Nina Helpling 360-236-3065
DOH	Chapter 246-453 WAC, Hospital charity care. DOH is considering amendments to implement new requirements in SSB 6273 (chapter 623, Laws of 2018) and SHB 1616 (chapter 197, Laws of 2022). Updates may be needed to ensure that the rules are current and align with best practices. DOH will also consider adding a new section to address requirements for clarity and conciseness.	22-20-069				Carrie Baranowski 360-236-4210
DOH	WAC 246-454-010, 246-454-020, 246-454-090, and 246-454-110, Hospitals—System of accounting, financial reporting, budgeting, cost allocation. DOH is considering amendments to existing rules to implement new requirements in E2SHB 1272. Updates may be needed to ensure that the rules are current and align with best practices. DOH will also consider adding a new section to address requirements for clarity and conciseness.	21-23-082				Carrie Baranowski 360-236-4210
DOH	WAC 246-480-010, 246-480-070, 246-480-080, and 246-480-990 within chapter 246-480 WAC, Drug take-back program. DOH is considering rule making to align existing rules with 2SHB 1161 (chapter 155, Laws of 2021) and adopt other amendments necessary to regulate the state drug take-back program, also known as the "safe medication return" program. Amendments may include clarifying how multiple program operators participate in the drug take-back program, setting fees, and other changes as appropriate.	22-01-170	Anticipate Filing			Mary Kellington 360-236-2988
DOH	Chapter 246-490 WAC, Vital statistics; and chapter 246-491 WAC, Vital statistics—Certificates. DOH is considering amending and repealing existing rules, and creating new rules related to vital records. The rules may establish registration and amendment requirements for vital records, update or add program processes to align with statutory changes, adopt fees associated with amendment and delayed birth applications, add or adjust fees associated with the issuance of certifications and informational copies, add or remove data items collected in a vital record, expand use of electronic registration of a vital event, make editorial and technical changes to align with statutory changes, and repeal obsolete sections of rule.	23-04-062				Kelly Thomson 360-236-2274

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
DOH	Chapter 246-720 WAC, Donor human milk bank standards. DOH is considering creating a new chapter to adopt safety standards for human milk banks.	22-15-044	Anticipate Filing			Shevonne Tsegaye 564-669-4454 Karen Mullen 360-515-8279 Ashley Noble 360-628-3776
DOH	Chapter 246-770 WAC, Fruit and vegetable incentives. DOH is considering creating a new chapter to implement a fruit and vegetable incentives program.	21-01-186	Anticipate Filing			Alyssa Auvinen 360-999-8967 Ashley Noble 360-236-3776
DOH	Chapter 246-780 WAC, Electronic benefit payments for farmers' market nutrition program, also to be known as e-FMNP. DOH is considering updating the chapter to allow for electronic benefit payments for the farmers' market nutrition program.	Anticipate Filing				Katherine Flores 360-742-4543 Steve Strong 360-742-2930
DOH	Chapter 246-805 WAC, Applied behavior analysis. Chapter review.	20-18-067	Anticipate Filing			Kendra Pitzler 360-236-4723
DOH	Chapter 246-809 WAC, Licensure for mental health counselors, marriage and family therapists, and social workers. Amending the topics of education, recordkeeping, mandatory reporting, supervision, approved supervisor, continuing education, and other licensing standards and to make needed clarifications and technical changes	18-11-029	Anticipate Filing			Brandon Williams 360-236-4611
DOH	WAC 246-810-010, 246-810-011, 246-810-012, 246-810-015, and 246-810-018. Implementation of E2SHB 1504 to define "student intern" as part of agency affiliated counselor.	21-21-036	Anticipate Filing			Ted Dale 360-236-2991
DOH	Chapter 246-810 WAC. Health equity CE requirements for certified counselors and advisors.	22-23-003	Anticipate Filing			Ted Dale 360-236-2991
DOH	WAC 246-811-070, 246-811-076, and 246-811-300. Substance use disorder professionals (SUDPs) and substance use disorder professional trainees (SUDPTs). DOH is considering updating the chapter to amend national certification requirements, include pharmacists as a profession eligible for the alternative training program, remove AIDS training from the probationary licensure requirements, and make other housekeeping updates as appropriate.	22-03-052	Anticipate Filing			Ted Dale 360-236-2991
DOH	WAC 246-811-220, 246-811-230, 246-811-240, 246-811-250, 246-811-280, and creating a new section in chapter 246-811 WAC. SUDPs and SUDPTs. Health equity CE requirements for SUDPs. DOH may also consider additional changes to update, clarify, and streamline these rule sections as appropriate.	22-23-002	Anticipate Filing			Ted Dale 360-236-2991

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
DOH	Chapter 246-822 WAC, Dietitians or nutritionists. DOH is considering rule making to amend or repeal several sections of the dietitian and nutritionist chapter. Specific sections focus on mandatory reporting, examinations, and curriculum.	18-10-059	Anticipate Filing			Tommy Simpson 360-402-9423
DOH	Chapter 246-824 WAC, Dispensing optician, health equity CE requirements.	23-01-097	Anticipate Filing			Kristina Bell 360-236-4841
DOH	Chapter 246-825 WAC. Genetic counselor health equity CE requirements.	22-24-002	Anticipate Filing			Kristina Bell 360-236-4841
DOH	WAC 246-827-0010, 246-827-0110, 246-827-0120, 246-827-0200, 246-827-0300, 246-827-0400, and 246-827-0610, medical assistants. DOH is considering rule amendments to several sections of medical assistant rules to update credentialing requirements and ensure that the rules are current and align with best practices. DOH will also consider adding a new section to address telemedicine supervision. This filing supersedes a previous filing on this topic under WSR 21-18-101 filed on August 31, 2021.	22-04-072	Anticipate Filing			Becky McElhiney 360-236-4766
DOH	Chapter 246-834 WAC, Midwives. Limited prescriptive license. DOH is considering creating new rule sections and amending existing sections to implement SSB 5765 (chapter 289, Laws of 2022). This bill creates two levels of limited prescriptive license extension for midwives to prescribe, obtain, and administer medications and therapies for the prevention and treatment of common prenatal and postpartum conditions, family planning methods, medical devices and implants. The bill also gives the secretary the authority to establish education requirements. DOH will also replace gendered terms with gender-neutral terms throughout the chapter. DOH intends to open the complete chapter for these potential revisions.	22-15-083				Kathy Weed 360-236-4883
DOH	New chapter 246-835 WAC, Birth doula. DOH is considering establishing a new chapter to implement ESHB 1881 (chapter 217, Laws of 2022). This bill creates a new certified profession, birth doula, under Title 18 RCW. The law requires the department to create rules for the profession, which are needed to establish processes for applicants to meet competency-based requirements for voluntary certification. Additionally, rule making is needed to specify various fees such as initial licensure, renewal, late renewal, duplicate license, and verification.	22-14-105	Anticipate Filing			Kathy Weed 360-236-4883

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
DOH	New WAC 246-847-991 Occupational therapy compact (compact) fees and renewal cycle. DOH is considering establishing a new section of rule to implement SB 5518, which creates a new interstate compact for occupational therapy and gives member states the discretion to charge a fee for granting compact privileges. DOH is considering adopting rules to specify the fees, as well as to ensure clarity and consistency of fees that are standard across all professions.	22-20-014	Anticipate Filing			Kathy Weed 360-236-4883
DOH	WAC 246-841-520 Expired license, 246-841-720 Mandatory reporting, and 246-841-990 Fees, in new chapter 246-841A WAC; and repealing WAC 246-841-520, 246-841-720, and 246-841-990, as part of an update and consolidation of chapters 246-841 and 246-842 WAC into a new chapter 246-841A WAC. DOH, in consultation with the nursing care quality assurance commission, is considering amending and consolidating nursing assistant rules regarding expired licenses, mandatory reporting, and fees. DOH may consider amendments to the existing language of WAC 246-841-520 and 246-841-720.	22-08-019 Withdrawn 23-04-056 New	Anticipate Filing			Ross Valore 360-236-4531
DOH	Chapter 246-850 WAC. Orthotics and prosthetics health equity CE.	23-01-099				Kristina Bell 360-236-4841
DOH	Chapter 246-926 WAC, Radiological technologists. DOH is considering revisions to clarify, streamline, and modernize the rules for cardiovascular invasive specialists, radiologic technologists, radiologist assistants, and X-ray technicians.	19-16-115	Anticipate Filing			Kim-Boi Shaddock 360-236-2912
DOH	Chapter 246-930 WAC, Sex offender treatment providers. Chapter rewrite based on recommendations from newly established sex offender treatment provider (SOTP) advisory committee.	22-04-057				Brandon Williams 360-236-4611
DOH	WAC 246-930-410. SOTP health equity CE requirements, considering adding to existing CE requirements.	23-04-058				Brandon Williams 360-236-4611
DOH	Chapter 246-803 WAC. Acupuncture and Eastern medicine practitioner health equity CE requirements.	23-02-019				Vicki Brown 360-236-4865
DOH	Chapter 246-928 WAC. Respiratory care practitioner health equity CE requirements.	22-23-005	Anticipate Filing			Ted Dale 360-236-2991

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
DOH	WAC 246-976-010 through 246-976-310, 246-976-330 through 246-976-400, 246-976-890, 246-976-920, 246-976-960 and 246-976-970, emergency medical services (EMS) and trauma care systems. DOH is considering amending the rules to align with current national standards, make rules more clear, concise, and organized, propose changes to address barriers to initial and renewal application processes, and respond to new legislative requirements. New sections may be added as required.	17-24-013 Withdrawn 22-11-065 New				Catie Holstein 360-236-2841
DOH	Chapter 246-976 WAC, Emergency medical services (EMS) and trauma care systems. DOH is considering updating sections of this chapter relating to EMS data to respond to legislative requirements required by SSB 5380 (section 19, chapter 314, Laws of 2019). New sections may be added as required.	20-17-011				Jim Jansen 360-236-2821
DOH	WAC 246-976-580 Trauma designation process and 246-976-700 Trauma service standards; criteria for minimum and maximum distribution of trauma services.	21-03-011	Anticipate Filing			Anthony Partridge 360-236-2411
DOH	WAC 246-980-010 Definitions for home care aide rules. DOH is considering amending WAC 246-980-010 to redefine "date of hire" for home care aides and to implement ESHB 1120, passed in the 2021 legislative session.	21-16-100	Anticipate Filing			Stacey Saunders 360-236-2813
DOH	WAC 246-980-100 Examination and reexamination for home care aide certification. DOH is considering amending WAC 246-980-100 to: (1) Update the home care aide examination process; (2) consider whether the examination must be completed within a certain time period after completing training; and (3) address any other issues identified by the department or interested parties. DOH may also consider changes to streamline or clarify the rules as appropriate.	23-04-064				Stacey Saunders 360-236-2813
Nursing Care Quality Assurance Commission	WAC 246-840-095 Temporary practice permits.	22-06-057				Jessilyn Dagum 360-236-3538
Nursing Care Quality Assurance Commission	WAC 246-840-010, 246-840-700, and 246-840-910 through 246-840-970. The nursing care quality assurance commission is considering amending the blood glucose testing and monitoring rules.	23-02-037				Jessilyn Dagum 360-236-3538
Nursing Care Quality Assurance Commission	WAC 246-840-365 Inactive and reactivating an ARNP license and 246-840-367 Expired license.	22-12-090	23-01-134			Jessilyn Dagum 360-236-3538
Nursing Care Quality Assurance Commission	Chapter 246-840 WAC, Practical and registered nursing, advanced practice pain management rules. Opioid prescribing.	19-15-092	Anticipate Filing			Jessilyn Dagum 360-236-3538

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
Nursing Care Quality Assurance Commission	Chapters 246-841 and 246-842 WAC, nursing assistants chapter review.	21-05-021	Anticipate Filing			Jessilyn Dagum 360-236-3538
Occupational Therapy Practice Board	WAC 246-847-065 Continuing competency. The occupational therapy practice board is considering amendments to include a health equity CE requirement.	23-02-040				Kathy Weed 360-236-4883
Pharmacy Quality Assurance Commission	Chapter 246-945 WAC. The pharmacy quality assurance commission is considering a new section of rule to implement SSB 6086, an act relating to increasing access to medications for people with opioid use disorder.	20-17-123	Anticipate Filing			Joshua Munroe 360-236-2987
Pharmacy Quality Assurance Commission	New sections in chapter 246-945 WAC pertaining to medication assistance and the settings in which medication assistance occurs. The pharmacy quality assurance commission and DOH are filing jointly to reinstate rules on medication assistance as permitted under chapter 69.41 RCW.	22-02-015	Anticipate Filing			Joshua Munroe 360-236-2987
Pharmacy Quality Assurance Commission	Chapter 246-945 WAC. The pharmacy quality assurance commission is considering adding a new section to the chapter to allow retired pharmacists to apply for a retired active pharmacist license status and practice pharmacy under certain conditions. The commission may also amend other sections in chapter 246-945 WAC to correspond to the new section.	21-09-063	22-20-101	Anticipate Filing		Joshua Munroe 360-236-2987
Pharmacy Quality Assurance Commission	New WAC 246-945-486 Return and reuse of unexpired medications—Department of corrections and new 246-945-488 Safe donation of unexpired prescription drugs. The pharmacy quality assurance commission is proposing new sections in chapter 246-945 WAC for the implementation of SSB 6526, an act relating to the reuse and donation of unexpired prescription drugs.	20-17-143	22-20-100 23-03-109 Supplemental	Anticipate Filing		Joshua Munroe 360-236-2987
Pharmacy Quality Assurance Commission	Chapter 246-945 WAC, Prescription drug label accessibility standards; WAC 246-945-016 and 246-945-417. The pharmacy quality assurance commission is opening these rules to consider including prescription label accessibility standards and is also considering new sections to chapter 246-945 WAC on the subject of prescription drug label accessibility.	22-09-065	Anticipate Filing			Joshua Munroe 360-236-2987

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
Pharmacy Quality Assurance Commission	WAC 246-945-162 Pharmacist license qualifications, 246-945-200 Pharmacy assistants, and 246-945-205 Pharmacy technician certification. The pharmacy quality assurance commission is proposing permanent amendments to remove specific requirements for AIDS education requirements. These amendments are in response to the repeal of statutory authority for specific AIDS education trainings by ESHB 1551 (chapter 76, Laws of 2020). Other formatting changes are also proposed.			Anticipate Filing	22-22-092	Joshua Munroe 360-236-2987
Pharmacy Quality Assurance Commission	WAC 246-945-178 Pharmacist continuing education and 246-945-220 Pharmacy technician —Continuing education. The pharmacy quality assurance commission is considering establishing minimum standards for health equity CE training programs.	23-01-113	Anticipate Filing			Joshua Munroe 360-236-2987
Pharmacy Quality Assurance Commission	WAC 246-945-455. The pharmacy quality assurance commission reviewing existing rules (WAC 246-945-455) limiting access to drugs stored outside of the pharmacy in a health care facility to licensed health care professionals. The commission will consider adopting new requirements allowing access to drugs outside the pharmacy by unlicensed staff. The commission will also consider if other disruptions within the health care facilities, resulting from requirements within WAC 246-945-455, are necessary.	23-01-111	Anticipate Filing			Joshua Munroe 360-236-2987
Pharmacy Quality Assurance Commission	Chapter 246-861 WAC; and WAC 246-901-061 Continuing education requirements. The pharmacy quality assurance commission is seeking to repeal CE requirements established in chapter 246-861 WAC and WAC 246-901-061 as such requirements are also in practice in more current sections of rule, WAC 246-945-178 and 246-945-220.			Anticipate Filing	23-05-010	Joshua Munroe 360-236-2987
Podiatric Medical Board	WAC 246-922-300 and 246-922-310. The podiatric medical board is considering amending existing CE rules to include health equity CE requirements.	23-05-029				Lana Crawford 564-669-1455
Podiatric Medical Board	WAC 246-922-400, 246-922-405, 246-922-410, and 246-922-415, substance abuse monitoring program for podiatric physicians. The podiatric medical board is proposing amendments to update rules regarding health profession monitoring programs to update language changes made by SSB 5496 (chapter 43, Laws of 2022).				Anticipate Filing	Lana Crawford 564-669-1455

Authority	WAC and Rule Title	CR-101 WSR #	CR-102 WSR #	CR-103 WSR #	CR-105 WSR #	Program Contact
Veterinary Board of Governors	WAC 246-933-010 Definitions and 246-933-200 Veterinary client patient relationship. The veterinary board of governors is considering rule making to amend existing rules and potentially adding a new section of rules to establish additional standards for veterinary telemedicine services.	22-17-101	Anticipate Filing			Loralei Walker 360-236-4647
Veterinary Board of Governors	WAC 246-933-501 through 246-933-550, repealing 246-933-530, and adding a new section. The veterinary board of governors is considering authorizing animal care and control agencies and nonprofit humane societies to provide full veterinary service to low-income households.	20-01-013	22-04-087 23-03-110 Supplemental	Anticipate Filing		Loralei Walker 360-236-4647
Veterinary Board of Governors	WAC 246-933-601 through 246-933-630. The veterinary board of governors is considering updating health professional monitoring program terminology as required by SSB 5496 Health professional monitoring programs.	23-01-048	Anticipate Filing			Loralei Walker 360-236-4647
Veterinary Board of Governors	WAC 246-935-060 Eligibility for examination as veterinary technician. The veterinary board of governors is considering amending WAC 246-935-060 to clarify that a board-approved apprenticeship program is a pathway for veterinary technician licensure.	Anticipate Filing				Loralei Walker 360-236-4647
Veterinary Board of Governors	Chapter 246-933 WAC, Veterinarians; and chapter 246-935 WAC, Veterinary technicians. The veterinary board of governors is considering adopting health equity CE requirements.	23-01-045	Anticipate Filing			Loralei Walker 360-236-4647
Washington Medical Commission	New sections in chapters 246-918 and 246-919 WAC regarding collaborative drug therapy agreements.	20-16-008				Amelia Boyd 360-918-6336
Washington Medical Commission	Chapter 246-918 WAC; and chapter 246-919 WAC. The Washington medical commission is considering adding physician assistant and allopathic physician health equity CE requirements.	23-05-054	Anticipate Filing			Amelia Boyd 360-918-6336



**WSR 23-09-001**

**NOTICE OF APPEAL**

**OFFICE OF THE GOVERNOR**

[Filed April 5, 2023, 12:08 p.m.]

**NOTICE OF APPEAL**

RCW 34.05.330(3)

Pursuant to RCW 34.05.330(3), you are hereby notified for publication in the Washington State Register that:

On April 5, 2023, the Governor's Office received an appeal from Conner Edwards, relating to the Public Disclosure Commission's denial of a petition to amend WAC 390-16-034 (*Additional contribution reporting requirements*).

DATE: April 5, 2023

Taylor K. Wonhoff  
Deputy General Counsel  
to the Governor

## WSR 23-09-005

## DEPARTMENT OF AGRICULTURE

[Filed April 6, 2023, 10:32 a.m.]

## LEGAL NOTICE FOR SPARTINA TREATMENTS

The Washington state department of agriculture (WSDA) is hereby notifying the affected public that the herbicides imazapyr and glyphosate may be used to control invasive *Spartina* grass species between June 1 and November 30, 2023.

Licensed pesticide applicators operating under WSDA's national pollutant discharge elimination system and state waste discharge general permit may apply these products in the following locations: Grays Harbor, Hood Canal, Willapa Bay, Puget Sound, the north and west sides of the Olympic Peninsula, and the mouth of the Columbia River.

For more information, including locations of possible application sites or information on *Spartina*, contact WSDA *Spartina* control program, phone 1-800-443-6684, email [pestprogram@agr.wa.gov](mailto:pestprogram@agr.wa.gov), website <https://agr.wa.gov/departments/insects-pests-and-weeds/weeds/spartina>; or write WSDA *Spartina* Program, P.O. Box 42560, Olympia, WA 98504-2560.

The Washington state department of ecology number for reporting concerns about *Spartina* treatments is 360-407-6600.

**WSR 23-09-007**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF HEALTH**  
 [Filed April 6, 2023, 3:32 p.m.]

In accordance with the Open Public Meeting[s] Act (chapter 42.30 RCW) and the Administrative Procedure Act (chapter 34.05 RCW), the following is the REVISED schedule of regular meetings for the department of health (DOH), orthotics and prosthetics advisory committee (committee) for the year 2023. Committee meetings are open to the public and access for persons with disabilities may be arranged with advance notice; please contact the staff person below for more information.

Agendas for the meetings listed below are made available in advance via listserv and the DOH website (see below). Every attempt is made to ensure that the agenda is up-to-date. However, the committee reserves the right to change or amend agendas at the meeting.

Date	Time	Location
<del>April 28, 2023</del>	9:00 a.m.	<del>TBD</del>
October 13, 2023	9:00 a.m.	TBD

If you need further information, please contact Kristina Bell, Program Manager, DOH, Orthotics and Prosthetics Advisory Committee, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4841, fax 360-236-2901, email Kristina.bell@doh.wa.gov, web www.doh.wa.gov.

Please be advised the committee is required to comply with the Public Disclosure [Records] Act, chapter 42.56 RCW. This act establishes a strong state mandate in favor of disclosure of public records. As such, the information you submit to the committee, including personal information, may ultimately be subject to disclosure as a public record.

**WSR 23-09-010**  
**INTERPRETIVE STATEMENT**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed April 7, 2023, 8:09 a.m.]

**NOTICE OF ADOPTION OF INTERPRETIVE STATEMENT**

Title of Interpretive Statement: Measuring Cannabis Plant Canopy  
- Interpretive Statement Number IS 23-01.

Issuing Entity: Washington state liquor and cannabis board.

Subject Matter: This interpretive statement is offered to confirm and provide additional guidance on the agency's interpretation of cannabis plant canopy as defined in WAC 314-55-010(31) and indoor and outdoor cannabis plant canopy production area as described in WAC 314-55-075.

Effective Date: April 7, 2023.

Contact Person: Katherine Hoffman, policy and rules manager,  
360-664-1622.

WSR 23-09-013

NOTICE OF PUBLIC MEETINGS

COMMISSION ON PESTICIDE REGISTRATION

[Filed April 10, 2023, 8:31 a.m.]

2023 Meeting dates are at 10 a.m. unless specifically listed:

February 24	9 a.m.	
Special meeting		
March 3		Prosser
April 5	2 p.m.	
Special meeting		
May 24		WSU Everett Campus Room 101 915 North Broadway
September 8		Snoqualmie Pass
December 14 and 15		Ellensburg

**WSR 23-09-015**  
**NOTICE OF PUBLIC MEETINGS**  
**STATEWIDE REENTRY COUNCIL**  
 [Filed April 10, 2023, 1:41 p.m.]

Following is the updated 2023 schedule of regular meetings for the Washington statewide reentry council:

DATE	TIME	LOCATION
January 12, 2023	12:30 - 2:30 [p.m.]	<b>Olympia, Washington</b> 1011 Plum Street COM FA Building 5, Floor 1, Large Room 110 - Columbia Room Olympia, WA 98504-2525
March 9, 2023	12:30 - 2:30 [p.m.]	<b>University of Washington Tacoma</b> 1900 Commerce Street Birmingham Block (BB) 106 Tacoma, WA 98402-3100
May 11, 2023	12:30 - 2:30 [p.m.]	<b>Kitsap County Givens Community &amp; Senior Center</b> 1026 Sidney Avenue Kitsap Room Port Orchard, WA 98366 <b>Tour of Kitsap County Jail</b> (Please be sure to register with Brittany by email before end of day May 7, 2023.)
July 13, 2023	12:30 - 2:30 [p.m.]	<b>Northwest Justice Project</b> 311 North 4th Street, Second Floor Yakima, WA 98901
September 14, 2023	12:30 - 2:30 [p.m.]	<b>Spokane Falls Community College</b> 3410 West Whistalks Way Building 17, Room 102/3 Spokane, WA 99224-5288
November 9, 2023	12:30 - 2:30 [p.m.]	<b>Port Gamble S'Klallam Tribe</b> 31912 Little Boston Road N.E. Longhouse Kingston, WA 98346

Due to the state's COVID[-19] emergency order ending, in-person meetings are now an option. All meetings will also have virtual log-ins. See below for details.

Join Zoom meeting <https://wastatecommerce.zoom.us/j/89912853821?pwd=cGo5OTVJRjdCYmNuMmVuOUdmeEJUdz09>, Meeting ID 899 1285 3821, Passcode 851948; Dial by your location +1 253 215 8782 US (Tacoma), +1 971 247 1195 US (Portland), +1 213 338 8477 US (Los Angeles), Meeting ID 899 1285 3821, Passcode 851948.

These meetings will be hybrid with both in person at locations around the state and online on the Zoom meeting platform. The online options will be available through the links provided on the meeting schedule on the council's website.

Members of the public are welcome to join pursuant to the Open Public Meetings Act (chapter 42.30 RCW).

Please direct all questions regarding the meetings to Janel McFeat, statewide reentry council executive director, at [janel.mcfeat@commerce.wa.gov](mailto:janel.mcfeat@commerce.wa.gov); and Brittany Lovely, council coordinator, at [Brittany.lovely@commerce.wa.gov](mailto:Brittany.lovely@commerce.wa.gov) or 360-789-1032.

WSR 23-09-016
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1496
CrRLJ 4.7—DISCOVERY )

The Washington State Bar Association, having recommended the adoption of the suggested amendments to CrRLJ 4.7—Discovery, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j) (1), the suggested amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 6th day of April, 2023.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.

GR 9 Cover Sheet
Suggested Changes to CrRLJ 4.7

- (A) Name of Proponent: Washington State Bar Association
(B) Spokesperson: Paul Crisalli, Chair Court Rules and Procedures Committee paul.crisalli@atg.wa.gov
(C) Purpose: The proposed amendments make the rule gender neutral.
(D) Hearing: None recommended.
(E) Expedited Consideration: Expedited consideration is not requested.

CrRLJ 4.7
DISCOVERY

(a) Prosecuting Authority's Obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting authority shall, upon written demand, disclose to the defendant or the defendant's counsel the following material and information within his or her the prosecuting authority's possession or control concerning:

- (i) - (xi) [Unchanged.]
(2) [Unchanged.]

(3) Except as otherwise provided by protective orders, the prosecuting authority shall disclose to defendant's lawyer any material or information within his or her the prosecuting authority's knowledge which tends to negate defendant's guilt as to the offense charged.

(4) The prosecuting authority's obligation under this section is limited to material and information within the actual knowledge, possession, or control of members of ~~his or her~~ the prosecuting authority's staff.

**(b) Defendant's Obligations.**

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the defendant shall disclose to the prosecuting authority the following material and information within ~~his or her~~ defendant's possession or control concerning:

(i) - (iv) [Unchanged.]

(v) whether ~~his or her~~ the defendant's prior convictions will be stipulated or need to be proved;

(vi) whether or not ~~he or she~~ the defendant will rely on a defense of insanity at the time of the offense; and

(vii) the general nature of ~~his or her~~ the defendant's defense.

(2) - (3) [Unchanged.]

**(c) Physical and Demonstrative Evidence.**

(1) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, the court on motion of the prosecuting authority or the defendant may require or allow the defendant to:

(i) - (v) [Unchanged.]

(vi) permit the taking of samples of or from ~~his or her~~ the defendant's blood, hair, and other materials of ~~his or her~~ the defendant's body including materials under ~~his or her~~ the defendant's fingernails which involve no unreasonable intrusion thereof;

(vii) provide specimens of ~~his or her~~ the defendant's handwriting; and

(viii) submit to a reasonable physical, medical, or psychiatric inspection or examination.

(2) [Unchanged.]

**(d) - (e)** [Unchanged.]

**(f) Matters Not Subject to Disclosure.**

(1) [Unchanged.]

(2) *Informants.* Disclosure of an ~~informants~~ informant's identity shall not be required when ~~his or her~~ the informant's identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

**(g) Regulation of Discovery.**

(1) [Unchanged.]

(2) *Continuing Duty To Disclose.* If, after compliance with this rule or orders pursuant to it, a party discovers additional material or information which is subject to disclosure, ~~he or she~~ that party shall promptly notify the other party or ~~his or her~~ lawyer counsel of the existence of such additional material. If the additional material or information is discovered during trial, the court shall also be notified.

(3) [Unchanged.]

(4) *Protective Orders.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit ~~his or her~~ the party's lawyer to make beneficial use of it.

(5) - (7) [Unchanged.]



WSR 23-09-017
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1497
RAP 15.2—DETERMINATION OF )
INDIGENCY AND RIGHTS OF )
INDIGENT PARTY )

The Access to Justice Board, having recommended the adoption of the suggested amendments to RAP 15.2—Determination of Indigency and Rights of Indigent Party, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j) (1), the suggested amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 6th day of April, 2023.

Johnson, J.
Madsen, J.
Owens, J.
Gonzalez, C.J.
Yu, J.
Montoya-Lewis, J.

RAP 15.2
DETERMINATION OF INDIGENCY AND RIGHTS OF INDIGENT PARTY

CURRENTNESS

(a) Motion for Order of Indigency. A party seeking review in the Court of Appeals or the Supreme Court partially or wholly at public expense must move in the trial court for an order of indigency. The party shall submit a Motion for Order of Indigency, in the form prescribed by the Office of Public Defense.

(b) Action by the Trial Court. The trial court shall determine the indigency, if any, of the party seeking review at public expense. The determination shall be made in written findings after a hearing, if circumstances warrant, or by reevaluating any order of indigency previously entered by the trial court. The court:

(1) shall grant the motion for an order of indigency if the party seeking public funds is unable by reason of poverty to pay for all or some of the expenses for appellate review of:

(A) criminal prosecutions or juvenile offense proceedings meeting the requirements of RCW 10.73.150.

(B) dependency and termination cases under RCW 13.34,

(C) commitment proceedings under chapters 71.05 and 71.09 RCW,

(D) civil contempt cases directing incarceration of the contemner,

(E) orders denying petitions for writ of habeas corpus under chapter 7.36 RCW, including attorneys' fees upon a showing of extraordinary circumstances, and

(F) any other case in which the party has a constitutional or statutory right to counsel at all stages of the proceedings; or

(2) shall deny the motion for an order of indigency if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review.

~~(c) Other Cases.~~ In cases not governed by subsection (b) of this rule, the trial court shall determine in written findings the indigency, if any, of the party seeking review. The party must demonstrate in the motion or the supporting affidavit that the issues the party wants reviewed have probable merit, which will be determined by the Supreme Court pursuant to subsection (d) of this paragraph. The party must further demonstrate the party has a constitutional or statutory right to review partially or wholly at public expense, the right to which will also be determined by the Supreme Court pursuant to subsection (d) of this paragraph.

~~(1) Party Not Indigent.~~ The trial court shall deny the motion if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review.

~~(2) Party Indigent.~~ If the trial court finds the party seeking review is unable by reason of poverty to pay for all or some of the expenses of appellate review, the trial court shall enter such findings, which shall be forwarded to the Supreme Court for consideration, pursuant to section (d) of this rule. The trial court shall determine in those findings the portion of the records necessary for review and the amount, if any, the party is able to contribute toward the expense of review. The findings shall conclude with an order to the clerk of the trial court to promptly transmit to the Supreme Court, without charge to the moving party, the findings of indigency, the affidavit in support of the motion, and all other papers submitted in support of or in opposition to the motion. The trial court clerk shall promptly transmit to the Supreme Court the papers designated in the findings of indigency.

~~(d) Action by Supreme Court.~~ If findings of indigency and other papers relating to the motion for an order of indigency are transmitted to the Supreme Court, the Supreme Court will determine whether an order of indigency in that case should be entered by the superior court. The determination will be made by a department of the Supreme Court on a regular motion day without oral argument and based only on the papers transmitted to the Supreme Court by the trial court clerk, unless the Supreme Court directs otherwise. If the Supreme Court determines that the party is seeking review in good faith, that an issue of probable merit is presented, and that the party is entitled to review partially or wholly at public expense, the Supreme Court will enter an order directing the trial court to enter an order of indigency. In all other cases, the Supreme Court will enter an order denying the party's motion for an order of indigency. The clerk of the appellate court will transmit a copy of the order to the clerk of the trial court and notify all parties of the decision of the Supreme Court.

~~(c) Order of Indigency.~~ An order of indigency shall designate the items of expense which are to be paid with public funds and, where appropriate, the items of expense to be paid by a party or the amount which the party must contribute toward the expense of review. The order shall designate the extent to which public funds are to be used for payment of the expense of the record on review, limited to those parts of the record reasonably necessary to review issues argued in

good faith. The order of indigency must be transmitted to the appellate court as a part of the record on review.

**(d) Continued Indigency Presumed.** A party and counsel for the party who has been granted an order of indigency must bring to the attention of the appellate court any significant improvement during review in the financial condition of the party. The appellate court will give a party the benefits of an order of indigency throughout the review unless the appellate court finds the party's financial condition has improved to the extent that the party is no longer indigent.

**(e) Appointment and Withdrawal of Counsel in Appellate Court.** The appellate court shall determine questions relating to the appointment and withdrawal of counsel for an indigent party on review. The Office of Public Defense shall, in accordance with its indigent appellate representation policies, provide the names of indigent appellate counsel to the appellate courts on a case-by-case basis. If trial counsel is not appointed, trial counsel must assist counsel appointed for review in preparing the record.

**(f) Review of Order or Finding of Indigency.** A party in a case of a type listed in section (b) (1) of this rule may seek review of an order of indigency or an order denying an order of indigency entered by a trial court. A party may also seek review of written findings under section (c) (1) of this rule that the party is not indigent. A party may object to an indigency decision of the trial court by motion in appellate court.

**(g) Withdrawal of Counsel in Appellate Court.** If counsel can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent as provided in rule 18.3(a).

#### References

Form 12, Order of ~~Indegency~~ Indigency; Rule 2.3, Decisions of the Trial Court Which May Be Reviewed by Discretionary Review.

WSR 23-09-018
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1498
CrRLJ 7.6—PROBATION [REVISED ]
PROPOSAL ]

The Washington Defender Association, having recommended the adoption of the suggested amendments to CrRLJ 7.6—Probation [Revised Proposal], and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j)(1), the suggested amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 6th day of April, 2023.

Johnson, J.
Madsen, J.
Owens, J.
Gonzalez, C.J.
Yu, J.
Montoya-Lewis, J.

CrRLJ 7.6
PROBATION

(a) Probation. After conviction of an offense the defendant may be placed on probation as provided by law.

(b) Jurisdiction. Pursuant to RCW 39.34.180, the court may transfer probation.

(c) Revocation or Modification of Probation. The court shall not revoke or modify probation except (1) after a hearing in which the defendant shall be present, (2) upon stipulation of the parties. The defendant has the right to be physically present at all contested evidentiary hearings and any hearing at which the prosecution seeks to detain the defendant the defense sets to reconsider bail or conditions of release. The court has discretion to allow the defendant to appear through counsel or remotely.

(d) Release Pending Probation Hearing. If the defendant has been arrested for an alleged probation violation, the court shall release the defendant within 24 hours or hold a hearing on the next judicial day to determine release conditions pursuant to rule 3.2.

(e) Timing of Probation Hearing. If a defendant is held in custody on the alleged probation violation, the court must hold a probation hearing in which the defendant has the right to be physically present within two weeks of the defendant's arrest unless the defendant requests a continuance. If the hearing is not set for a date within two weeks of arrest, the defendant shall be released pending the hearing.

(f) Rights of the Defendant Unless Waived. The defendant is entitled to be represented by a lawyer, and a lawyer shall be appointed for a defendant financially unable to obtain one. Before a probation

hearing, the probationer shall be advised of the nature of the alleged violation and provided discovery of evidence supporting the allegation, including names and contact information of witnesses. If the defendant seeks to cross-examine witnesses, the defendant shall give notice at least three days before the hearing. A defendant who gives such notice shall have the right to confront adverse witnesses unless the court specifically finds good cause for not allowing confrontation. At the hearing, the defendant shall have the right to present evidence and cross-examine any witnesses.

**(g) Record of Grounds for Decision.** If the court revokes probation, it shall state the grounds for its decision succinctly in the record.

WSR 23-09-019
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENT TO RAP ) NO. 25700-A-1499
13.5—DISCRETIONARY REVIEW OF )
INTERLOCUTORY DECISION )

The Supreme Court Clerk's Office, having recommended the suggested amendment to RAP 13.5—Discretionary Review of Interlocutory Decision, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as shown below is 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 2024.

(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, 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 6th day of April, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 Cover Sheet

Name of Proponent: Supreme Court Clerk's Office

Spokesperson: Erin L. Lennon, Washington State Supreme Court Clerk

Sarah R. Pendleton, Washington State Supreme Court Deputy Clerk

Purpose: The purpose of the rule amendment is to update the Rules of Appellate Procedure (RAP) to reflect the Supreme Court's holding in In re Pers. Restraint of Fero, 190 Wn.2d 1, 409 P.3d 214 (2018) that the 30-day time period to file a motion for discretionary review begins to run after a decision on a timely motion for reconsideration.

As background, RAP 13.3 provides two methods for seeking Supreme Court review of a decision by the Court of Appeals: a petition for review and a motion for discretionary review. The rules for a petition for review explicitly state that if a timely motion for reconsideration is filed, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration. See RAP 13.4(a). The rules for a motion for discretionary review do not address the effect of a timely motion for reconsideration on the deadline for filing a motion for discretionary review. See RAP 13.5(a).

In *In re Pers. Restraint of Fero*, 190 Wn.2d at 14, the Supreme Court held that a motion for discretionary review is considered timely filed if it is filed within 30 days after an order is filed denying a timely motion for reconsideration (in this split opinion, three Justices joined Justice González in his lead opinion holding that such a motion would be timely, and Justice Stephens filed a separate concurrence joining in that holding).

To ensure that the RAP properly inform litigants of the timeline that will apply to a motion for discretionary review when a motion for reconsideration is filed, the Supreme Court Clerk's Office recommends that RAP 13.5(a) be amended to reflect the holding announced in *Fero*. There remains confusion on behalf of litigants, some of whom file a motion for discretionary review while a motion for reconsideration is pending because they are not aware of *Fero*.

The Supreme Court Clerk's Office recommends that the same rule apply when a motion to publish is filed. This would ensure that the rules for motions for discretionary review parallel the rules for petitions for review.

The rule amendment also proposes removing the requirement to file a copy of the motion for discretionary review at the Court of Appeals and the Supreme Court. In the age of electronic documents, it is not necessary to file two copies. This change brings the rule for motions for discretionary review in alignment with the rule for petitions for review (RAP 13.4(a)), which directs the party to file at the Court of Appeals, who then forward the document to the Supreme Court.

**Hearing:** The proponent does not believe a public hearing is necessary.

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

## RAP 13.5

## DISCRETIONARY REVIEW OF INTERLOCUTORY DECISION

(a) How To Seek Review. A party seeking review by the Supreme Court of an interlocutory decision of the Court of Appeals must file a motion for discretionary review in the ~~Supreme Court and a copy in the~~ Court of Appeals within 30 days after the decision is filed. If the Court of Appeals decision is in the form of an opinion and a motion to publish is timely filed, the motion for discretionary review should be filed within 30 days after an order deciding the motion to publish is filed. If the Court of Appeals decision is subject to a motion for reconsideration under RAP 12.4 and a motion for reconsideration is timely filed, the motion for discretionary review should be filed within 30 days after an order deciding the motion for reconsideration is filed.

(b) - (d) [unchanged.]

WSR 23-09-020
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1500
IRLJ 6.6—SPEED MEASURING )
DEVICE: DESIGN AND )
CONSTRUCTION CERTIFICATION )

The District and Municipal Court Judges' Association, having recommended the suggested amendments to IRLJ 6.6—Speed Measuring Device: Design and Construction Certification, 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 2024.

(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, 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 6th day of April, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GENERAL RULE 9
RULE AMENDMENT COVER SHEET
PROPOSED AMENDMENT TO RULE IRLJ 6.6

- 1. Proponent Organization
District and Municipal Court Judges' Association
2. Spokesperson & Contact Info
Judge Megan Valentine, Grays Harbor District Court
(360) 249-3441
Megan.valentine@graysharbor.us

3. Purpose of Proposed Rule Amendment

Allow for filing and judicial notice of public documents generated when weigh station scales are tested and calibrated for the purpose of foundation of commercial vehicle weights in traffic infractions and set forth the appropriate legal criteria for said documents.

This rule change would not remove any obligation of the WSP to ensure their scales are calibrated and maintained, but provides a more efficient manner of providing information for contested infraction hearings.

Proposed rule change promotes the purpose of the Infraction Rules for Courts of Limited Jurisdiction as stated in IRLJ 1.1(b) through a



just, speedy and inexpensive mechanism for law enforcement to establish the foundation for weight measurements relied upon in determining an overweight commercial vehicle traffic infraction.

4. Is Expedited Consideration Requested? No, the regular publication cycle is fine.

5. Is a Public Hearing Recommended? No.

Proposed Rule Changes

IRLJ 6.6 SPEED AND WEIGHT MEASURING DEVICE: DESIGN AND CONSTRUCTION CERTIFICATION

(a) In General. This rule applies only to contested hearings in traffic infraction cases.

(b) Speed Measuring Device Certificate; Form. In the absence of proof of a request on a separate pleading to produce an electronic or laser speed measuring device (SMD) expert served on the prosecuting authority and filed with the clerk of the court at least thirty (30) days prior to trial or such lesser time as the court deems proper, a certificate in substantially the following form is admissible in lieu of an expert witness in any court proceeding in which the design and construction of an electronic or laser speed measuring device (SMD) is an issue:

CERTIFICATION CONCERNING DESIGN AND CONSTRUCTION OF ELECTRONIC SPEED MEASURING DEVICES OR LASER SPEED MEASURING DEVICES

I, \_\_\_\_\_ do certify under penalty of perjury as follows: I am employed with \_\_\_\_\_ as a \_\_\_\_\_. I have been employed in such a capacity for \_\_\_\_\_ years. Part of my duties include supervising the maintenance and repair of all electronic and laser speed measuring devices (SMD's) used by \_\_\_\_\_ (name of agency). This agency currently uses the following SMD's: \_\_\_\_\_ (List all SMD's used and their manufacturers and identify which SMDs use laser technology.) I have the following qualifications with respect to the above stated SMD's: (List all degrees held and any special schooling regarding the SMD's listed above.) This agency maintains manuals for all of the above stated SMD's. I am personally familiar with those manuals and how each of the SMD's are designed and operated. On \_\_\_\_\_ (date) testing of the SMD's was performed under my direction. The units were evaluated to meet or exceed existing performance standards. This agency maintains a testing and certification program. This program requires: (State the program in detail.) Based upon my education, training, and experience and my knowledge of the SMD's listed above, it is my opinion that each of these electronic pieces of equipment is so designed and constructed as to accurately employ the Doppler effect in such a manner that it will give accurate measurements of the speed of motor vehicles when properly calibrated and operated by a trained operator or, in the case of the laser SMDs, each of these pieces of equipment is so designed and constructed as to accurately employ measurement techniques based on the velocity of light in such a manner that it will give accurate measurements of the speed of motor vehicles when properly calibrated and operated by a trained operator.

\_\_\_\_\_ (Signature) Dated: \_\_\_\_\_

(c) Scale Certification of Inspection and Calibration; Form. A certificate, in substantially the following form is admissible in lieu of a witness in any court proceeding in which the calibration and accuracy of a weigh station scale weight measuring is an issue:

SCALE TEST REPORT AND CERTIFICATION OF INSPECTION

I, \_\_\_\_\_ do certify under penalty of perjury as follows:

I am employed with \_\_\_\_\_ as a \_\_\_\_\_. Part of my duties include supervising the inspection and calibration of the traffic scales used by \_\_\_\_\_. I have the following qualifications with respect to scale calibration: (list all training or special degrees regarding scale calibration)

On \_\_\_\_\_ (date) testing of the following scale was performed under my direction and the scale was evaluated to meet or exceed existing accuracy standards.

(List all scale identification information to indicate the location type and relevant parameters of the scale.)

Using the testing procedures set forth in Handbook 44 promulgated by the National Institute of Standards and Technology and test weights certified under oath as accurate as shown on the attached "Report of Calibration" under certification number(s) \_\_\_\_\_,

and herein incorporated by reference, the above device met or exceeded the standards of accuracy.

\_\_\_\_\_  
(Signature) Dated: \_\_\_\_\_

~~(e)~~ **(d) Continuance.** The court at the time of the formal hearing shall hear testimony concerning the infraction and, if necessary, may continue the proceedings for the purpose of obtaining evidence concerning an electronic speed measuring device and the certification thereof or a weigh station scale and the certification of calibration thereof. If, at the time it is supplied, the evidence is insufficient, a motion to suppress the readings of such device shall be granted.

~~(d)~~ **(e) Maintaining Certificates as Public Records.** Any certificate, affidavit or foundational evidentiary document allowed or required by this rule can be filed with the court and maintained by the court as a public record. The records will be available for inspection by the public. Copies will be provided on request. The court may charge any allowable copying fees. The records are available without a formal request for discovery. The court is entitled to take judicial notice of the fact that the document has been filed with the court. Evidence will not be suppressed merely because there is not a representative of the prosecuting authority present who actually offers the document. Evidence shall be suppressed pursuant to subsection (c) of this rule if the evidence in the certificate, affidavit or document is insufficient, or if it has not been filed as required.

**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 23-09-021
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO CR ) NO. 25700-A-1501
28—PERSONS BEFORE WHOM )
DEPOSITIONS MAY BE TAKEN AND )
CR 30—DEPOSITIONS UPON ORAL )
EXAMINATION )

Byers and Anderson Litigation Services, having recommended the suggested amendments to CR 28—Persons Before Whom Depositions May Be Taken and CR 30—Depositions Upon Oral Examination, 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 2024.

(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, 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 6th day of April, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Changes to

CIVIL RULE 28

A. Name of Proponent: Byers & Anderson, Inc. dba B&A Litigation Services (B&A)

B. Spokespersons:

Steven B. Crandall, JD, CLVS
Chief Executive Officer
2200 6th Avenue, Suite 425
Seattle, Washington 98121
253-627-6401
scrandall@balitigation.com

C. Purpose: Amending CR 28 (a), (c), (d), and (e) is necessary to preserve the integrity of the record and make it clear that any persons recording depositions would be considered "officers" under the rules and are subject to rule 28(c) Disqualification for Interest, rule 28(d) Equal Terms Required, and rule 28(e) Final Certification of the Transcript.

On October 27, 2022, the Supreme Court of Washington issued an Order Regarding Court Operations After October 31, 2022. Washington courts had been operating under a series of orders issued by the Court following Governor Inslee's proclamation of a state of emergency on February 29, 2020, due to the novel coronavirus disease (COVID-19) pandemic.

The Court ordered that the following provisions of the Court's current emergency orders remain in effect until further order of the court: *With Respect to Civil Matters:*

3. With respect to all civil matters, courts should encourage parties to stipulate in writing to reasonable modifications of existing case schedules and remote methods of service and to conduct discovery, pretrial hearings, and alternative dispute resolution by remote means whenever possible.

*Presumption of Remote Depositions:* With respect to discovery, depositions shall be performed remotely absent agreement of the parties or a finding of good cause by the Court to require the depositions be performed in person. Absent agreement of the parties, with respect to remote depositions where only the deponent and their counsel are in the same room, the technology used must include video/audio for both the deponent and their counsel. If the deposition is being recorded (see CR 30 (b) (8)), the recording need only be of the deponent witness and not of other participants to the deposition proceeding.

The routine use of remote depositions has created an opportunity for counsel to exploit ambiguities in the rules to argue that CR 30 (b) (8) (H) permits counsel, counsel's employees, or anyone to video record a deposition thereby avoiding the safeguards of CR 28 and jeopardizing the integrity of the record and confidence in the system.

The rules give the parties great latitude in selecting the person before whom a deposition may be taken.

CR 29 *Stipulation Regarding Discovery Procedure*, states:

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

The rules provide additional latitude in selecting the method used to record deposition testimony.

CR 30 (b) (4) *Nonstenographic Recording*, states:

The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or the order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy.

It has become standard practice in Washington Courts to employ audio/video recording systems in place of stenographic court reporters. In addition, the Department of Licensing has recognized that Voice Writers, who use specialized software and skills to make the record, may be certified as court reporters in the State of Washington. The methods and persons before whom a deposition may be taken have evolved as technology has changed. The rules have not kept up.

With respect to depositions the rules provide a special exception for recording of deposition testimony by video without court order or the need for stipulation by counsel.

CR 30 (b) (8) *Video recording of depositions*, states in part:

(A) Any party may video record the deposition of any party or witness without leave of court provided that written notice is served on all parties not less than 20 days before the deposition date, and specifically states that the deposition will be video recorded.

In *Perales v Town of Cicero, et al.*, US District Court, Northern District of Illinois, Case Number 11 C 2056, March 6, 2012 the Court held that:

... unless stipulated otherwise, each method of deposition recording must be accompanied by its own separate Rule 28(a) officer who can perform the duties laid out in Rule 30."

In *Alcorn v City of Chicago*, Case Number 17 C 5859 the Court addressed Plaintiff's proposal to use a Zoom recording:

The issue presented is one that is novel and a product of the national health crisis that we are currently facing. Since April 2020, attorneys have been conducting an extraordinary number of depositions remotely using videoconferencing technology. While technology has changed the dynamics of the practice of law, some things have remained the same. A court reporter is still a fixed and necessary presence at a deposition, and is charged under the Federal Rules of Civil Procedure with ensuring the integrity of the deposition. The question presented in this matter is whether a party can record a deposition, using the "Zoom" record function, where the court reporter has been retained only to stenographically record the deposition, and has declined to certify the video recording as an accurate record of the witness's testimony.

The Court went on to note that:

Rather, it is a certified videographer who has the appropriate training to serve as the Rule 28 officer, and ensure that a video deposition is properly recorded with established procedures to go on or off the record, limit noise and interruptions, address technical glitches, and frame the camera view on the witness. And it is the videographer who will complete the necessary certification under the Federal Rules to affirm the accuracy of the video recording of the deposition, not the stenographic reporter.

By modifying CR 28(a) to include a person recording a deposition under CR 30 in the definition of officer, the Court would remove an ambiguity in the rules which counsel are exploiting to avoid the application of CR 28 safeguards thereby ensuring the integrity of the process.

These CR 28 safeguards include:

CR 28(c) *Disqualification for Interest*, states:

No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

and

CR 28(d) *Equal Terms Required*, states:

Any arrangement concerning court reporting services or fees in a case shall be offered to all parties on equal terms. This rule applies to any arrangement or agreement between the person before whom a deposition is taken or a court reporting firm, consortium or other organization providing a court reporter, and any party or any person arranging or paying for court reporting services in the case, including any attorney, law firm, person or entity with a financial interest in the outcome of the litigation, or person or entity paying for court reporting services in the case.

By replacing the word "person" with "officer" the court eliminates the ambiguity that allows counsel to misinterpret the rules and makes it clear that the duties of an officer apply.

CR 28(e) provides an additional safeguard by requiring that the transcript produced shall not be certified until after the final version has been reviewed and that the transcript should not be modified after the certification. I submitted this rule change request adding section (e) back in June of 2016. At that time alternative methods and stipulated persons before whom depositions were taken was a rare occurrence. That is no longer the case.

CR 28(e) *Final Certification of the Transcript*, states:

The court reporter reporting a deposition shall not certify the deposition transcript until after he or she has reviewed the final version of the formatted transcript. A court reporting firm, consortium, or other organization transmitting a court reporter's certified transcript shall not alter the format, layout, or content of the transcript after it has been certified.

As currently written this safeguard applies only to transcripts produced by court reporters who are certified pursuant to RCW 18.145.010.

CR 29 allows stipulation by counsel as to other persons before whom a deposition may be taken. When such a person is not a certified court reporter pursuant to RCW 18.145.010, the court's interest in the accuracy of the transcript makes certification of the transcript more essential not less.

No matter who produces a transcript or what method is used to record the testimony of a witness, whether it be a stenographic reporter, a voice writer, a court installed system, audio or video recording, or some other method stipulated to by the parties, the court retains an interest in maintaining the integrity of the record, disqualifying persons with an interest in the outcome, providing equal terms to all parties, and certifying the accuracy of the transcript.

Such a change is also consistent with the use of the term "officer" in rules 30, 31, and 32.

D. **Hearing:** B&A does not believe a public hearing is needed.

E. **Expedited Consideration:** B&A believes that the Court's Order Regarding Court Operations After October 31, 2022 has created exceptional circumstances which justify expedited consideration.

F. **Supporting Materials:**

Declaration of Steven B. Crandall in support of suggested changes to CR 28(b) and CR 30 (b) (8) (H).

Alcorn v. City of Chicago, Case No. 17 C 5859

Perales v Town of Cicero, Case No. 11 C 2056

#### CR 28

#### PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

##### SUGGESTED CHANGE TO CIVIL RULE 28

(-) (1) - (6) [Unchanged.]

**(a) Within the United States.** Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before (i) an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, (ii) a certified court reporter, or (iii) a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term "officer" as used in rules 28, 30, 31, and 32 includes a certified court reporter, a person appointed by the court, ~~or~~

designated by the parties under rule 29-, or recording a deposition under rule 30.

(b) [Unchanged.]

(c) **Disqualification for Interest.** No deposition shall be taken before a ~~person~~ an officer who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) **Equal Terms Required.** Any arrangement concerning court reporting services or fees in a case shall be offered to all parties on equal terms. This rule applies to any arrangement or agreement between the ~~person~~ officer before whom a deposition is taken or a court reporting firm, consortium or other organization providing a court reporter, and any party or any person arranging or paying for court reporting services in the case, including any attorney, law firm, person or entity with a financial interest in the outcome of the litigation, or person or entity paying for court reporting services in the case.

(e) **Final Certification of the Transcript.** The ~~court reporter~~ officer reporting a deposition shall not certify the deposition transcript until after ~~he or she has~~ they have reviewed the final version of the formatted transcript. A court reporting firm, consortium, or other organization transmitting a ~~court reporter's~~ an officer's certified transcript shall not alter the format, layout, or content of the transcript after it has been certified.

GR 9 COVER SHEET

Suggested Changes to

CIVIL RULE 30

A. **Name of Proponent:** Byers & Anderson, Inc. dba B&A Litigation Services (B&A)

B. **Spokespersons:**

Steven B. Crandall, JD, CLVS  
Chief Executive Officer  
B&A Litigation Services  
2200 6th Avenue, Suite 425  
Seattle, Washington 98121  
253-627-6401  
scrandall@balitigation.com

C. **Purpose:** Amending CR 30 (b) (8) (H) is necessary to eliminate an ambiguity that counsel are exploiting to record video depositions themselves without the assistance of an impartial professional legal videographer. Use of an impartial professional legal videographer ensures, *inter alia*, impartiality, accuracy, trustworthiness and professionalism during the examination, the privacy and safe keeping of a deponent's information, and the impartiality of the video record.

It is also consistent with CR 30 (b) (4) that the testimony at a deposition may be recorded by other than stenographic means, the safeguards of CR 28(c) *Disqualification for Interest*, the equal terms of CR 28(d) *Equal Terms Required*, and the transcript certification requirements of CR 28(e) *Final Certification of the Transcript*.

CR 30 (b) (8) *Video recording of depositions*, states in part:

Any party may video record the deposition of any party or witness without leave of court provided that written notice is served on all parties not less than 20 days before the deposition date, and specifically states that the deposition will be video recorded.

Counsel have misinterpreted CR 30 (b) (8) to mean that they have an unrestricted right to video record a deposition without any rules or limitations other than the requirements set forth in subsection

(b) (8). This interpretation is contrary to the rules and case law. Counsel read CR 30 (b) (8) to mean "independent of" rather than "in addition to" to the other rules and regulations related to the taking of depositions.

By recording the deposition themselves or by using their own employees, counsel are interpreting the rules to allow that anyone can record the video deposition and that the disqualification for interest prohibitions in CR 28(b) apply only to the stenographic officer. Such an interpretation would allow recording by the attorney themselves, an employee of the law firm, an employee of one of the parties, a relative of one of the parties, or someone else with a financial interest in the outcome of the litigation. Such a position is against public policy, the court's interest in the impartiality of the record, and the integrity of the judicial process.

CR 28(c) states:

*Disqualification for Interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Counsel interpret CR 28(c) narrowly to mean an "officer" as defined previously in the rule in order to reach the conclusion that this rule does not apply to the video operator identified in CR 30. Such an interpretation ignores the unambiguous use of the term "person." CR 28 uses the language a "person" before whom a deposition may not be taken. Had the court wished to restrict this rule to only officers as defined in CR 28(a) they could have used the language, "No deposition shall be taken before an officer who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action." [Emphasis added.] They did not.

Counsel, further ignores the context within which rule 30(b) (8) was written.

CR 30 (b) (4) states:

The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means.

CR 30 (b) (4) recognizes that the testimony at a deposition may be recorded by other than stenographic means while CR 30 (b) (8) (H) makes a special exception for video recorded depositions so that stipulation or court order is not necessary for this particular method. It does not give counsel leave to ignore the requirements of CR 28 or the context of CR 30 (b) (4).

Given the apparent ease of recording virtual depositions, one can easily imagine a scenario in which one, two, or more counsel each record the deposition and seek to introduce their video as representative of the video record at trial.

CR 30 (b) (8) (G) states:

Absent agreement of the parties or court order, if all or any part of the video recording will be offered at trial, the party offering it must order the stenographic record to be fully transcribed at that party's expense. A party intending to offer a video recording of a deposition in evidence shall notify all parties in writing of that intent and the parts of the deposition to be offered within sufficient time for a stenographic transcript to be prepared, and for objections to be made and ruled on before the trial or hearing. Objections to all or part of the deposition shall be made in writing within sufficient time to allow for rulings on them and for editing of the video record-



ing. The court shall permit further designations of testimony and objections as fairness may require. In excluding objectionable testimony or comments or objections of counsel, the court may order that an edited copy of the video recording be made, or that the person playing the recording at trial suppress the objectionable portions of the recording. In no event, however, shall the original video recording be affected by any editing process.

It has become standard practice to synchronize the deposition video to the court reporter's transcript in order to create designations for use in trial and to eliminate objections from the video playback. The court reporter cannot ensure the accuracy of the video produced by counsel. In this case, you have a transcript, produced by an independent impartial officer who has a duty to produce an unbiased record being synchronized to a video being produced by one of the party's counsel who have a duty to zealously represent the interest of their client. When the synchronized video is played back in court it is often done without showing the written transcript and the video effectively stands in for the official record. Any jury could reasonably assume that the video they are seeing is an accurate record of the deponent's testimony.

In *Alcorn v City of Chicago*, No. 17-cv-5859, F.R.D. 440 (N.D. Ill. 2020), the court addressed Plaintiff's proposal to use a Zoom recording created without the use of an independent professional legal videographer. The court noted that:

Plaintiff's proposal in this case is untenable. If permitted, Plaintiff would obtain a certified transcript of the recording but an uncertified video recording of the deposition. Yet, Plaintiff seeks to use both the transcript and the recording as equals at her discretion. As a result, the process outlined in the Federal Rules of Civil Procedure to ensure the integrity of the deposition would be bypassed. The court reporter would not be managing the appearance or demeanor of anyone on the screen, any edits to the recording, or the sealing and maintaining of the recording. There would be no certification that the Zoom video recording accurately captures the testimony of the deponent. Plaintiff's proposal essentially seeks an end-run around the procedures outlined in Rule 30.

CR 30 (b) (8) (D) states:

Unless otherwise stipulated to by the parties, the expense of video recording shall be borne by the noting party and shall not be taxed as costs. Any party, at that party's expense, may obtain a copy of the video recording.

CR 28(d) *Equal Terms Required* states in part:

Any arrangement concerning court reporting services or fees in a case shall be offered to all parties on equal terms.

By allowing one party to control the video recording of the deposition the court would set up a situation in which counsel would have to purchase the recording from opposing counsel. There would be no limitation on what the recording party could charge. Such a situation would be at odds with the equal terms requirement of CR 28(d) and could result in significant litigation cost shifting.

Legal videography has been a service offered by court reporting agencies since its introduction in the 1980s. As such it must be offered to all parties on equal terms. Until the introduction of remote depositions and the ease of self-recording, the issue of counsel recording their own depositions rarely arose. The specialized equipment and knowledge made such a practice unthinkable.

Professional legal videographers are trained to conduct depositions under CR 30 and recording of physical and mental examination of persons under CR 35. As such they consider themselves to be officers of the court with a duty to create an impartial video record. They adhere to a number of standards and best practices. In no case do they simply hit "record," whether conducting a deposition in person or remotely. They use specialized software, equipment, and knowledge to produce deposition recordings. Utilizing the services of professional legal videographers not only guarantees the quality and integrity of the recording, it also ensures the impartiality of the person making the recording.

In *Brizuela v City of Seattle*, the Superior Court of the State of Washington for King County, Case No. 14-2-05875-6SEA, plaintiff sought to use an uncertified videographer with limited experience in conducting CR 35 examinations. The defense filed a motion to compel that any videotaping be performed by a certified, professional videographer. The Honorable Theresa B. Doyle ordered that "if the plaintiff wishes to videotape either examination...he will employ a licensed professional videographer."

D. **Hearing:** B&A does not believe a public hearing is needed.

E. **Expedited Consideration:** B&A believes that the Court's Order Regarding Court Operations After October 31, 2022 has created exceptional circumstances which justify expedited consideration.

F. **Supporting Materials:**

Declaration of Steven B. Crandall in support of suggested changes to CR 28(b) and CR 30 (b) (8) (H).

CR 30

DEPOSITIONS UPON ORAL EXAMINATION  
SUGGESTED CHANGE TO CIVIL RULE 30

(a) [Unchanged.]

(b) Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization; Video Recording.

(1) - (7) [Unchanged.]

(8) (A) - (G) [Unchanged.]

(H) After the deposition has been taken, the operator of the video recording equipment shall submit with the video recording a certificate that the recording is a correct and complete record of the testimony by the deponent. Pursuant to rule 28(c) the operator shall further certify that they have no financial interest in this matter, nor are they an attorney for, nor are they a relative or employee of, any party or attorney in this action. If the video recording is stored exclusively on a computer or service (including cloud storage) and not on an easily removable and portable storage device, the certificate shall so state and indicate measures taken to preserve it. Unless otherwise agreed by the parties on the record, the operator shall retain custody or control of the original video recording. The custodian shall store it under conditions that will protect it against loss, destruction, or tampering, and shall preserve as far as practicable the quality of the recording and the technical integrity of the testimony and images it contains. The custodian of the original video recording shall retain custody of it until 6 months after final disposition of the action, unless the court, on motion of any party and for good cause shown, orders that the recording be preserved for a longer period.

(8) (I) [Unchanged.]

(c) - (h) [Unchanged.]

**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 23-09-022
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1502
SAR 15—COMMISSIONER OF THE )
SUPREME COURT )

Supreme Court Commissioner Michael Johnston, having recommended the adoption of the suggested amendments to SAR 15—Commissioner of the Supreme Court, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j)(1), the suggested amendments will be expeditiously published in the Washington Reports and will become effective immediately.

DATED at Olympia, Washington this 6th day of April, 2023.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.

GR 9 Cover Sheet
Suggested change to SAR 15(k)

Proponent: Commissioner Michael E. Johnston.

Spokesperson: Commissioner Michael E. Johnston.

Date Submitted: January 24, 2023.

Purpose: SAR 15(k) prohibits the commissioner and attorneys employed by the commissioner from "acting as an attorney." The plain language of this rule prohibits a commissioner or a staff attorney from engaging in reserve military service as a judge advocate in the United States military's Judge Advocate General's Corps (JAG). Attorneys in other state government entities serve as reserve judge advocates, and such service provides veteran attorneys opportunities for military service credit. Furthermore, there are no apparent legal or ethical conflicts within the Washington appellate court system in light of the wide separation between military and state justice systems. Nevertheless, reserve judge advocate service by a staff attorney conflicts with SAR 15(k). This broad prohibition likely will have a disparate impact on court staff attorneys wishing to engage in reserve JAG service, potentially violating the United Service Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 et seq. Furthermore, strict application of the rule in this context may interfere with the commissioner's efforts to recruit a more diverse team of staff attorneys. Amending the rule to allow staff attorneys to engage in reserve judge advocate service will remedy this situation. The proposed change does not apply to the commissioner or deputy commissioner

Hearing: The proponent does not believe a hearing is necessary.

**Expedited Consideration:** The proponent requests expedited consideration of this suggested rule change in light of ongoing recruiting efforts.

**Suggested Change:**

The commissioner and the attorneys employed by the commissioner are prohibited, during term of office, from acting as an attorney unless a staff attorney is acting as a reserve judge advocate within the Judge Advocate General's Corps (JAG) in such a capacity as not to create a conflict with the staff attorney's duties with the Washington Supreme Court.

SAR 15

COMMISSIONER OF THE SUPREME COURT

(a) - (j) [Unchanged.]

(k) **Prohibition From Practice of Law.** The commissioner and the attorneys employed by the commissioner are prohibited, during term of office, from acting as an attorney unless a staff attorney is acting as a reserve judge advocate within the Judge Advocate General's Corps (JAG) in such a capacity as not to create a conflict with the staff attorney's duties with the Washington Supreme Court.

(l) [Unchanged.]

WSR 23-09-023
RULES OF COURT
STATE SUPREME COURT
[April 10, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1503
THE BJA RULES )

The Board for Judicial Administration, having recommended the adoption of the suggested amendments to the BJA Rules, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j)(1), the suggested amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 10th day of April, 2023.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.

GR 9 COVER SHEET

Suggested Amendments

TO THE BOARD FOR JUDICIAL ADMINISTRATION (BJA) RULES
(Hearing is Not Recommended)

Submitted by the Board for Judicial Administration

A. Name of Proponent: The Board for Judicial Administration

B. Spokespersons:

- Chief Justice Stephen González, Chair
Judge Tam Bui, District and Municipal Court Judges' Association, Snohomish County District Court, Member Chair
Jeanne Englert, Administrative Manager, BJA

Purpose: This is a request to revise and update the BJA Rules (BJAR). Both the BJA Rules and Bylaws were reviewed to ensure they accurately reflect current practice and needs. Changes were recommended to the Rules to reflect current practices, provide clarification or simplify language, and to move items to the document that makes the most sense.

C. To accomplish this, the BJA formed an ad hoc committee to evaluate the BJA bylaws and rules. The Ad Hoc Committee was comprised of a representatives from BJA committees and each court level. The Bylaws and Rules Ad Hoc Committee members were Chief Justice Steven González, Judge Jennifer Forbes, Judge David Mann, Commissioner Rick Leo.

The BJA Bylaws were last amended October 24, 2019. The BJAR Preamble, and Rules 1, 2, 3, 4, and 5 were last amended November 6, 2019.

The Ad Hoc Committee reviewed the BJA Bylaws and Rules and made several recommendations, including:

- Changes included Article 3 of the Bylaws and BJAR 2 nomenclature for the Court of Appeals.
- shared authority language in Article 6 of the Bylaws;
- a slight change in language from telephone conferences to remote meetings in Article 8 of the Bylaws;
- added flexibility in designating a proxy in Article 13 of the BJAR;

These changes were reviewed by members and non-members of the BJA, revised as appropriate, and approved by majority vote of BJA members at the November 18, 2022 BJA meeting.

**D.** A hearing is not recommended.

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

### Supporting Materials

Attached as supporting materials are:

- A red-lined version of the proposed changes to BJA Rules.
- A version of the BJA Rules with all the proposed changes.
- A red-lined version of the proposed changes to BJA Bylaws.
- A version of the BJA Bylaws with all the proposed changes.

Additional supporting information, including BJA meeting minutes, is available at the AOC Website at: [https://www.courts.wa.gov/programs\\_orgs/pos\\_bja/](https://www.courts.wa.gov/programs_orgs/pos_bja/)

#### BOARD FOR JUDICIAL ADMINISTRATION RULES (BJAR)

##### TABLE OF RULES

##### BJAR

##### PREAMBLE

The power of the judiciary to make administrative policy governing its operations is an essential element of its constitutional status as an equal branch of government.

[Adopted effective January 25, 2000, November 6, 2019 amended.]

##### BJAR 1

##### BOARD FOR JUDICIAL ADMINISTRATION

The Board for Judicial Administration (BJA) is established to provide leadership and develop policy to enhance the judiciary's ability to serve as an equal, independent, and responsible branch of government. The vision of the BJA is to be the unified voice of the Washington State Courts. Judges serving on the BJA shall pursue the best interests of the judiciary at large.

[Amended effective October 29, 1993; January 25, 2000; November 6, 2019.]

##### BJAR 2

##### COMPOSITION

(a) Membership. The Board for Judicial Administration shall consist of judges from all levels of court and other key stakeholders. The voting membership of the Board for Judicial Administration shall consist of the Chief Justice and one other member of the Supreme

Court, one member from each division of the Court of Appeals, five members from the Superior Court Judges' Association, one of whom shall be the President, and five members from the District and Municipal Court Judges' Association, one of whom shall be the President. The non-voting membership shall include: the Washington State Bar Association's Executive Director and Board President, the Administrator for the Courts, ~~the Presiding Chief Judge of the Court of Appeals~~, the President-elect judge of the Superior Court Judges' Association and the President-elect judge of the District and Municipal Court Judges' Association.

(b) Selection. Members shall be selected based upon a process established by their respective associations or court level which considers demonstrated interest and commitment to judicial administration, improving the courts, racial and gender diversity, and the court's geographic and caseload differences.

(c) Terms of Office.

(1) Members serve four year terms, except the Chief Justice, ~~Presiding Chief Judge of the Court of Appeals~~, the Association President Judges, the Washington State Bar Association President and Executive Director, and the Administrator for the Courts who shall serve during their tenure.

(2) Members serving on the BJA shall be granted equivalent pro tempore time.

[Amended effective October 29, 1993; February 16, 1995; January 25, 2000; June 30, 2010; July 4, 2017; November 6, 2019.]

#### BJAR RULE 3

##### STRUCTURE

(a) Leadership. The Board for Judicial Administration shall be chaired by the Chief Justice of the Washington Supreme Court in conjunction with a Member Chair who shall be elected by the Board. The duties of the Chief Justice Chair and the Member Chair shall be clearly articulated in the bylaws.

(b) Committees. The Board shall appoint at least four standing committees: Policy and Planning, Budget and Funding, Education, and Legislative. Other committees may be convened to help facilitate the work of the Board as determined by the Board.

[Adopted effective January 25, 2000; amended effective September 1, 2014; November 6, 2019.]

#### BJAR 4

##### STAFF

Staff for the Board for Judicial Administration shall be provided by the Administrator for the Courts.

[Adopted effective January 25, 2000; November 6, 2019.]

#### BJAR 5

##### BYLAWS

The Board may by a majority vote of the voting members develop, adopt and amend bylaws for its operations that do not conflict with these rules. [Adopted effective November 6, 2019.]

Amended effective November 6, 2019

#### BOARD FOR JUDICIAL ADMINISTRATION

##### BYLAWS



Amended October 24, 2019

**ARTICLE I: Purpose**

The Board for Judicial Administration (BJA) shall adopt policies and provide leadership for the administration of justice in Washington courts. Included in, but not limited to, that responsibility is: 1) improving the quality of justice in Washington by fostering excellence in the courts through effective education; 2) developing proactive legislation and advising and recommending positions on legislation of interest; 3) facilitating and managing a process of engagement within the judicial branch to identify priority policy issues and to develop strategies to address those issues; 4) coordinating efforts to achieve adequate, stable and long-term funding of Washington's courts to provide fair and equitable justice throughout the state; 5) reviewing and making recommendations, including prioritization, regarding proposed budget requests routed through the BJA.

**ARTICLE II: Membership**

The Board for Judicial Administration shall consist of judges from all levels of court and other key stakeholders as outlined in the Court Rules.

**ARTICLE III: Terms of Office**

The Chief Justice, ~~Presiding Chief Judge of the Court of Appeals,~~ the Association President Judges, the Washington State Bar Association President and Executive Director, and the Administrator for the Courts shall serve during their tenure. All other members serve four year terms unless their governing body specifies otherwise and their terms are renewable for one additional four year term.

**ARTICLE IV - Vacancies**

If a vacancy occurs in any representative position, the bylaws of the governing group shall determine how the vacancy will be filled.

**ARTICLE V: Chairs**

The Chief Justice of the Supreme Court shall chair the Board for Judicial Administration in conjunction with a Member chair. The Member chair shall be nominated by the Chief Justice Chair and confirmed by the Board. The member chair shall serve a two year term. The Member chair position shall be filled alternately between a voting Board member who is a superior court judge and a voting Board member who is either a district or municipal court judge.

**ARTICLE VI: Duties of Chairs**

The Chief Justice Chair ~~shall preside at all meetings of the Board, performing the duties usually incident to such office, and shall be the official spokesperson for the Board. The Chief Justice Chair and Member Co-Chair shall preside at all meetings of the Board, performing the duties usually incident to such office,~~ The Chief Justice chair and the Member chair shall nominate for the Board's approval the chairs of all committees. The Member chair shall perform the duties of the Chief Justice chair in the absence or incapacity of the Chief Justice chair.

**ARTICLE VII: Committees**

1) Standing Committees are identified in BJAR 3(b). Any change to standing committees must be approved by a majority vote.

2) The BJA, by majority vote, can establish ad hoc committees or task forces. Ad hoc committees or task forces will be guided by a BJA approved charter for a duration of 2 years, subject to renewal or revision by a majority of the BJA. The Chief Justice chair and the Member chair shall nominate committee and task force chairs for the Board's approval. Membership on all committees and task forces will reflect representation from all court levels as outlined in their charter. Membership may also include anyone working in the judicial system or anyone from the public.

3) Committees and task forces shall report in writing to the Board for Judicial Administration as appropriate to their charter.

4) The terms of committee and task force members will be determined by their charter.

#### **ARTICLE VIII: Executive Committee**

There shall be an Executive Committee composed of Board for Judicial Administration members, and consisting of the co-chairs, a judge from the Court of Appeals selected by and from the Court of Appeals members of the Board, the President Judge of the Superior Court Judges' Association, and the President Judge of the District and Municipal Court Judges' Association, and non-voting members to include one Washington State Bar Association representative selected by the Chief Justice, President-elect judge of the Superior Court Judges' Association, President-elect judge of the District and Municipal Court Judges' Association and the Administrator for the Courts.

It is the purpose of this committee to consider and take action on emergency matters arising between Board meetings, subject to ratification of the Board. During legislative sessions, the Executive Committee is authorized to conduct ~~telephone conferences~~ remote meetings for the purpose of reviewing legislative positions.

#### **ARTICLE IX: Regular Meetings**

There shall be regularly scheduled meetings of the Board for Judicial Administration. A meeting schedule will be approved by the Board annually. Reasonable notice of meetings shall be given to each member. Any Board member may submit items for the meeting agenda.

#### **Article X: Executive Sessions**

Executive sessions may be held upon majority vote to discuss matters deemed confidential. A motion to enter executive session shall set forth the purpose of the executive session, which shall be included in the minutes.

#### **ARTICLE XI: Special Meetings**

Special meetings may be called by any member of the Board. Reasonable notice of special meetings shall be given to each member.

#### **ARTICLE XII: Quorum**

Eight voting members of the Board shall constitute a quorum provided each court level is represented.

#### **ARTICLE XIII: Voting**

Each judicial member of the Board for Judicial Administration shall have one vote. All decisions of the Board shall be made by ma-

majority vote of those present and provided there is at least one affirmative vote from each level of court. ~~Remote Telephonic or electronic attendance shall be permitted, but no member shall be allowed to cast a vote by proxy~~ A voting members may designate a non-voting BJA member from the same level of court to cast a vote by proxy in their absence.

#### **ARTICLE XIV: Amendments and Repeal of Bylaws**

These bylaws may be amended or modified at any regular or special meeting of the Board, at which a quorum is present and by majority vote, provided there is at least one affirmative vote from each level of court. No motion or resolution for amendment of bylaws may be considered at the meeting in which they are proposed.

Approved for Circulation—7/27/87

Amended 1/21/00

Amended 9/13/00

Amended 5/17/02

Amended 5/16/03

Amended 10/21/05

Amended 3/16/07

Amended 5/17/19

Amended 10/18/19

Amended 10/24/19

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**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 23-09-031  
PUBLIC RECORDS OFFICER  
DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed April 13, 2023, 8:50 a.m.]

Effective April 17, 2022 [2023], pursuant to RCW 42.56.580, the public records officer for the Department of Retirement Systems is Johnna Craig, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7219, and public records requests should be sent to johnna.craig@drs.wa.gov.

Johnna Craig  
Public Records Officer

WSR 23-09-032

HEALTH CARE AUTHORITY

[Filed April 13, 2023, 9:52 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 23-0024  
State Governor Review.

Effective Date: April 1, 2023.

Description: The health care authority (HCA) intends to submit  
medicaid SPA 23-0024 to reflect the appointment of Dr. Charissa Foti-  
nos as Washington's medicaid director. Dr. Fotinos was permanently ap-  
pointed to this position on May 16, 2022; however, submission of an  
SPA to reflect that appointment was delayed.

SPA 23-0024 is expected to have no effect on annual aggregate  
payments/expenditures/reimbursements.

A copy of SPA 23-0024 is available for review. HCA would appreci-  
ate any input or concerns regarding this SPA. To request a copy 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 Ann Myers, Medicaid State Plan, P.O. Box 45502, phone  
360-622-1978, TRS 711, email ann.myers@hca.wa.gov.

**WSR 23-09-034**  
**NOTICE OF PUBLIC MEETINGS**  
**ENVIRONMENTAL AND**  
**LAND USE HEARINGS OFFICE**  
 (Growth Management Hearings Board)  
 [Filed April 13, 2023, 4:17 p.m.]

The growth management hearings board has changed the following regular meeting:

<b>From:</b>		
<b>Date</b>	<b>Time</b>	<b>Location</b>
July 12, 2023	9:00 a.m.	Remote meeting (Zoom): <a href="https://us02web.zoom.us/j/7496675441?pwd=d2tYMitiTlpZVENyWW9FRGpvckxwUT09">https://us02web.zoom.us/j/7496675441?</a> pwd=d2tYMitiTlpZVENyWW9FRGpvckxwUT09 Meeting ID: 749 667 5441 Passcode: 566678 Physical location: 1111 Israel Road S.W., Suite 301 Tumwater, WA 98501
<b>To:</b>		
June 14, 2023	9:00 a.m.	Remote meeting (Zoom): <a href="https://us02web.zoom.us/j/7496675441?pwd=d2tYMitiTlpZVENyWW9FRGpvckxwUT09">https://us02web.zoom.us/j/7496675441?</a> pwd=d2tYMitiTlpZVENyWW9FRGpvckxwUT09 Meeting ID: 749 667 5441 Passcode: 566678 Physical location: 1111 Israel Road S.W., Suite 301 Tumwater, WA 98501

If you need further information, contact Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, 360-485-1282, jamie.merly@eluhwa.gov, fax 360-586-2253, www.eluhwa.gov.

**WSR 23-09-038**

**DEPARTMENT OF AGRICULTURE**

[Filed April 14, 2023, 11:10 a.m.]

**2023 QUARTERLY REPORT ON RULE-MAKING ACTIVITIES**

**Petitions Received**

The following information is being sent to you in order to implement RCW 1.08.112 (1)(g) and WAC 1-21-180. The Washington state department of agriculture received zero petitions for rule making during the first quarter of 2023.

**WSR 23-09-042**  
**POLICY STATEMENT**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed April 14, 2023, 3:23 p.m.]

Under RCW 34.05.230, following are statements regarding one repealed and six amended policies, issued by the department of labor and industries (L&I) fraud prevention and labor standards division.

If you have any questions or need additional information, please contact Tracy West, rules coordinator, at Tracy.West@Lni.wa.gov, or 360-902-6954.

Title: Policy ES.A.3 - *Minimum Hourly Wage.*

Date Revised: April 6, 2023.

Description: The amended policy provides guidance on changes made to the Minimum Wage Act (MWA) due to Initiative 1433. L&I also incorporated changes in this policy to make it more accessible by using plain language and providing additional clarity.

Contact: Bridget Osborne, 310 Israel Road, Tumwater, WA 98501, 360-902-5552, Bridget.Osborne@Lni.wa.gov.

Title: Policy ES.A.5 - *Waiving of Rights under Minimum Wage Act Prohibited and More Favorable Laws Allowed.*

Date Revised: April 6, 2023.

Description: The amended policy provides guidance on changes made to MWA due to Initiative 1433. L&I also incorporated changes in this policy to make it more accessible by using plain language and providing additional clarity. This policy also adds content from policy ES.A.7 to condense like subjects and prevent a multitude of short policies. ES.A.7 was repealed. *See below.*

Contact: Bridget Osborne, 310 Israel Road, Tumwater, WA 98501, 360-902-5552, Bridget.Osborne@Lni.wa.gov.

Title: Policy ES.A.6 - *Collective Bargaining Agreements, Employment Agreements, and Policies.*

Date Revised: April 6, 2023.

Description: The amended policy provides guidance on changes made to MWA due to Initiative 1433. L&I also incorporated changes in this policy to make it more accessible by using plain language and providing additional clarity.

Contact: Bridget Osborne, 310 Israel Road, Tumwater, WA 98501, 360-902-5552, Bridget.Osborne@Lni.wa.gov.

Title: Policy ES.A.7 - *More Favorable Laws.*

Date Repealed: April 6, 2023.

Description: This policy was repealed because it was incorporated into Policy ES.A.5 to condense like subjects and prevent a multitude of short policies. *See above.*

Contact: Bridget Osborne, 310 Israel Road, Tumwater, WA 98501, 360-902-5552, Bridget.Osborne@Lni.wa.gov.

Title: Policy ES.A.8.1 - *Overtime.*

Date Revised: April 6, 2023.

Description: The amended policy provides guidance on changes made to MWA due to Initiative 1433. L&I also incorporated changes in this policy to make it more accessible by using plain language and providing additional clarity.



Contact: Bridget Osborne, 310 Israel Road, Tumwater, WA 98501, 360-902-5552, Bridget.Osborne@Lni.wa.gov.

Title: Policy ES.C.1 - *Industrial Welfare Act: Applications, Exemptions, and Interpretations.*

Date Revised: April 6, 2023.

Description: The amended policy provides guidance on changes made to MWA due to Initiative 1433. L&I also incorporated changes in this policy to make it more accessible by using plain language and providing additional clarity.

Contact: Bridget Osborne, 310 Israel Road, Tumwater, WA 98501, 360-902-5552, Bridget.Osborne@Lni.wa.gov.

Title: Policy ES.D.1 - *Recordkeeping and Access to Payroll Records (Non-agricultural Employment).*

Date Revised: April 6, 2023.

Description: The amended policy provides guidance on changes made to MWA due to Initiative 1433. L&I also incorporated changes in this policy to make it more accessible by using plain language and providing additional clarity.

Contact: Bridget Osborne, 310 Israel Road, Tumwater, WA 98501, 360-902-5552, Bridget.Osborne@Lni.wa.gov.

Tracy West  
Rules Coordinator

**WSR 23-09-043**

**NOTICE OF PUBLIC MEETINGS**

**STATUTE LAW COMMITTEE**

[Filed April 16, 2023, 1:58 p.m.]

A statute law committee meeting has been scheduled for Wednesday, June 21, 2023. The meeting will begin at 12:00 p.m. and will end at approximately 1:00 p.m. Agenda items to be determined.

The meeting will be hybrid, with in-person in the ABC Room, JAC Building, and via Zoom.

Shayne O'Grady or Kathleen Buchli are the contact persons for information concerning this meeting and can be reached at 360-786-6777 or CROFrontDesk@leg.wa.gov.

WSR 23-09-045

NOTICE OF PUBLIC MEETINGS

DAIRY PRODUCTS COMMISSION

[Filed April 17, 2023, 9:15 a.m.]

**Dairy Farmers of Washington (DFW)**  
Revised 2023 Board Meeting Schedule

March 8, 2023	DFW board meeting Washington Dairy Center 4201 198th Street S.W. Lynnwood, WA 98036	8:00 a.m.
May 31, 2023	DFW board meeting - virtual option available 1580 Kruse Road Pasco, WA 99301	8:00 a.m.
July 26, 2023	DFW board meeting Western Washington, TBD	8:00 a.m.
September 27, 2023	DFW board meeting - virtual option available Washington Dairy Center 4201 198th Street S.W. Lynnwood, WA 98036	8:00 a.m.
December 6, 2023	DFW board meeting - virtual	8:00 a.m.

NOTE: Please confirm all final meeting start times with the Washington dairy products commission at 425-672-0687.

WSR 23-09-047

**NOTICE OF PUBLIC MEETINGS  
RECREATION AND CONSERVATION  
OFFICE**

(Salmon Recovery Funding Board)

[Filed April 17, 2023, 10:48 a.m.]

The salmon recovery funding board is changing the **time** and **location** of the regular quarterly meeting scheduled for May 23-24, 2023:  
**FROM:** May 23-24, 2023, from 9:00 a.m. to 5:00 p.m., Room 172, Natural Resource Building, 1111 Washington Street S.E., Olympia, WA 98501.  
**to:** May 23, 2023, from **8:15 a.m. to 4:00 p.m., Nisqually Watershed, in-person only;** and May 24, 2023, from 9:00 a.m. to 5:00 p.m., Room 172, Natural Resource Building, 1111 Washington Street S.E., Olympia, WA 98501, **in-person and online via Zoom.** Additional information can be found on recreation and conservation office's (RCO) web page Meetings - RCO (wa.gov).

For further information, please contact Julia McNamara, julia.mcnamara@rco.wa.gov or check RCO's web page at Meetings - RCO (wa.gov).

RCO schedules all public meetings at barrier-free sites. Persons who need special assistance may contact Leslie Frank at 360-902-0220 or email leslie.frank@rco.wa.gov.

**WSR 23-09-050**

**NOTICE OF PUBLIC MEETINGS**

**BELLEVUE COLLEGE**

[Filed April 17, 2023, 3:05 p.m.]

The Bellevue College board of trustees has changed the following regular meeting:

From: June 21, 2023, at 2:00 p.m.

To: June 22, 2023, at 3:30 p.m.

If you need any further information, please contact Alicia Keating Polson, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 425-564-2302, [Alicia.keatingpolson@bellevuecollege.edu](mailto:Alicia.keatingpolson@bellevuecollege.edu).

WSR 23-09-071

NOTICE OF PUBLIC MEETINGS

EDMONDS COLLEGE

[Filed April 19, 2023, 10:20 a.m.]

The Edmonds College board of trustees has changed the time of their regular May meeting as follows:

**From:** Thursday, May 11, 2023, at **2:30 p.m.**

**To:** Thursday, May 11, 2023, at **3:30 p.m.**

If you need further information, contact Kristen NyQuist, Edmonds College, 20000 68th Avenue West, Lynnwood, [WA] 98036, 425-275-8060, kristen.nyquist@edmonds.edu.