WSR 07-22-081
RULES OF COURT
STATE SUPREME COURT
[November 1, 2007]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENTS TO CrR 4.1—ARRAIGNMENT, CrR4.2—PLEAS, CrRLJ 4.1—ARRAIGNMENT AND CrRLJ 4.2—PLEAS; NEW APR 27—PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER AND AMENDMENT TO RPC 5.5—UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW—COMMENT 14; ER 408—COMPROMISE AND OFFERS TO COMPROMISE; ER 410—INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS; CrR 8.3—DISMISSAL AND CrRLJ 8.3—DISMISSAL; RAP 2.2—DECISIONS OF THE SUPERIOR COURT THAT MAY BE APPEALED AND RALJ 2.2—WHAT MAY BE APPEALED; RPC 1.8—CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES; NEW GR 34—WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS AND APPENDIX A, B, C AND D; JuCR 7.15—WAIVER OF RIGHT TO COUNSEL; APR 12—LIMITED PRACTICE RULE FOR CLOSING OFFICERS; APPENDIX APR 12—REGULATIONS OF THE APR 12 LIMITED PRACTICE BOARD; DISCIPLINARY REGULATIONS APPLICABLE TO APR 12.1; CONTINUING EDUCATION REGULATIONS OF THE LIMITED PRACTICE BOARD; NEW RULES OF PROFESSIONAL [PROFESSIONAL] CONDUCT FOR LIMITED PRACTICE OFFICERS; RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT; ELC 15.4—TRUST ACCOUNT OVERDRAFT NOTIFICATION; RPC 1.15A—SAFEGUARDING PROPERTY; RPC 1.5—FEES; RPC 5.5—UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW; APR 15—LAWYERS' FUND FOR CLIENT PROTECTION—RULE 5—ELIGIBLE CLAIMS AND RULE 6—PROCEDURES AND ELC 13.9—COSTS AND EXPENSES	ORDER NO. 25700-A-882

The Washington State Bar Association having recommended the adoption of the proposed amendments to CrR 4.1—Arraignment, CrR 4.2—Pleas, CrRLJ 4.1—Arraignment and CrRLJ 4.2—Pleas; New APR 27—Provision of Legal Services Following Determination of Major Disaster and Amendment to RPC 5.5—Unauthorized Practice of Law; Multijurisdictional Practice of Law—Comment 14; ER 408—Compromise and Offers to Compromise; ER 410—Inadmissibility of Pleas, Offers of Pleas, and Related Statements; CrR 8.3—Dismissal and CrRLJ 8.3—Dismissal; RAP 2.2—Decisions of the Superior Court That May Be Appealed and RALJ 2.2—What May Be Appealed; RPC 1.8—Conflict of Interest: Current Clients: Specific Rules; New GR 34—Waiver of Court and Clerk's Fees and Charges in Civil Matters and Appendix A, B, C AND D; JuCR 7.15—Waiver of Right to Counsel; APR 12—Limited Practice Rule for Closing Officers; Appendix APR 12—Regulations of the APR 12 Limited Practice Board; Disciplinary Regulations Applicable to APR 12.1; Continuing Education Regulations of the Limited Practice Board; New Rules of Professional Conduct for Limited Practice Officers; Rules for Enforcement of Limited Practice Officer Conduct; ELC 15.4—Trust Account Overdraft Notification; RPC 1.15A—Safeguarding Property; RPC 1.5—Fees; RPC 5.5—Unauthorized Practice of Law; Multijurisdictional Practice of Law; APR 15—Lawyers' Fund for Client Protection—Rule 5—Eligible Claims and Rule 6—Procedures and ELC 13.9—Costs and Expenses, and the Court having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Office of the Administrator for the Court's websites in January, 2008.

(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, 2008. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Camilla.Faulk@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 1st day of November, 2007.

For the Court
Gerry L. Alexander
CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment to
SUPERIOR COURT CRIMINAL RULES (CrR)

CrR 4.1 ARRAIGNMENT

Submitted by the Washington State Bar Association

Purpose

Please see the statement of purpose for the suggested amendment to CrRLJ 4.1. These suggested amendments are intended conform CrR 4.1 to the amended version of CrRLJ 4.1, where appropriate.

In addition, the suggested amendment to paragraph (f) of CrR 4.1 specifies that the prosecuting attorney shall read the indictment or information. Because a prosecuting attorney is

typically present at superior court arraignments, this should not effect a substantial change in existing practice.

SUPERIOR COURT CRIMINAL RULES (CrR)
RULE 4.1 ARRAIGNMENT

(a) - (b) [Unchanged.]

(c) Counsel. A defendant shall not be arraigned unless counsel is present to assist the defendant at the arraignment. At arraignment, the court shall provide for a lawyer pursuant to CrR 3.1. If the defendant appears without counsel, ~~the court shall inform the defendant of his or her right to have counsel before being arraigned. T~~the court shall inquire if the defendant has counsel. If the defendant is not represented, the court shall inform the defendant of his or her right to have counsel before being arraigned. If the defendant is not represented and is unable to obtain counsel, counsel shall be assigned to him or her by the court, unless otherwise provided.

(d) Waiver ~~of Counsel~~

(1) *Waiver of Counsel.* If the defendant chooses to proceed without counsel, the court shall ascertain whether this waiver is made voluntarily, competently and with knowledge of the consequences. If the court finds the waiver valid, an appropriate finding shall be entered in the minutes, including a finding that defendant had the opportunity to consult with counsel who was present at arraignment. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed. If such claim for counsel is not timely, the court shall appoint counsel but may deny or limit a continuance.

(2) *Waiver of Interpreter*. The court shall not accept a waiver of interpreter at arraignment, except in compliance with RCW 2.43.060.

(e) [Unchanged.]

(f) Reading. The prosecuting attorney shall read ~~T~~the indictment or information ~~shall be read~~ to defendant, unless the reading is waived, and a copy shall be given to defendant.

GR 9 COVER SHEET

Suggested Amendment to
SUPERIOR COURT CRIMINAL RULES (CrR)

CrR 4.2 PLEAS

Submitted by the Washington State Bar Association

Purpose

Please see the statement of purpose for the suggested amendment to CrRLJ 4.1. This suggested amendment, by preventing the superior court from accepting a plea from an unrepresented defendant in the absence of a valid waiver, is intended to underscore the importance of either appointing counsel for a defendant intending to enter a plea or invoking the appropriate procedures to ensure that a waiver of counsel is valid.

SUPERIOR COURT CRIMINAL RULES (CrR)
RULE 4.2 PLEAS

(a)-(c) [Unchanged.]

(d) Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea. The court shall not accept a plea of guilty from an unrepresented defendant unless a valid waiver of counsel is entered on the record.

(e)-(g) [Unchanged.]

GR 9 COVER SHEET

Suggested Amendment to
CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION
(CrRLJ)

CrRLJ 4.1 ARRAIGNMENT

Submitted by the Washington State Bar Association

Purpose

The suggested amendments to CrRLJ 4.1 are intended to change the culture of courts of limited jurisdiction that hold arraignment calendars without providing counsel as required by the existing court rules and state and federal constitutions.

Background and Rationale

"Courts of limited jurisdiction serve as the window to the judicial branch for many people who do not normally have contact with the judicial system." In re Discipline of Michels, 150 Wn.2d 159, 170, 75 P.3d 950 (2003). The Michels court added:

The rights of the poor and indigent are the rights that often need the most protection. Each county or city operating a criminal court holds the responsibility of adopting certain standards for the delivery of public defense services, with the most basic right being that counsel shall be provided.

Id. at 174. More than 30 years ago, in Argersinger v Hamlin, 407 U.S. 25 (1972), the United States Supreme court extended the Sixth and Fourteenth Amendment right to counsel to defendants charged with misdemeanors that carry a potential jail sentence. In Argersinger, Justice Douglas warned of the danger that unrepresented defendants might fall victim to "assembly-line justice." Unfortunately, many city and county courts in Washington do not provide lawyers at arraignment or probation review hearings. As a result, thousands of accused persons face misdemeanor prosecutions and revocation of probation every year in Washington without meaningful access to counsel.

In *The Right to Counsel: Every Accused Person's Right*,[1] Seattle public defender Robert Boruchowitz reported on observations he had made in courts of limited jurisdiction during his Soros Fellowship. He found that some courts have stated, either on websites or in court, that no lawyer will be provided at arraignment. In these courts, accused persons who wished to resolve their cases quickly and who had no one to advise them felt pressured to go forward without coun-

sel. Mr. Boruchowitz noted that some in-custody defendants in handcuffs were approached by prosecutors seeking to negotiate guilty plea agreements without counsel. The WSBA Blue Ribbon Panel on Criminal Defense[2] also found that these practices were widespread in many district and municipal courts, and that defendants in custody who did ask for a lawyer would often then have to wait in jail for another hearing a day later, sometimes several days later.

The practice of arraigning persons without the presence of counsel in courts of limited jurisdiction circumvents a crucial right in a criminal case: the right to counsel. As noted above, prosecutors negotiate directly with unrepresented, uncounseled defendants, and judges take guilty pleas at the first appearance of an often unsophisticated, confused, and hurried defendant before he or she can review the matter with a lawyer or even determine whether the assistance of counsel would be advisable.

Moreover, in many courts, neither a defense lawyer nor prosecutor is present at the arraignment hearing. Owing to a lack of alternatives, the judge is then thrust into the prosecutorial role of informing the defendant of the nature of the charge and the maximum penalty under the law. In these circumstances, moreover, some judges take uncounseled guilty pleas and fill out the guilty plea form for the defendant. Even if a prosecutor is present, that prosecutor may meet with the unrepresented defendant and persuade him or her to accept a plea offer at arraignment without the defendant being advised or aware of any collateral consequences that may occur as a result of the plea.

The Current Rule and Its Shortcomings

Existing CrRLJ 4.1 does not expressly provide for the presence of counsel at the arraignment hearing. Instead, the rule provides that the defendant may not be forced to enter a plea to the complaint until he or she has had a reasonable time to examine it and to consult with a lawyer if requested. CrRLJ 4.1 (a)(2). The rule also requires the judge to "advise" the defendant on the record of "the right to be represented by a lawyer at arraignment and to have an appointed lawyer for arraignment if the defendant cannot afford one." CrRLJ 4.1 (a)(3). Many judges and prosecutors interpret CrRLJ 4.1 to allow arraignment without counsel if the judge advises a defendant that he or she has a right to a lawyer at arraignment. In these situations, the judge will proceed with the arraignment after advisement unless the defendant affirmatively asks for a lawyer to be present. Often this advice of a right to a lawyer is given en masse at the start of a criminal calendar without any individual soliloquy with the defendant as to whether he or she wants a lawyer or can afford one.

The standards for a court's acceptance of a valid guilty plea require that, prior to acceptance of the plea, the judge must determine, and the circumstances reflected on the record must show, that the guilty plea was made freely, voluntarily, and intelligently with a full knowledge and understanding of the nature of the charge and the consequences of the plea. CrRLJ 4.2(d). Additionally, a defendant has a right to be represented by a lawyer when entering a plea of guilty. See CrRLJ 4.2(g) (paragraph 4(a) of Statement of Defendant on Plea of Guilty). Although not clearly stated in CrRLJ 4.2, a guilty plea proffered without counsel cannot be taken without a valid waiver of the right to counsel. For such a waiver to be accepted, the judge must ascertain that the waiver was made voluntarily, competently, and with knowledge of the consequences. Iowa v. Tovar, 541 U.S. 77 (2004); In re Grajeda, 20 Wn. App. 249, 579 P.2d 406 (1978). Although both court rules and case law in Washington recognize a right to counsel at the entry of a guilty plea, a considerable number of courts of limited jurisdiction accept uncounseled guilty pleas at arraignment. Because there are more than a quarter of a million misdemeanor filings each year in Washington, this is a considerable problem.

The WSBA Suggested Amendments to CrRLJ 4.1

The attached amendments to CrRLJ 4.1 are designed to ensure that Washington's courts of limited jurisdiction maintain the appearance of fairness and afford all defendants the right to counsel by requiring that a lawyer be present to assist defendants at arraignment, and by prohibiting the court from proceeding with arraignment in the absence of counsel or a valid waiver. In no case would the amended rule prevent a defendant who has validly waived counsel from pleading guilty at arraignment. Counterpart amendments to CrR 4.1 are intended to conform the language of the superior court rule where appropriate.

The Already-Pending "DMCJA" Proposed Amendments to CrRLJ 4.1

In pursuit of essentially the same goals, the District and Municipal Court Judges' Association (DMCJA) suggested, and in April 2007 the Supreme Court published for comment, proposed amendments to CrRLJ 4.1.[3] Although the two versions were originally disparate in a number of respects, discussions initiated by the Chair of the WSBA Court Rules and Procedures Committee resulted in a reduction of the differences to only a few, detailed below. The versions are now otherwise substantially similar. For example, both the WSBA version and the DMCJA version utilize the same organizational structure (which mirrors the format of existing CrR 4.1). And both versions incorporate an "attorney of the day" provision, originally devised by the DMCJA. The WSBA version, however, clarifies ambiguities in the DMCJA version that could be construed to permit courts of limited jurisdiction to continue to circumvent the right to counsel at arraignment. The WSBA version makes clear the obligation of the court and of local jurisdictions to ensure the presence of counsel at arraignment to advise defendants before entry of a plea.

Significant Changes to the Rule

Apart from a general reorganization to conform the structure of the rule to that of the corresponding superior court rule, CrR 4.1, the following components represent recommended changes of significance and/or distinctions from the DMCJA-proposed version.

- *CrRLJ 4.1(c). Requirement of Counsel.* WSBA's suggested amendment ensures that counsel is assigned at arraignment by specifying that, if at arraignment the defendant is not represented and is unable to obtain counsel, "the court shall provide for a lawyer pursuant to CrRLJ 3.1." By contrast, the DMCJA-proposed version, using language found in CrR 3.1, provides that counsel shall be assigned "unless otherwise provided." Second, unlike the DMCJA version, the WSBA-suggested amendment

expressly states: "A defendant shall not be arraigned unless counsel is present to assist the defendant at the arraignment." Both versions provide the option of satisfying the right to counsel at arraignment through "limited appearance counsel," which is defined as a lawyer who is present to assist unrepresented defendants at an arraignment calendar.

- *CrRLJ 4.1 (d)(1). Waiver of Counsel.* For situations involving waiver of the right to counsel, WSBA's suggested amendment adds an express requirement for entry of a finding that counsel has been waived at arraignment, which must include "a finding that the defendant had the opportunity to consult with counsel who was present at arraignment." Additionally, this paragraph specifies that without a valid waiver, the court cannot proceed with the arraignment until counsel is provided. By contrast, the DMCJA version borrows language from CrR 4.1(d), which only states, "If the court finds the waiver valid, an appropriate finding shall be entered in the record."
- *CrRLJ 4.1 (d)(2). Waiver of Interpreter.* New paragraph (d)(2) would prohibit a court from accepting a waiver of interpreter at arraignment, except in compliance with RCW 2.43.060 ("Waiver of right to interpreter").[4] Although the statute is mandatory, this provision in the rule will serve to remind the court and counsel about the necessity of statutory compliance.
- *CrRLJ 4.1(f). Reading of Charges and Presence of Prosecutor.* WSBA's suggested amendment requires that a prosecutor be present at any in-custody arraignment. By contrast, like the existing superior court rule, the DMCJA version is silent on the issue of whether a prosecutor must read the charges or be present at an arraignment.

WSBA Recommends Concurrent Amendments to CrR 4.1 and CrRLJ & CrR 4.2

Complementary amendments to CrR 4.1 conform the language of that rule to the amendments to CrRLJ 4.1, where appropriate.

Companion amendments to CrRLJ 4.2(d) and CrR 4.2(d), which govern pleas, reinforce the significance of the right to counsel when a defendant enters a plea by specifying that a court "shall not accept a plea of guilty from an unrepresented defendant unless a valid waiver of counsel is entered on the record."

[1] Washington State Bar News (Jan. 2004), available at http://www.wsba.org/media/publications/barnews/2004/jan-04-boruchowitz.htm

[2] See Report of the WSBA Blue Ribbon Panel on Criminal Defense (May 2004), available at http://www.wsba.org/lawyers/groups/blueribbonreport.pdf

[3] Following publication of the proposed amendments, WSBA requested, and the Supreme Court authorized, an extension of the comment period to August 17, 2007.

[4] The statute provides as follows:

(1) The right to a qualified interpreter may not be waived except when:

(a) A non-English-speaking person requests a waiver; and

(b) The appointing authority determines on the record that the waiver has been made knowingly, voluntarily, and intelligently.

(2) Waiver of a qualified interpreter may be set aside and an interpreter appointed, in the discretion of the appointing authority, at any time during the proceedings.

CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION (CrRLJ)

RULE 4.1 ARRAIGNMENT

(a) ~~Procedures.~~ ~~After the complaint or the citation and notice has been filed, the defendant shall be arraigned thereon in open court.~~

~~(1)~~ **Time.**

(1) *Defendant Detained in Jail.* ~~(i)~~ The defendant shall be arraigned not later than ~~15~~ 14 days after the date the complaint or citation and notice is filed in court, if the defendant is ~~(A)~~ (i) detained in a county or city jail in the county where the charges are pending, or ~~(B)~~ (ii) subject to conditions of release imposed in connection with the same charges.

~~(ii)~~ (2) *Defendant Not Detained in Jail.* The defendant shall be arraigned not later than ~~15~~ 14 days after that appearance which next follows the filing of the complaint or citation and notice, if the defendant is not detained in such jail or subject to such conditions of release. Any delay in bringing the defendant before the court shall not affect the allowable time for arraignment, regardless of the reason for the delay. For purposes of this rule, "appearance" has the meaning defined in CrRLJ 3.3 (a)(3)(iii).

~~(2) *Reading and Plea.* Arraignment shall consist of reading the complaint or the citation and notice to the defendant or stating to him or her the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the complaint or the citation and notice before being called upon to plead, unless a copy has previously been supplied. The defendant shall not be required to plead to the complaint or the citation and notice until he or she shall have had a reasonable time to examine it and to consult with a lawyer, if requested.~~

~~(3) Advisement. At arraignment, unless the defendant appears with a lawyer, the court shall advise the defendant on the record:~~

~~(i) of the right to trial by jury if applicable; and~~

~~(ii) of the right to be represented by a lawyer at arraignment and to have an appointed lawyer for arraignment if the defendant cannot afford one.~~

(b) Objection to Arraignment Date—Loss of Right to Object. A party who objects to the date of arraignment on the ground that it is not within the time limits prescribed by this rule must state the objection to the court at the time of the arraignment. If the court rules that the objection is correct, it shall establish and announce the proper date of arraignment. That date shall constitute the arraignment date for purposes of CrRLJ 3.3. A party who fails to object as required shall lose the right to object, and the arraignment date shall be conclusively established as the date upon which the defendant was actually arraigned.

(c) ~~Waiver~~ Counsel.

(1) *~~Jury trial.~~* ~~A waiver of jury trial at arraignment must be in writing and signed by the defendant. If the defendant waives a jury trial at arraignment, he or she must be advised of the right to withdraw the waiver and request a jury trial~~

~~within 10 days of arraignment.~~ *Requirement of Counsel*. If the defendant appears without counsel, the court shall inform the defendant of his or her right to have counsel before being arraigned. The court shall inquire if the defendant has counsel. If the defendant is not represented and is unable to obtain counsel, the court shall provide for a lawyer pursuant to CrRLJ 3.1. A defendant shall not be arraigned unless counsel is present to assist the defendant at the arraignment.

(2) ~~*Lawyer*. If the defendant chooses to proceed without a lawyer, the court shall determine on the record that the waiver is made voluntarily, competently and with knowledge of the consequences. The defendant must be advised that waiver of a lawyer at arraignment does not preclude the defendant from asserting the right to a lawyer later in the proceedings.~~ *Limited Appearance Counsel*. Counsel who is present to assist unrepresented defendants at an arraignment calendar may fulfill the requirement of counsel under this provision.

(d) Waiver.

(1) *Waiver of Counsel*. If the defendant chooses to proceed without counsel, the court shall determine on the record that the waiver is made voluntarily, competently and with knowledge of the consequences. If the court finds the waiver valid, an appropriate finding shall be entered in the record, including a finding that the defendant had the opportunity to consult with counsel who was present at arraignment. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed.

(2) *Waiver of Interpreter*. The court shall not accept a waiver of interpreter at arraignment, except in compliance with RCW 2.43.060.

(e) Name. ~~At arraignment, the court shall ask the defendant his or her true name. If the defendant's name has been incorrectly stated in the complaint or citation and notice, the court shall order the complaint or citation and notice to be corrected accordingly.~~ Defendant shall be asked his or her true name. If the defendant alleges that their true name is one other than that by which he or she is charged, it must be entered in the record, and subsequent proceedings shall be had against him or her by that name or other names relevant to the proceedings.

(f) Reading and Attendance of Prosecuting Authority. The complaint or citation and notice or the substance of the charge, shall be read to the defendant, unless the reading is waived, and a copy shall be given to the defendant. If the defendant is detained in custody, the prosecuting authority shall attend the arraignment.

~~(e)~~ **(g) Appearance by Defendant's Lawyer.** Except as otherwise provided by statute or by local court rule, a lawyer may enter an appearance or a plea of not guilty on behalf of a client for any offense. Such appearance or plea may be entered only after a complaint or citation and notice has been filed.

(1) The appearance or the plea of not guilty shall be made only in writing or in open court, and eliminates the need for a further arraignment.

(2) An appearance that waives arraignment but fails to state a plea shall be deemed to constitute entry of a plea of not guilty.

(3) An appearance under this rule constitutes a waiver of any defect in the complaint or the citation and notice except for failure to charge a crime which may be raised at any time and except for any other defect that is specifically stated in writing or on the record at the time the appearance is entered.

(4) A written appearance shall commence the running of the time periods established in rule 3.3 from the date of its receipt by the court, unless the time periods have previously been commenced by an appearance in open court.

(5) Telephonic requests or notices by either the defendant or the defendant's lawyer shall not constitute an arraignment or an appearance or entry of a plea, and shall not commence the running of the time periods under rule 3.3.

(6) The appearance by a lawyer authorized by this rule shall be construed as an "arraignment" under the other provisions of these rules.

GR 9 COVER SHEET

Suggested Amendment to
CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION
(CrRLJ)

CrRLJ 4.2 PLEAS

Submitted by the Washington State Bar Association

Purpose

Please see the statement of purpose for the suggested amendment to CrRLJ 4.1. This suggested amendment, by preventing the court from accepting a plea from an unrepresented defendant in the absence of a valid waiver, is intended to underscore the importance of either appointing counsel for a defendant intending to enter a plea or invoking the appropriate procedures to ensure that a waiver of counsel is valid.

CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION
(CrRLJ)
RULE 4.2 PLEAS

(a)-(c) [Unchanged.]

(d) Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea. The court shall not accept a plea of guilty from an unrepresented defendant unless a valid waiver of counsel is entered on the record.

(e)-(g) [Unchanged.]

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
APR 27 PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER
(NEW RULE)

Submitted by the Board of Governors of the Washington State Bar Association

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Purpose: In the aftermath of the destruction and disruption caused by hurricanes Katrina and Rita, the American Bar Association formed a Task Force on Hurricane Katrina. One of the most significant early efforts of the Task Force was advocating the suspension of unlicensed practice of law rules by various states impacted by the hurricane so that lawyers from other jurisdictions could volunteer to provide pro bono legal services in the affected jurisdictions. The Task Force soon recognized the need for a model rule that would expeditiously allow out-of-state lawyers to provide pro bono legal services in an affected jurisdiction and allow lawyers in the affected jurisdiction whose legal practices had been disrupted by a major disaster to practice law on a temporary basis in an unaffected jurisdiction. In February 2007, the ABA House of Delegates adopted a Model Court Rule on Provision of Legal Services Following Determination of Major Disaster.

The WSBA Board of Governors proposes adoption of the ABA Model Court Rule, modified for application in Washington. As proposed, the Supreme Court shall determine whether a major disaster has occurred in the State of Washington, or in a part of the state. Paragraph (b) of the suggested rule permits lawyers authorized to practice law in another jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services in Washington following determination of a major disaster. That lawyer would practice in Washington under the supervision of a Washington lawyer and on matters assigned by a qualified legal services provider as defined in APR 8(e) or as otherwise ordered by the Supreme Court.

Paragraph (c) provides that lawyers authorized to practice law in an affected jurisdiction, whose practices are disrupted by a major disaster there, are authorized to provide legal services on a temporary basis in Washington. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction.

Paragraph (d) addresses the duration of authority for temporary practice. Paragraph (e) addresses the limited circumstances when such temporary practice would include authority to appear in court. Paragraph (f) provides for registration of lawyers temporarily practicing in Washington under this rule, and provides that they are subject to the disciplinary authority of Washington, and paragraph (g) provides for notification to clients.

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
APR 27. PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER
(NEW RULE)

(a) Determination of Existence of Major Disaster. Solely for purposes of this Rule, the Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(1) Washington and whether the emergency caused by the major disaster affects the entirety or only a part of the State of Washington, or

(2) another jurisdiction, but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in Washington pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) Temporary Practice in Washington Following Major Disaster in Washington. Following the determination of an emergency affecting the justice system in Washington pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in Washington are in need of pro bono services and the assistance of lawyers from outside of Washington is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in Washington on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be supervised by a lawyer licensed to practice in Washington and assigned by a qualified legal services provider as defined in Rule 8(e) or as otherwise ordered by the Supreme Court. A qualified legal services provider shall be entitled to receive all court-awarded attorney's fees for any representation rendered by the assigned lawyer pursuant to this Rule. When a lawyer authorized to practice under this rule signs correspondence or pleadings, the lawyer's signature shall be followed by the title "active disaster relief lawyer."

(c) Temporary Practice in Washington Following Major Disaster in Another Jurisdiction. Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in Washington on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) Duration of Authority for Temporary Practice. The authority to practice law in Washington granted by paragraph (b) of this Rule shall end when the Supreme Court determines that the emergency affecting the justice system caused by the major disaster in Washington has ended except that a lawyer then representing clients in Washington pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereaf-

ter accept new clients. The authority to practice law in Washington granted by paragraph (c) of this Rule shall end 60 days after the Supreme Court declares that the emergency affecting the justice system caused by the major disaster in the affected jurisdiction has ended.

(e) Court Appearances. The authority granted by this Rule does not include appearances in court except:

(1) pursuant to Rule 8(b) and, if such authority is granted, any fees for such admission shall be waived; or

(2) if the Supreme Court, in any determination made under paragraph (a) of this Rule, grants blanket permission to appear in all or designated courts of Washington to lawyers providing legal services pursuant to paragraph (b) of this Rule. If such an authorization is included, any admission fees shall be waived.

(f) Disciplinary Authority and Registration Requirement and Approval. Lawyers providing legal services in Washington pursuant to paragraphs (b) or (c) are subject to the disciplinary authority of Washington and the Washington Rules of Professional Conduct as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in Washington under paragraphs (b) or (c) must file a registration statement with the Washington State Bar Association. The registration statement shall be in a form prescribed by the Bar Association. Any lawyer seeking to provide legal services pursuant to this rule must be approved by the Supreme Court before being authorized to provide such legal services. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in Washington.

(g) Notification to Clients. Lawyers licensed to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in Washington of the jurisdiction in which they are licensed to practice law, any limits on that license, and that they are not authorized to practice law in Washington except as permitted by this Rule. They shall not state or imply to any person that they are otherwise licensed to practice law in Washington.

SUGGESTED AMENDMENT
RULES OF PROFESSIONAL CONDUCT (RPC)
RPC 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: The Washington State Bar Association proposes adoption of a new Admission to Practice Rule on Provision of Legal Services Following Determination of Major Disaster. If that amendment is adopted, then the WSBA also suggests an amendment to Comment 14 of RPC 5.5 regarding unauthorized practice of law and multijurisdictional practice of law to refer to the rule on provision of legal services following determination of major disaster.

SUGGESTED AMENDMENT
RULES OF PROFESSIONAL CONDUCT (RPC)
RPC 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

[No change].

Comment

[1] - [13] [No change].

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro bono legal services on a temporary basis in Washington following determination by the Supreme Court that an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred, who are not otherwise authorized to practice law in Washington, as well as lawyers from another affected jurisdiction who seek to practice law temporarily in Washington, but who are not otherwise authorized to practice law in Washington, should consult Admission to Practice Rule 27 on Provision of Legal Services Following Determination of Major Disaster.

[15] - [21] [No change].

GR 9 COVER SHEET

Suggested Amendment to
RULES OF EVIDENCE (ER)
ER 408. COMPROMISE AND OFFERS TO COMPROMISE

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: In 2005, the Supreme Court held that evidence of negotiations or compromise between a criminal defendant and a victim in efforts to compromise a potential civil claim is admissible in the criminal trial of the defendant, on grounds that ER 408 does not apply in criminal trials. *See State V. O'Connor,* 155 Wn.2d 335, 119 P.3d 806 (2005). The intent of this suggested amendment is to codify the *O'Connor* decision. A companion amendment to ER 410 also responds to the *O'Connor* decision.

RULES OF EVIDENCE (ER)
RULE 408. COMPROMISE AND OFFERS TO COMPROMISE

In a civil case, ~~E~~evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

GR 9 COVER SHEET

Suggested Amendment to
RULES OF EVIDENCE (ER)
ER 410. INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: In 2005, the Supreme Court held that evidence of negotiations or compromise between a criminal defendant and a victim in efforts to compromise a potential civil claim is admissible in the criminal trial of the defendant, on grounds that ER 408 does not apply in criminal trials. *See State v. O'Connor*, 155 Wn.2d 335, 119 P.3d 806 (2005). The Court reasoned that the policy favoring civil settlements reflected in ER 408, although sufficient in a civil case to bar evidence relating to settlements and offers to settle, is insufficient in criminal cases. A companion amendment to ER 408 is intended to codify the O'Connor decision by expressly limiting ER 408 to civil cases.

Under RCW Chapter 10.22, if a defendant is prosecuted for a misdemeanor and the victim also has a civil remedy, the criminal prosecution may be compromised, subject to certain exceptions. RCW 10.22.010-.020. If the victim shows the court that he or she has received satisfaction for the injury, the court, in its discretion, may dismiss the charges. RCW 10.22.020. The Legislature has also created a civil action and civil penalties for criminal conversion of goods or merchandise or for not paying restaurant or hotel bills. See RCW 4.24.230. In these instances, the policy favoring civil settlements is heightened despite the possibility of a related criminal prosecution.

ER 410 makes evidence of criminal plea negotiations inadmissible in both civil and criminal trials. The suggested amendment would add a new paragraph (b) to the rule, intended to render evidence of civil negotiations or compromise pursuant to these statutes inadmissible in civil or criminal proceedings.

RULES OF EVIDENCE (ER)
RULE 410. INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS

(a) General. Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and in the presence of counsel. This rule does not govern the admissibility of evidence of a deferred sentence imposed under RCW 3.66.067 or RCW 9.95.200-.240.

(b) Statutory Offers of Compromise. Evidence of payment or an offer or agreement to pay (i) to compromise a misdemeanor pursuant to RCW Chapter 10.22, or (ii) for a liability described in RCW 4.24.230, shall not be admissible in any civil or criminal proceeding.

GR 9 Cover Sheet

Suggested Amendment to Criminal Rule (CrR) 8.3 Dismissal

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: The suggested addition of new subsection (c) to CrR 8.3 is intended to codify a common law pretrial dismissal procedure in criminal cases akin to summary judgment motions in civil cases. The Supreme Court called for enactment of such a rule when it described the contours of the motion procedure in *State v. Knapstad,* 107 Wn.2d 346, 353-54 & n.1, 729 P.2d 48 (1986) ("We… take this opportunity to clarify this pretrial motion procedure by this opinion and suggest a formal rule be considered subsequently, if necessary."). The language of the new subsection recognizes that, pursuant to the holding in *Knapstad*, charges in a criminal case may be dismissed for insufficient evidence prior to trial on motion by the defendant. The procedures are derived from those described in the *Knapstad* decision and those that have developed in criminal proceedings since the case was decided in 1986.

Paragraph (1) of the rule provides that the defendant's motion must be in writing and supported by an affidavit or declaration alleging that the state cannot prove a *prima facie* case. Alternatively, the facts may be agreed to by stipulation. Under paragraph (2), the prosecuting attorney may submit opposing affidavits or declarations. Paragraph (3) provides that the court, viewing all evidence in the light most favorable to the prosecuting attorney and making all reasonable inferences in the light most favorable to the prosecuting attor-

ney, must grant the motion if there are no material disputed facts and the undisputed facts do not establish a *prima facie* case of guilt. If the motion is granted, paragraph (4) directs the court to enter a written order granting the motion without prejudice and setting forth the evidence relied upon and conclusions of law.

Under paragraph (3), a decision denying a motion to dismiss is not subject to appeal under RAP 2.2. However, a decision granting a motion to dismiss under the rule is final and appealable under the counterpart amendment to RAP 2.2 (b)(1).

CRIMINAL RULES (CrR)
RULE 8.3 DISMISSAL

(a)-(b) [Unchanged.]

(c) On Motion of Defendant for Pretrial Dismissal. The defendant may, prior to trial, move to dismiss a criminal charge due to insufficient evidence establishing a prima facie case of the crime charged.

(1) The defendant's motion shall be in writing and supported by an affidavit or declaration alleging that there are no material disputed facts and setting out the agreed facts, or by a stipulation to facts by both parties. The stipulation, affidavit or declaration may attach and incorporate police reports, witness statements or other material to be considered by the court when deciding the motion to dismiss. Any attached reports shall be redacted if required under the relevant court rules and statutes.

(2) The prosecuting attorney may submit affidavits or declarations in opposition to defendant's supporting affidavits or declarations. The affidavits or declarations may attach and incorporate police reports, witness statements or other material to be considered by the court when deciding defendant's motion to dismiss. Any attached reports shall be redacted if required under the relevant court rules and statutes.

(3) The court shall grant the motion if there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. In determining defendant's motion, the court shall view all evidence in the light most favorable to the prosecuting attorney and the court shall make all reasonable inferences in the light most favorable to the prosecuting attorney. The court may not weigh conflicting statements and base its decision on the statement it finds the most credible. The court shall not dismiss a sentence enhancement or aggravating circumstance unless the underlying charge is subject to dismissal under this section. A decision denying a motion to dismiss under this rule is not subject to appeal under RAP 2.2. A defendant may renew the motion to dismiss if the trial court subsequently rules that some or all of the prosecuting attorney's evidence is inadmissible.

(4) If the defendant's motion to dismiss is granted, the court shall enter a written order setting forth the evidence relied upon and conclusions of law. The granting of defendant's motion to dismiss shall be without prejudice.

GR 9 Cover Sheet

Suggested Amendment to Criminal Rule for Courts of Limited Jurisdiction (CrRLJ) 8.3 Dismissal

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: Please see the statement of purpose for the suggested amendment to CrR 8.3. The term "prosecuting attorney" in the suggested amendment to CrR 8.3 is here replaced with "prosecuting authority" as used elsewhere in the CrRLJs. And, because appeals from courts of limited jurisdiction are governed by the RALJs, the reference to RAP 2.2 in the suggested amendment to the superior court rule is here replaced with RALJ 2.2.

CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION (CrRLJ)
RULE 8.3 DISMISSAL

(a)-(b) [Unchanged.]

(c) On Motion of Defendant for Pretrial Dismissal. The defendant may, prior to trial, move to dismiss a criminal charge due to insufficient evidence establishing a prima facie case of the crime charged.

(1) The defendant's motion shall be in writing and supported by an affidavit or declaration alleging that there are no material disputed facts and setting out the agreed facts, or by a stipulation to facts by both parties. The stipulation, affidavit or declaration may attach and incorporate police reports, witness statements or other material to be considered by the court when deciding the motion to dismiss. Any attached reports shall be redacted if required under the relevant court rules and statutes.

(2) The prosecuting authority may submit affidavits or declarations in opposition to defendant's supporting affidavits or declarations. The affidavits or declarations may attach and incorporate police reports, witness statements or other material to be considered by the court when deciding defendant's motion to dismiss. Any attached reports shall be redacted if required under the relevant court rules and statutes.

(3) The court shall grant the motion if there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. In determining defendant's motion, the court shall view all evidence in the light most favorable to the prosecuting authority and the court shall make all reasonable inferences in the light most favorable to the prosecuting authority. The court may not weigh conflicting statements and base its decision on the statement it finds the most credible. The court shall not dismiss a sentence enhancement or aggravating circumstance unless the underlying charge is subject to dismissal under this section. A decision denying a motion to dismiss under this rule is not subject to appeal under RALJ 2.2. A defendant may renew the motion to dismiss if the trial court subsequently rules that some or all of the prosecuting authority's evidence is inadmissible.

(4) If the defendant's motion to dismiss is granted, the court shall enter a written order setting forth the evidence

relied upon and conclusions of law. The granting of defendant's motion to dismiss shall be without prejudice.

GR 9 Cover Sheet

Suggested Amendment to Rule of Appellate Procedure (RAP) 2.2
Decisions of the Superior Court That May Be Appealed

Submitted by the Board of Governors of the Washington State Bar Association

(C) Purpose: Please see the statement of purpose for the suggested amendment to CrR 8.3.

RULES OF APPELLATE PROCEDURE (RAP)
RULE 2.2 DECISIONS OF THE SUPERIOR COURT THAT MAY BE APPEALED

(a) [Unchanged.]

(b) Appeal by State or a Local Government in Criminal Case. Except as provided in section (c), the State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:

(1) *Final Decision, Except Not Guilty.* A decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c).

(2) - (6) [Unchanged.]

(c) - (d) [Unchanged.]

GR 9 Cover Sheet

Suggested Amendment to Rule for Appeals of Decisions Of Courts of Limited Jurisdiction (RALJ) Rule 2.2
What May Be Appealed

Submitted by the Board of Governors of the Washington State Bar Association

(C) Purpose: Please see the statement of purpose for the suggested amendments to CrR 8.3 and CrRLJ 8.3.

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION (RALJ)
RULE 2.2 WHAT MAY BE APPEALED

(a)-(b) [Unchanged.]

(c) Appeal by State or a Local Government in Criminal Case. The State or local government may appeal in a criminal case only from the following decisions of a court of limited jurisdiction and only if the appeal will not place the defendant in double jeopardy:

(1) *Final Decision, Except Not Guilty*. A decision which in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing a complaint or citation and notice to appear, or a decision granting a motion to dismiss under CrRLJ 8.3(c).

(2)-(4) [Unchanged.]

GR 9 COVER SHEET

Suggested Amendment to
RULES OF PROFESSIONAL CONDUCT (RPC)
RPC 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: The suggested amendment to RPC 1.8 is intended to classify as a specific conflict of interest, and thereby prohibit, a public defense contract between a lawyer and a governmental entity that obligates the contracting lawyer or law firm to bear the expense of obtaining conflict counsel or to bear the cost of obtaining investigative or expert services out of the general proceeds of the contract. Many public defense contracts in Washington have been structured as lump sum agreements, forcing the contracting lawyers to decide whether funds that would otherwise be kept as compensation should be applied to paying outside counsel when a conflict of interest arises or to pay for investigative and/or expert services. This type of contract structure has been recognized as creating a conflict of interest. See WSBA Informal Ethics Opinion No. 1647 (conflict of interest issues under RCP 1.7 and 1.9 exist in requiring public defender office to recognize a conflict and hire outside counsel out of its budget). Because this is a specific, situational conflict of interest, it is appropriate to expressly identify it as such in Rule of Professional Conduct 1.8, so that lawyers will be aware of the ethical prohibition even if local governments proffer such contracts.

Additional background and rationale for the amendment is set forth in the Washington Comments subjoined to the Rule, which are reiterated here as an explanation of purpose.

Where there is a right to a lawyer in court proceedings, the right extends to those who are financially unable to obtain one. This right is effected in some Washington counties and municipalities through indigent defense contracts, i.e., contracts entered into between lawyers or law firms willing to provide defense services to those financially unable to obtain them and the governmental entities obliged to pay for those services. When a lawyer or law firm providing indigent defense services determines that a disqualifying conflict of interest precludes representation of a particular client, the lawyer or law firm must withdraw and substitute counsel must be obtained for the client. See Rule 1.16. In these circumstances, substitute counsel is typically known as "conflict counsel."

An indigent defense contract by which the contracting lawyer or law firm assumes the obligation to pay conflict counsel from the proceeds of the contract, without further

payment from the governmental entity, creates an acute financial disincentive for the lawyer either to investigate or declare the existence of actual or potential conflicts of interest requiring the employment of conflict counsel. For this reason, such contracts involve an inherent conflict between the interests of the client and the personal interests of the lawyer. These dangers warrant a prohibition on making such an agreement or accepting compensation for the delivery of indigent defense services from a lawyer that has done so. See WSBA Informal Ethics Opinion No. 1647 (conflict of interest issues under RPC 1.7 and 1.9 exist in requiring public defender office to recognize a conflict and hire outside counsel out of its budget); ABA Standards for Criminal Justice, Std. 5-3.3 (b)(vii) (3d ed. 1992) (elements of a contract for defense services should include "a policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses"); *People v. Barboza,* 29 Cal.3d 375, 173 Cal. Rptr. 458, 627 P.2d 188 (Cal. 1981) (structuring public defense contract so that more money is available for operation of office if fewer outside attorneys are engaged creates "inherent and irreconcilable conflicts of interest").

For these reasons, suggested paragraph (m) specifies that it is a conflict of interest for a lawyer to enter into or accept compensation under an indigent defense contract that does not provide for the payment of funds, outside of the contract, to compensate conflict counsel for fees and expenses.

Similar conflict-of-interest considerations apply when indigent defense contracts require the contracting lawyer or law firm to pay for the costs and expenses of investigation and expert services from the general proceeds of the contract. Paragraph (m)(1)(ii) prohibits agreements that do not provide that such services are to be funded separately from the amounts designated as compensation to the contracting lawyer or law firm.

RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 1.8: CONFLICT OF INTEREST:
CURRENT CLIENTS: SPECIFIC RULES

(a) - (l) [Unchanged.]

(m) A lawyer shall not:

(1) make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm:

(i) to bear the cost of providing conflict counsel; or

(ii) to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel; or

(2) knowingly accept compensation for the delivery of indigent defense services from a lawyer who has entered into a current agreement in violation of paragraph (m)(1).

Comment

[Unchanged.]

Additional Washington Comments (21-~~24~~29)

Financial Assistance

[21] [Unchanged.]

Client-Lawyer Sexual Relationships

[22] - [23] [Unchanged.]

Personal Relationships

[24] [Unchanged.]

Indigent Defense Contracts

[25] Model Rule 1.8 does not contain a provision equivalent to paragraph (m) of Washington's Rule. Paragraph (m) specifies that it is a conflict of interest for a lawyer to enter into or accept compensation under an indigent defense contract that does not provide for the payment of funds, outside of the contract, to compensate conflict counsel for fees and expenses.

[26] Where there is a right to a lawyer in court proceedings, the right extends to those who are financially unable to obtain one. This right is effected in some Washington counties and municipalities through indigent defense contracts, *i.e.*, contracts entered into between lawyers or law firms willing to provide defense services to those financially unable to obtain them and the governmental entities obliged to pay for those services. When a lawyer or law firm providing indigent defense services determines that a disqualifying conflict of interest precludes representation of a particular client, the lawyer or law firm must withdraw and substitute counsel must be obtained for the client. See Rule 1.16. In these circumstances, substitute counsel is typically known as "conflict counsel."

[27] An indigent defense contract by which the contracting lawyer or law firm assumes the obligation to pay conflict counsel from the proceeds of the contract, without further payment from the governmental entity, creates an acute financial disincentive for the lawyer either to investigate or declare the existence of actual or potential conflicts of interest requiring the employment of conflict counsel. For this reason, such contracts involve an inherent conflict between the interests of the client and the personal interests of the lawyer. These dangers warrant a prohibition on making such an agreement or accepting compensation for the delivery of indigent defense services from a lawyer that has done so. See WSBA Informal Ethics Opinion No. 1647 (conflict of interest issues under RPC 1.7 and 1.9 exist in requiring public defender office to recognize a conflict and hire outside counsel out of its budget); ABA Standards for Criminal Justice, Std. 5-3.3 (b)(vii) (3d ed. 1992) (elements of a contract for defense services should include "a policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses"); *People v. Barboza,* 29 Cal.3d 375, 173 Cal. Rptr. 458, 627 P.2d 188 (Cal. 1981) (structuring public defense contract so that more money is available for operation of office if fewer outside attorneys are engaged creates "inherent and irreconcilable conflicts of interest").

[28] Similar conflict-of-interest considerations apply when indigent defense contracts require the contracting lawyer or law firm to pay for the costs and expenses of investigation and expert services from the general proceeds of the contract. Paragraph (m)(1)(ii) prohibits agreements that do not provide that such services are to be funded separately from the amounts designated as compensation to the contracting lawyer or law firm.

[29] Because indigent defense contracts involve accepting compensation for legal services from a third-party payer, the lawyer must also conform to the requirements of paragraph (f). See also Comments [11]-[12].

GR 9 COVER SHEET

Suggested Amendment
GENERAL RULES (GR)
New Rule 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters

Submitted by the Washington State Bar Association

Purpose: This rule is intended to promote broader access to justice for people lacking the financial means to pay initial filing fees and other litigation fees and charges. Fees and charges that prevent courts form considering meritorious cases effectively bar justice to the indigent. By establishing predictable, efficient and uniform statewide standards for waiving court and clerk's fees and charges in civil cases, this rule should reduce the time spent by applicants or their lawyers in obtaining waiver of fees and charges, reduce court administration and judicial time in acting on waiver applications, and encourage *pro bono* representation by lawyers in private practice who wish to meet RPC 6.1's aspirational goals.

GENERAL RULES (GR)
[New Rule]
RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

(a) Waiver of Civil Court and Clerk's Fees and Charges. Any individual, by reason of indigency, may seek relief pursuant to this rule from payment of the following civil filing fees and charges in Superior or District Court:

(1) the first or initial civil filing fees listed in RCW 36.18.016 (2)(b) and 36.18.020 (2)(a) and (b); and

(2) the civil fees and charges listed in RCW 36.18.016 (2)(a), (3)(a), (4), (12), (15), (18), (19), (24), and (25), and in RCW 36.18.020 (2)(c) through (e).

(b) Automatic Waiver for Applicant Represented Through Qualified Legal Services Provider.

(1) The fees referred to in subsection (a)(1) shall be waived when the applicant presents to the clerk:

(A) a completed financial statement in the form shown as Appendix C signed by the applicant and attached to a completed form shown as Appendix D signed by the applicant; and

(B) an Application and Declaration in substantially the same form as Appendix A, signed by the applicant's attorney of record, establishing that the applicant is represented by an attorney working in conjunction with a qualified legal services provider that has prescreened the applicant and has determined that the applicant's family income is within the needs-based guidelines established by the qualified legal services provider for serving its low-income clients.

(2) "Qualified legal services provider" means a not-for-profit legal services organization or program designated as a qualified legal services provider by the Washington State Bar Association.

(3) "An attorney working in conjunction with a qualified legal services provider" means either an attorney working for or with the qualified legal services provider or a volunteer attorney working without expectation of compensation through a referral from the qualified legal services provider.

(4) The clerk shall accept an application that complies with subsection (b)(1) without the necessity of a court order. If the clerk refuses such an application, the applicant may file a motion, which may be filed, heard, and ruled upon without payment of a filing fee, and the court shall review the clerk's refusal and enter such orders as may be required.

(c) Court Waiver.

(1) *Applicant Receiving Benefits Through Assistance Program.* The court may waive the fees and charges referred to in section (a) when the applicant files an Application and Declaration in substantially the same form as Appendix B, establishing that:

(A) the applicant is currently receiving assistance under a needs-based, means-tested assistance program such as the following:

(i) Federal Temporary Assistance for Needy Families (TANF);

(ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);

(iii) Federal Supplemental Security Income (SSI); or

(iv) Food Stamp Program (FSP);

(B) the assistance was not obtained through false representation;

(C) to the best of the applicant's knowledge, information, and belief, the applicant's financial circumstances at the time of application continue to meet the program's eligibility requirements for receiving such assistance; and

(D) the applicant has signed the Application and Declaration pursuant to CR 11 or CRLJ 11.

Receipt of such assistance shall be established by filing with the Application and Declaration a copy of the applicant's most recent benefits award letter, a copy of a benefits check received within 30 days prior to the date of the application, or other documentation from the assistance program establishing the applicant's current receipt of or qualification for such assistance.

(2) *Applicant Whose Gross Monthly Household Income Is No More Than Twice the Applicable Federal Poverty Guideline.* The court may waive the fees and charges referred to in section (a) when the applicant files an Application and Declaration in substantially the same form as Appendix B establishing that:

(A) his or her gross monthly household income is no more than twice the then-current applicable federal poverty guideline (by family size) as defined in 42 U.S.C. § 9902; and

(B) the applicant has signed the Application and Declaration pursuant to CR 11 or CRLJ 11.

Nothing in this rule precludes a court from adopting a local rule setting a higher maximum monthly household income level.

(3) *Applicant Represented Through Qualified Legal Services Provider.* An applicant represented through a qualified legal services provider may file a motion to waive the fees and charges referred to in subsection (a)(2).

(4) *Procedure.* A motion or application under this section may be filed, heard, and ruled upon before filing of the underlying complaint, petition, or other pleading asserting one or more counterclaims, cross claims, or third-party claims. No filing fee shall be charged to or collected from an applicant in order to seek a waiver under this section unless the court in its discretion otherwise orders. Nothing in this rule precludes a court from adopting a local rule allowing the clerk to accept, without the necessity of a court order, a motion or application that complies with this section.

(d) Ex Parte. Any motion or application under this rule may be heard ex parte.

(e) Filing Under Seal. In any motion or application under this rule, a financial statement and any other documents filed with the form shown as Appendix D, restricted personal identifiers as defined in GR 22 (b)(6), and information contained in sealed financial source documents as defined in GR 22 (b)(8), shall be filed under seal, unless otherwise requested by the applicant.

(f) Recoupment. At the time of entry of a final order, judgment, or decree in any action, suit, or proceeding in which any fees or charges have been waived under this rule, the court may reevaluate the original grounds for granting the waiver and consider any changed financial circumstances of the party who obtained the waiver and in its discretion require the party to pay any waived fees or charges to the clerk, or assess any waived fees or charges against another party as provided in section (g).

(g) Assessment. If a party has received a waiver under this rule and would as a prevailing party otherwise be entitled to recover any of the waived fees or charges from one or more other parties, the court may assess the recoverable fees or charges against the appropriate parties and order payment to the clerk.

(h) Court's Authority and Discretion. This rule does not and shall not be construed in any way to limit or eliminate, in whole or in part, the court's constitutional or inherent authority and discretion in any matter, including without limitation other grounds for granting or denying a waiver, under this rule or otherwise.

Commentary

1. This rule shall promote broader access to justice for people lacking the financial means to pay initial filing fees and other litigation fees and charges. Fees and charges that prevent courts from considering meritorious cases effectively bar justice to the indigent. By establishing predictable, efficient, and uniform statewide standards for waiving court and clerk's fees and charges in civil cases, rather than simply deferring them, this rule is intended to reduce the time spent by applicants or their attorneys in obtaining waiver of fees and charges, reduce court administration and judicial time in acting on waiver applications, and encourage *pro bono* representation by attorneys in private practice who wish to meet RPC 6.1's aspirational goals.

2. Section (a) simply restates the common law *in forma pauperis* rule that courts may waive filing fees and charges in civil cases for indigent parties. Subsection (a)(1) refers to first or initial civil filing fees, which shall be waived if the party is indigent. Subsection (a)(2) refers to other fees and charges listed in the referenced statutes and includes, among others, a jury demand; certain copying charges; facilitator surcharge; service fee for faxed documents; mandatory arbitration fee; and filing a request for trial de novo. These fees may be waived, depending upon the applicant's available income, assets, extent of the hardship and the totality of the circumstances.

3. Fee waivers are automatic under subsection (b)(1) because a qualified legal services provider ("QLSP") providing services to low-income clients, in order to comply with its own internal grant-funding requirements, limits its services and referrals to those who meet certain needs-based financial eligibility tests. Thus, in the circumstances covered by subsection (b)(1) of the rule, a QLSP has already prescreened the applicant and has determined that the applicant meets the QLSP's needs-based test. The QLSP's determination that an applicant is qualified for legal services ensures that an automatic fee waiver is available only to those who need it. A court administration official or judicial officer need not duplicate the QLSP's financial screening process. By facilitating fee waivers in these circumstances, subsection (b)(1) also encourages volunteer attorneys, members of private law firms, sole practitioners, government attorneys, and other Washington State Bar Association ("WSBA") members (such as those practicing under the emeritus membership rule) to accept client referrals from QLSPs and to obtain the benefits of this rule for the applicant.

4. To identify QLSPs for purposes of section (b), the WSBA maintains and periodically updates a website listing designated Washington QLSPs. Clerks across the state may easily access the WSBA website to confirm the QLSP's status, thus substantially streamlining the fee-waiver process. The forms in the Appendices should also save substantial judicial and administrative time, removing another impediment to *pro bono* representation.

5. Under subsection (c)(1)(D) and the Application and Declaration in Appendix B, the applicant declares an awareness and understanding of CR 11 or CRLJ 11, as appropriate. This requirement addresses concerns regarding fee and charge waivers in apparently non-meritorious cases, and meets the standard articulated in *O'Connor v. Matzdorff,* 76 Wn.2d 589, 601, 458 P.2d 154 (1969): "it is sufficient [to discourage frivolous litigation] to require an affidavit that the suit is brought in good faith, or if possible, an attorney's affidavit that it has apparent merit, if the court has no means of making an independent investigation." The declaration requirement satisfies the *O'Connor* burden and relieves court personnel of any responsibility to review or evaluate the merits.

6. Because not every applicant may meet the requirements of subsection (b)(1), subsections (c)(1) and (c)(2) set forth financial eligibility standards for allowing fee and charge waivers as part of a motion or application filed by or on behalf of the applicant. An applicant may establish eligibility either (a) by demonstrating participation in a needs-

based, means-tested public benefits program such as those non-exclusively listed in the rule or (b) by demonstrating a gross monthly household income that is no more than twice the applicable federal poverty guideline, which was at the time of adoption of this rule the current eligibility ceiling for clients served by QLSPs funded by the Legal Services Corporation.

The federal poverty guidelines are similar to the income standards used by QLSPs. These guidelines may be obtained from the U.S. Department of Health and Human Services website. Satisfying these guidelines will ensure consistency and predictability throughout the state and will permit only indigent applicants to receive fee and charge waivers.

The last sentence in subsection (c)(2) makes clear that a court may adopt local rules allowing the applicant to have a higher income level (in comparison to the federal poverty guidelines) and still be eligible for routine approval of fee and charge waivers. Such a change may be appropriate for various reasons, including a higher-than-average cost of living in a particular county or a failure of the federal government to update the poverty guidelines in the future.

GR 34
APPENDIX A

SUPERIOR/DISTRICT COURT OF WASHINGTON
COUNTY OF

	)	CASE NO. _____
_____	)	
Petitioner/Plaintiff,	)	APPLICATION AND DECLARATION IN SUPPORT OF AUTOMATIC WAIVER OF CIVIL FEES
v.	)	
	)	*(QLSP FILING)*
_____	)	
Respondent/Defendant.	)	(Clerk's Action Required)

APPLICATION AND DECLARATION

1. Pursuant to GR 34(b) and on behalf of the ❑ petitioner/ plaintiff or the ❑ respondent/defendant above named, I hereby apply for a waiver of all first or initial filing fees required to file this case listed in RCW 36.18.016 (2)(b) or RCW 36.18.020 (2)(a) or (b).

2. I certify that I am an attorney working in conjunction with a Qualified Legal Services Provider (QLSP) in one of the following categories:

[ ] attorney working for or with a QLSP; or

[ ] volunteer attorney working without expectation of compensation through a referral from a QLSP.

3. The name of the QLSP is _____, which has been designated as a QLSP by the Washington State Bar Association.

4. The financial declaration of the petitioner/plaintiff or the respondent/defendant above named, as applicable, is filed with a sealed financial source document coversheet.

I hereby declare under penalty of perjury under the laws of the State of Washington that the above declaration is true and correct.

Signed this _____ day of _____, 20____, at _____, Washington.

_____
Attorney's Signature, WSBA # _____

_____
Attorney's Printed Name

GR 34
APPENDIX B

SUPERIOR/DISTRICT COURT OF WASHINGTON
COUNTY OF

	)	CASE NO. _____
_____	)	
Petitioner/Plaintiff,	)	APPLICATION, DECLARATION, AND ORDER ON WAIVER OF CIVIL FEES AND CHARGES
v.	)	
	)	(Clerk's Action Required)
_____	)	
Respondent/Defendant.	)	

APPLICATION AND DECLARATION

I DECLARE THAT: I am unable to pay the first or initial filing fee and/or the other fees and charges listed below on the basis of indigency. I hereby apply for a waiver of all first or initial filing fees required to file this case listed in RCW 36.18.016 (2)(b) or RCW 36.18.020 (2)(a) or (b). In addition, I request that the following fees and charges be waived:

[ ] Petition for modification of decree of dissolution/ paternity [RCW 36.18.016 (2)(a)]
[ ] Jury demand [RCW 36.18.016 (3)(a)]
[ ] Copying charges [RCW 36.18.016(4)]
[ ] Duplicated recordings [RCW 36.18.016(12)]
[ ] Facilitator charge [RCW 36.18.016(15)]
[ ] Change of venue [RCW 36.18.016(18)]
[ ] Receiving faxed documents [RCW 36.18.016(19)]
[ ] Mandatory arbitration fee [RCW 36.18.016(24)]
[ ] Request for trial de novo [RCW 36.18.016(25)]
[ ] Petition for judicial review [RCW 36.18.020 (2)(c)]
[ ] Petition for unlawful harassment [RCW 36.18.020 (2)(d)]
[ ] Notice of debt due re crime victim [RCW 36.18.020 (2)(e)]
[ ] Other: _____

[ALL APPLICANTS: TO SHOW THAT YOU ARE NOT ABLE TO PAY COURT FEES AND CHARGES, CHECK THE BOX IN FRONT OF A, B, AND/OR C BELOW AND PROVIDE THE INFORMATION REQUESTED UNDER THE BOX YOU CHECK.]

[ ] A. Pursuant to GR 34 (c)(1), I currently receive benefits under the federal- or state-provided, means-tested public assistance programs marked below (check all that apply):
[ ] Federal Temporary Assistance for Needy Families (TANF);

[ ] State-provided general assistance for unemployable individuals (GA-U or GA-X);
[ ] Federal Supplemental Security Income (SSI);
[ ] Food Stamp Program (FSP); and/or
[ ] Other: _____

_____

I am filing the following proof of my most recent receipt of benefits:

[CHECK AT LEAST ONE BOX BELOW. IN ADDITION TO THIS FORM, FILE THE DOCUMENT(S) YOU CHECK BELOW UNDER A "SEALED FINANCIAL SOURCE DOCUMENTS" COVERSHEET IN THE FORM OF APPENDIX D.]

[ ] Copy of the most recent benefits award letter from the federal or state government agency upon which this application is based;
[ ] Copy of a benefits check received within the past thirty days; or
[ ] Other documentation from the public agency issuing the assistance showing that I currently receive or am eligible to receive such assistance
(list each document): _____

I am not receiving benefits from the program(s) marked above as a result of fraud or under false pretenses. To the best of my knowledge, information, and belief, my financial circumstances at this time continue to meet the eligibility requirements of the program or programs marked above, and I otherwise remain entitled to receive benefits from the program or programs marked above.

[ ] B. Pursuant to GR 34 (c)(2), my gross monthly household income is $_____.

[CHECK ONE BOX BELOW.]

[ ] I know that my gross monthly household income is less than or equal to twice the current federal poverty guidelines (by family size) as defined in 42 United States Code § 9902, or any higher income level adopted by this Court.

[ ] I do not know if my gross monthly household income is less than or equal to twice the current federal poverty guidelines (by family size) as defined in 42 United States Code § 9902, or any higher income level adopted by this Court.

[IN ADDITION TO THIS FORM, FILE A FINANCIAL STATEMENT IN THE FORM OF APPENDIX C UNDER A "SEALED FINANCIAL SOURCE DOCUMENTS" COVERSHEET IN THE FORM OF APPENDIX D.]

[ ] C. Pursuant to GR 34 (c)(3) or GR 34(h), I am unable to pay the filing fee and/or other fees and charges in this case for the following reason(s):

_____

_____

_____

[IN ADDITION TO THIS FORM, FILE A FINANCIAL STATEMENT IN THE FORM OF APPENDIX C UNDER A "SEALED FINANCIAL SOURCE DOCUMENTS" COVERSHEET IN THE FORM OF APPENDIX D.]

[ALL APPLICANTS: PLEASE CAREFULLY REVIEW THE INFORMATION YOU HAVE PROVIDED, READ THE FOLLOWING PARAGRAPHS, AND SIGN BELOW.]

I believe that I have valid reasons for bringing my claim and that I am entitled to the relief requested in my complaint, petition, or other pleading. I bring my claim in good faith. I believe that my signature (or my attorney's signature, if any) on the complaint, petition, or other pleading that I am seeking to file meets the signature requirements of Superior Court Civil Rule (CR) 11(a) or Civil Rule 11(a) for Courts of Limited Jurisdiction (CRLJ), each of which provides:

A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. . . . The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation…. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

I hereby declare under penalty of perjury under the laws of the State of Washington that the above Application and Declaration is true and correct and that the financial statement or financial documents I am filing are accurate and complete.

Signed this _____ day of _____, 2____, at _____, Washington.

_____
Applicant's Signature

_____
Applicant's Printed Name

ORDER

The Court, after reviewing the foregoing application and declaration and the supporting documentation, FINDS THAT:

[ ] The applicant has satisfied the conditions set forth in ❑ GR 34 (c)(1) ❑ GR 34 (c)(2)
[ ] The applicant has failed to satisfy the conditions set forth in ❑ GR 34 (c)(1) ❑ GR 34 (c)(2)

[ ] The applicant is entitled to a waiver under GR 34 (c)(3)
[ ] The application should be approved
[ ] The application should be denied for the following reason(s): _____

_____

It is HEREBY ORDERED:

[ ] The application for waiver of the first or initial filing fee as listed in RCW 36.18.016 (2)(b) or RCW 36.18.020 (2)(a) or (b), as applicable, is granted.
[ ] The following fees and charges shall be waived:
[ ] Petition for modification of decree of dissolution/paternity [RCW 36.18.016 (2)(a)]
[ ] Jury demand [RCW 36.18.016 (3)(a)]
[ ] Copying charges [RCW 36.18.016(4)]
[ ] Duplicated recordings [RCW 36.18.016(12)]
[ ] Facilitator charge [RCW 36.18.016(15)]
[ ] Change of venue [RCW 36.18.016(18)]
[ ] Receiving faxed documents [RCW 36.18.016(19)]
[ ] Mandatory arbitration fee [RCW 36.18.016(24)]
[ ] Request for trial de novo [RCW 36.18.016(25)]
[ ] Petition for judicial review [RCW 36.18.020 (2)(c)]
[ ] Petition for unlawful harassment [RCW 36.18.020 (2)(d)]
[ ] Notice of debt due re crime victim [RCW 36.18.020 (2)(e)]
[ ] Other: _____

The application for waiver of fees and charges is DENIED.

Dated _____, 2____. _____
JUDGE/COURT COMMISSIONER

Presented by:

_____
Applicant's Signature or Applicant's Attorney's Signature

_____
Printed Name (and WSBA No., if applicable)

GR 34
Appendix C

FINANCIAL STATEMENT							
1. My name is				; my age is:			
2. My spouse's name is				; my spouse's age is:			
3. Self				**3. Spouse (Complete this if joint petition.)**			
Employed [ ] Unemployed [ ]				Employed [ ] Unemployed [ ]			
Employer's Name				Employer's Name			
Pay per month (gross):				Pay per month (gross):			
Pay per month (net):				Pay per month (net):			
4. Other Sources of Income Per Month				**4. Other Sources of Income Per Month (Spouse)**			
Amount	$	Source		Amount	$	Source	
Amount	$	Source		Amount	$	Source	
Total				Total			
5. Our Monthly Living Expenses are:				**6. Other Monthly Payments (list):**			
Rent/Mortgage	$	Daycare	$		$ /mo		$ /mo
Food	$	Tuition	$		$ /mo		$ /mo
Utilities	$	Insurance	$		$ /mo		$ /mo
Transportation	$	Other	$				
Medical-Dental	$			$			
Clothing	$						
Total	$			Total	$		
7. I provide support to people who live with me:							
How many?		Age(s):					
8. My assets and equity values are:							
Checking Account Balance		$		Home (Value less mortgage)		$	
Savings Acct. Balance		$		Cash on Hand		$	
Auto #1: Make:		Year		Value less loan		$	
Auto #2: Make:		Year		Value less loan		$	
Other		$		Total		$	
Date:				**Signature:**			

GR 34
APPENDIX D

SUPERIOR/DISTRICT COURT OF WASHINGTON
COUNTY OF

	)	CASE NO. _____
_____	)	
Petitioner/Plaintiff,	)	SEALED FINANCIAL
	)	SOURCE DOCUMENTS
v.	)	
	)	(Clerk's Action Required)
_____	)	
Respondent/Defendant	)	

Attached are documents that contain:

Restricted personal identifiers: ❑ social security number ❑ driver license number or sealed financial source documents:

- ❑ public agency benefits award letter
- ❑ benefits check
- ❑ documentation from public agency relating to qualification for assistance
  - ❑ TANF ❑ SSI
  - ❑ GA-U ❑ Food Stamp Program
  - ❑ GA-X ❑ Other: _____
- ❑ financial declaration
- ❑ income tax return and/or schedules
- ❑ W-2s
- ❑ wage stubs
- ❑ other: _____ .

Signed this _____ day of _____ , 2 _____ .

_____
Applicant's Signature

_____
Applicant's Printed Name

GR 9 COVER SHEET

Suggested Amendment
JUVENILE COURT RULES

JuCR 7.15 - Waiver of Right to Counsel

Submitted by the Washington State Bar Association

Suggested Juvenile Court Rule 7.15 addresses the significant problem of juveniles appearing in court without representation by counsel. The *Washington State Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters*[1] recommended: "Washington law should be changed to conform to national standards prohibiting children from waiving the right to counsel." Although the suggested rule does not go so far as prohibiting the waiver of counsel in juvenile proceedings, it sets forth minimum protections to ensure that all children brought before juvenile courts in Washington understand the serious consequences that can flow from proceeding in juvenile court matters without the assistance of counsel.

Forty years ago, the U.S. Supreme Court's landmark ruling in *In re Gault,* 387 U.S. 1 (1967), held that the "juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it." Today, the protections found necessary by the Court in *Gault* are even more critical because juvenile convictions result in criminal history that is easily accessible to the public even after the youth reaches adulthood and can be used against the juvenile in future adult criminal proceedings. Youth in juvenile court face not only incarceration, legal financial obligations, and community supervision, but also collateral consequences such as loss of employment, housing, and educational opportunities that can limit them for the rest of their lives.

RCW 13.40.140(2)[2] and JuCR 9.2(d) provide that a juvenile has the right to be represented by counsel in all critical stages of the proceedings unless that right is waived. There is currently no court rule that establishes a standard procedure for accepting a waiver of counsel in a juvenile offender matter. As a result of this lack of uniform procedure, courts around Washington State can and do allow children to proceed to a finding of guilt without assistance of counsel. This can happen with minimal inquiry into the young person's ability to understand the significant consequences of the decision to proceed without counsel. Although this practice might appear expedient to some courts and even to some parents, such expedience comes at a tremendous cost to juveniles and to the public's confidence in the fairness of the juvenile justice system.

Suggested JuCR 7.15 provides a standard procedure for the court to determine whether a juvenile is knowingly, voluntarily, and intelligently waiving his or her right to counsel. The suggested rule sets forth a procedure for the court to determine, on the record, whether a young person understands the right to representation by counsel and the consequences of waiving that right. Youth and their parents in juvenile court are often encountering the legal system for the first time and are unaware of the gravity of their decisions. The suggested rule requires that the juvenile consult with a lawyer prior to making the significant decision to forego counsel. This will ensure that the juvenile understands the role of a lawyer and the consequences of the decision to proceed without a lawyer's assistance. This suggested procedure is not unduly cumbersome and it provides a meaningful safeguard to ensure that every youth in Washington State has equal access to justice in the juvenile court system.

[1] *Washington State Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (American Bar Association Juvenile Justice Center, National Juvenile Defender Center, Northwest Juvenile Defender Center, 2003)

[2] RCW 13.40.140:

(1) A juvenile shall be advised of his or her rights when appearing before the court.

(2) A juvenile and his or her parent, guardian, or custodian shall be advised by the court or its representative that the juvenile has a right to be represented by counsel at all critical stages of the proceedings. Unless waived, counsel shall be provided to a juvenile who is financially unable to obtain counsel without causing substantial hardship to himself or herself or the juvenile's family, in any proceeding where the juvenile may be subject to transfer for criminal prosecution, or in any proceeding where the juvenile may be in danger of confinement. The ability to pay part of the cost of counsel does not preclude assignment. In no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay therefore. The juvenile shall be fully advised of his or her right to an attorney and of the relevant services an attorney can provide.

Suggested Juvenile Court Rule (JUCR)
RULE 7.15 WAIVER OF RIGHT TO COUNSEL

(a) A juvenile who is entitled to representation of counsel in a juvenile court proceeding may waive his or her right to counsel in the proceeding only after:

(1) the juvenile has been advised regarding the right to counsel by a lawyer who has been appointed by the court or retained;

(2) a written waiver in the form prescribed in section (c), signed by both the juvenile and the juvenile's lawyer, is filed with the court; and

(3) a hearing is held on the record where the advising lawyer appears and the court, after engaging the juvenile in a colloquy, finds the waiver was ~~intelligently,~~ knowingly, intelligently, and voluntarily made and not unduly influenced by the interests of others, including the parent(s) or guardian(s) of the juvenile.

(b) This rule does not apply to diversion proceedings. See JuCR 6.2 and 6.3.

(c) Before a waiver can be accepted by the court, an attorney or the ~~respondent~~ juvenile shall file a written waiver of the right to counsel in substantially the following form:

SUPERIOR COURT OF WASHINGTON COUNTY OF _____ JUVENILE COURT	
STATE OF WASHINGTON v. Respondent D.O.B.	NO: **WAIVER OF RIGHT TO COUNSEL**

1. My true name is: _____

I am also known as: _____.

2. My age is _____. Date of birth: _____.

3. I have completed the _____ grade in school.

4 I understand that I am accused of:

Count I, the offense of: _____.

Count II, the offense of: _____.

Count III, the offense of: _____.

Additional counts: _____.

The Standard Disposition Ranges for the offenses are as follows:

[ ] Local Sanctions:

COUNT	SUPERVISION	COMMUNITY RESTITUTION	FINE	DETENTION	CVC	RESTITUTION
[ ] 1	0 to 12 months	0 to 150 hours	$0 to $500	0 to 30 Days	$75/$100	[ ] As required [ ] _____
[ ] 2	0 to 12 months	0 to 150 hours	$0 to $500	0 to 30 Days	$75/$100	[ ] As required [ ] _____
[ ] 3	0 to 12 months	0 to 150 hours	$0 to $500	0 to 30 Days	$75/$100	[ ] As required [ ] _____

[ ] Juvenile Rehabilitation Administration (JRA) Commitment:

COUNT	WEEKS AT JUVENILE REHABILITATION ADMINISTRATION (JRA) FACILITY	CVC	RESTITUTION
[ ] 1	[ ] 15 to 36 [ ] 30 to 40 [ ] 52 to 65 [ ] 80 to 100 [ ] 103 to 129 [ ] 180 to Age 21	$75/$100	[ ] As required [ ] __
[ ] 2	[ ] 15 to 36 [ ] 30 to 40 [ ] 52 to 65 [ ] 80 to 100 [ ] 103 to 129 [ ] 180 to Age 21	$75/$100	[ ] As required [ ] __
[ ] 3	[ ] 15 to 36 [ ] 30 to 40 [ ] 52 to 65 [ ] 80 to 100 [ ] 103 to 129 [ ] 180 to Age 21	$75/$100	[ ] As required [ ] __

The maximum possible punishment that can be imposed by Juvenile Court is _____ years or commitment to JRA to age 21, whichever is less. I also understand that there may be lasting consequences even after I turn eighteen, if I am found guilty, including: employment disqualification, loss of my right to possess a firearm, suspension of ability to keep or obtain a driver's license, and school notification.

5. I understand that I have the right to be represented by a lawyer. If I cannot afford to pay for a lawyer, the court will provide appoint one to represent me at no cost to me.

6. I understand that an attorney would:

- Represent me and speak on my behalf in court.
- Advise me about my legal rights and options.
- Explain and assist me with legal and court procedures.
- Investigate and explore possible defenses that I may not know about.
- Prepare and conduct my defense at any motion court hearing or trial.

7. I understand that if I represent myself:

- The judge cannot be my attorney and cannot give me any legal advice.

- The prosecuting attorney cannot be my attorney and cannot give me any legal advice.
- The judge, prosecuting attorney and court personnel are not required to explain court procedures or the law.
- I will be required to follow all legal rules and procedures, including the rules of evidence.
- It may be difficult for me to do as good a job as ~~my own~~ an attorney.
- If I represent myself, the judge is not required to provide me with an attorney as a legal advisor or standby counsel.
- If I later change my mind and decide that I want an attorney to represent me, the judge may require me to continue to represent myself without a lawyer.

8. I am making this decision to represent myself knowingly, intelligently, and voluntarily. No one has made any promises or threats to me, and no one has used any influence, pressure or force of any kind to get me to waive my right to an attorney.

9. I have read, or have had read to me, this entire document. I want to give up my right to an attorney. I want to represent myself in this case.

Dated: _____

_____
RESPONDENT

_____
ATTORNEY FOR RESPONDENT

_____
Type or Print Name/Bar Number

COURT'S CERTIFICATE

After engaging the respondent in a colloquy in open court, I find that the respondent has knowingly, intelligently, and voluntarily waived his or her right to counsel.

Dated: _____ _____
JUDGE/COURT COMMISSIONER/PRO TEM

GR 9 COVER SHEET

SUGGESTED AMENDMENTS TO
ADMISSION TO PRACTICE RULE (APR) 12 - LIMITED PRACTICE RULE FOR CLOSING OFFICERS

APPENDIX APR 12. REGULATIONS OF THE APR 12 LIMITED PRACTICE BOARD

DISCIPLINARY REGULATIONS APPLICABLE TO APR 12.1
AND
CONTINUING EDUCATION REGULATIONS OF THE LIMITED PRACTICE BOARD

AND SUGGESTED NEW RULES

RULES OF PROFESSIONAL CONDUCT FOR LIMITED PRACTICE OFFICERS (LPORPC)
AND
RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT (ELPOC) - To Replace Current Disciplinary Rules for Limited Practice Officers (LPO)

AND RELATED AMENDMENTS TO

RULES FOR THE ENFORCEMENT OF LAWYER CONDUCT (ELC)
ELC 15.4
AND
THE RULES OF PROFESSIONAL CONDUCT (RPC)
RPC 1.15A

Submitted by the Limited Practice Board

Purpose: This proposal is a substantial revision of the entire body of administrative rules that cover Limited Practice Officers (LPOs). It also includes the suggested adoption of a new set of rules governing the professional conduct of LPOs, and the replacement of the existing disciplinary rules for LPOs with a new set of disciplinary rules. This proposal is the result of approximately three years of work by the Limited Practice Board (LP Board), which undertook a complete review of the administration of the LPO licensing system, from the examination, through the administrative rules governing admission and continued licensing, and continuing through the disciplinary process.

The LP Board is made up of lawyer and non-lawyer representatives of groups involved in the real estate industry in Washington, and by its makeup, it is intended to receive and include input from all areas of that industry. The LP Board created a Rules Committee to review existing rules and develop a proposal to present to this Court. The proposals developed by that Committee and ultimately adopted by the full LP Board were broadcast to all licensed LPOs in Washington and to major employers in Washington's real estate industry, with a request for input and feedback. Information about the report was also disseminated to members of the WSBA through its Sections, Committees and Boards, and to the Legal Foundation of Washington (LFW) and the Access to Justice Board, and through the WSBA website.

The report of the LP Board Rules committee was first presented to the Washington State Bar Association (WSBA) Board of Governors in June of 2007 (for first reading), then presented again (for action) in September of 2007. At the September 2007 WSBA Board of Governors meeting, the LFW expressed its support of this proposal. Also at the September 2007 meeting, the Board of Governors voted to approve this proposal. The final materials submitted to the WSBA Board of Governors in September for action - consisting of the cover memo, the LP Board Rules Committee Report providing detailed explanations of the suggested rule changes and reasons for the suggestions, and red-lined and clean versions of the suggested amendments and new rules and regulations - accompany this proposal.

Significant elements of the submission are the following:

- **Addition of Comments to Rules -** In keeping with the Rules of Professional Conduct (RPC) for lawyers, these suggested rules, regulations and amendments contain some Comments. These Comments have been suggested where it appeared that guidance to LPOs about the application of the rules would be helpful. Where Comments exist in the RPCs but are not included in the suggested LPOR-

PCs, the omission is deliberate and intentional based on the LP Board's determination that the comments do not and should not apply to the limited practice of LPOs.

Comments are distinguished from the "Explanatory/Purpose Statements" contained in the LP Board Rules Committee final report, which were are not intended to be included with the rules and regulations. The Explanatory/Purpose Statements are intended to provide insight into the considerations weighed by the LP Board and Rules Committee when discussing and developing these suggestions.

- **Amendments to Admission to Practice Rules for Closing Officers (APR 12) -** The suggested amendments to APR 12 contain fewer items of significance. They replace the term "certified closing officer" with "limited practice officer"; add preparation of powers of attorney in anticipation of a real estate transaction to the authorized functions of LPOs; and add a comment to APR 12(g) that discusses the standard of care applicable to LPOs.
- **Amendments to Appendix APR 12 - Regulations of the APR 12 Limited Practice Board; and Amendments to the Regulations following LPO 11.5 (Disciplinary Regulations Applicable to APR 12.1, and Continuing Education Regulations of the Limited Practice Board) -**

  The suggested amendments to the regulations in Appendix APR 12 and the regulations following LPO 11.5 are more in the nature of housekeeping and also have fewer matters of major significance. These suggested amendments are intended primarily to improve administration of LPO admissions, licensing, exams, continuing education requirements, etc., and to make adjustments to these regulations as would be necessary if the other rules in this submission are adopted. The suggested elimination of the LPO would suggest that all of the regulations be placed in Appendix APR 12 - Regulations of the APR 12 Limited Practice Board, with the Disciplinary Regulations and the Continuing Education Regulations following the other regulations.
- **Suggested Rules of Professional Conduct for LPOs (LPORPC) -** These suggested rules were developed after detailed consideration of the lawyer RPCs and discussion by the LP Board about how various ethical duties and responsibilities of lawyers do or do not apply to the limited practice of law by LPOs. A few of the suggested rules currently exist in some form in APR 12 and the LPO (Disciplinary Rules), and where appropriate the existing rules were consolidated into these suggested rules. Additional rules have been suggested based on a determination by the LP Board Rules Committee and the LP Board that guidance for LPOs is desirable in those areas.

  Of note (and a major topic of discussion, input and feedback from many groups) are the suggested revisions to the IOLTA rules applicable to LPOs. The suggested changes are intended to bring LPO IOLTA requirements more in line with *current* lawyer IOLTA requirements in RPC 1.15A and B (rather than the lawyer IOLTA rules as they existed several years ago), yet reflect the reality of limited practice as an LPO - hence the intentional omission of the Comments to RPC 1.15A, most notably Comment 15, from the corresponding LPORPC 1.12A. *See* suggested LPORPC 1.12A and B with the associated Explanatory/Purpose Statements, and the suggested amendments to RPC 1.15A with the associated Explanatory/Purpose Statements, contained in the LP Board Rules Committee report for an explanation of the reasoning behind this approach.

  The LP Board believes that in order to achieve the desired goals of the rule changes, *all* of the suggested rule changes need to be adopted as a "package".
- **Amendments to Rules for Enforcement of Lawyer Conduct (ELC 15.4), and Rules of Professional Conduct (RPC 1.15A), and Trust Account Regulations (Disciplinary Regulations Applicable to APR 12.1) -** In addition to suggested changes to the IOLTA rules applicable to LPOs - as contained in suggested new LPORPC 1.12A and B - this submission also suggests amendments to ELC 15.4, regarding trust account overdraft reporting requirements for financial institutions, to specifically include IOLTA accounts covered by LPORPC 1.12A.

  This submission also suggests amendments to RPC 1.15A relating to IOLTA requirements for lawyers. Currently, LPOs must ensure that all funds for transactions in which the LPOs selected, prepared and completed documents are maintained in accordance with IOLTA rules even if the LPOs do not personally handle the funds. These amendments are being suggested in order to require the same of lawyers - lawyers who select, prepare and complete real estate transaction documents would be required to ensure that the funds for that transaction are maintained in accordance with IOLTA rules, even if the lawyers personally do not handle the funds. The reasoning behind this approach is set forth in the Explanatory/Purpose Statements in the Rules Committee report, related to LPORPC 1.12A and B, and related to the suggested changes to RPC 1.15A.

  In order to accomplish the intended objectives with respect to IOLTA requirements, it is important that these amendments be adopted as a package with the suggested new LPORPCs.
- **Suggested Rules for Enforcement of LPO Conduct (ELPOC) -** The LP Board and Rules Committee believe that a significant overhaul of the LPO discipline system is in order. In an attempt to prevent duplication of efforts, staffing and resources, the suggested rules essentially follow the Rules for Enforcement of Lawyer Conduct (ELC), and employ existing resources in the lawyer discipline system (investigators and disciplinary counsel from the WSBA Office of Disciplinary Counsel, and Hearing Officers from the WSBA Hearing Officer

Panel) to investigate and prosecute apparently serious instances of LPO misconduct.

The intent of these rules, however, is that the LP Board and/or the LP Board Discipline Committee is always involved in the "resolution" stages of any disciplinary grievance or proceeding, including dismissal, imposition of a disciplinary sanction, and appeals, and that the final authority rests with the Supreme Court.

- **LPO (Disciplinary Rules for LPOs) to be Rescinded** - If the suggested new Rules for the Enforcement of LPO Conduct (ELPOC) are adopted, the existing LPO (the existing disciplinary rules for LPOs) should be rescinded because they will be replaced by the ELPOC.

SUGGESTED AMENDMENTS
ADMISSION TO PRACTICE RULES
RULE 12. LIMITED PRACTICE RULE FOR ~~CLOSING OFFICERS~~ LIMITED PRACTICE OFFICERS

(a) Purpose. The purpose of this rule is to authorize certain lay persons to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions and to prescribe the conditions of and limitations upon such activities.

(b) Limited Practice Board.

(1) *Establishment.* There is hereby established a Limited Practice Board (referred to herein as the "Board") consisting of nine members to be appointed by the Supreme Court of the State of Washington. Not less than four of the members of the Board must be admitted to the practice of law in the State of Washington. Four of the members of the Board shall be business representatives, one each of the following four industries: escrow, lending, title insurance, and real estate. Appointments shall be for 4-year terms. No member may serve more than two consecutive terms. Terms shall end on December 31 of the applicable year. The Supreme Court shall designate one of the members of the Board as chairperson.

(2) *Duties and Powers.*

(i) Applications. The Board shall accept and process applications for certification under this rule.

(ii) Examination. The Board shall conduct the examination for certification required by this rule. The examination shall consist of such questions as the Board may select on such subjects as may be listed by the Board and approved by the Supreme Court. The Board shall establish the number of examinations to be given each year and the dates of the examinations.

(iii) Investigation and recommendation for admission. The Board shall notify each applicant of the results of the examination and shall recommend to the Supreme Court the admission or rejection of each applicant who passes the examination. The Supreme Court shall enter an order admitting to limited practice those applicants it deems qualified, conditioned upon each applicant taking an oath that he or she will comply with this rule and paying to the Board the annual fee for the current year. Upon the entry of such order, the taking and filing of the oath, and payment of the annual fee, an applicant shall be enrolled as a ~~certified closing officer~~ limited practice officer and shall be entitled to perform those services permitted by this rule. The oath must be taken before a court of record in the State of Washington.

(iv) Education. The Board shall approve individual courses and may accredit all or portions of the entire educational program of a given organization which, in the Board's judgment, will satisfy the educational requirement of these rules. It shall determine the number of credit hours to be allowed for each such course. It shall encourage the offering of such courses and programs by established organizations, whether offered within or outside this state.

(v) Grievances and discipline. The Board shall adopt hearing and appeal procedures and shall hear complaints of persons aggrieved by the failure of ~~certified closing officers~~ limited practice officers to comply with the requirements of this rule and of ~~APR 12.~~1 the Limited Practice Officer Rules of Professional Conduct. Upon a finding by the Board that a ~~certified closing officer~~ limited practice officer has failed to comply in any material manner with the requirements of this rule, the Board shall take such action as may be appropriate to the degree of the violation, considering also the number of violations and the previous disciplinary record of the ~~closing officer~~ limited practice officer. Disciplinary action may include admonitions, reprimands, and recommendations to the Supreme Court for the suspension or revocation of the ~~closing officer~~ limited practice officer's certification.

(vi) Investigation. Upon the receipt of a complaint that a ~~closing officer~~ limited practice officer has violated the provisions of this rule and in other appropriate circumstances, the Board may investigate the conduct of the ~~closing officer~~ limited practice officer to determine whether the ~~closing officer~~ limited practice officer has violated the requirements, conditions or limitations imposed by this rule.

(vii) Approval of forms. The Board shall approve standard forms for use by ~~closing officers~~ limited practice officers in the performance of services authorized by this rule.

(viii) Fees. The Board shall establish and collect examination and annual fees in such amounts as are necessary to carry out the duties and responsibilities of the Board.

(ix) Regulations. The Board shall propose regulations to implement the provisions of this rule for adoption by the Supreme Court.

(3) *Expenses of the Board.* Members of the Board shall not be compensated for their services. For their actual and necessary expenses incurred in the performance of their duties, they shall be reimbursed by the Board in a manner consistent with its rules. All such expenses shall be paid pursuant to a budget submitted to and approved by the Washington State Bar Association on an annual basis. Funds accumulated from examination fees, annual fees, and other revenues shall be used to defray all expenses of the Board. The administrative support to the Board shall be provided by the Washington State Bar Association.

(c) Certification Requirements. An applicant for certification as a ~~closing officer~~ limited practice officer shall:

(1) *Age.* Be at least 18 years of age.

(2) *Moral Character.* Be of good moral character.

(3) *Examination.* Satisfy the examination requirements established by the Board.

(4) *Oath.* Execute under oath and file with the Board two copies of his or her application, in such form as may be required by the Board. Additional proof of any fact stated in the application may be required by the Board. In the event of the failure or refusal of an applicant to furnish any information or proof, or to answer any interrogatories of the Board pertinent to the pending application, the Board may deny the application.

(5) *Examination Fee.* Pay, upon the filing of an application, the examination fee.

(d) Scope of Practice Authorized by Limited Practice Rule. Notwithstanding any provision of any other rule to the contrary, a person certified as a ~~closing officer~~ limited practice officer under this rule may select, prepare and complete documents in a form previously approved by the Board for use by others in, or in anticipation of, closing a loan, extension of credit, sale or other transfer of interest in real or personal property. Such documents shall be limited to deeds, promissory notes, guaranties, deeds of trust, reconveyances, mortgages, satisfactions, security agreements, releases, Uniform Commercial Code documents, assignments, contracts, real estate excise tax affidavits, ~~and~~ bills of sale, and powers of attorney. Other documents may be from time to time approved by the Board.

(e) Conditions Under Which ~~Certified Closing Officers~~ Limited Practice Officers May Prepare and Complete Documents. ~~Certified closing officers~~ Limited practice officers may render services authorized by this rule only under the following conditions and with the following limitations:

(1) *Agreement of the ~~Parties~~ Clients.* Prior to the performance of the services, all ~~parties~~ clients to the transaction shall have agreed in writing to the basic terms and conditions of the transaction. In the case of a power of attorney prepared in anticipation of a transaction, the principal(s) and attorney(s)-in-fact shall have provided the limited practice officer consistent written instructions for the preparation of the power of attorney.

(2) *Disclosures to the ~~Parties~~ Clients.* The ~~closing officer~~ limited practice officer shall advise the ~~parties~~ clients of the limitations of the services rendered pursuant to this rule and shall further advise them in writing:

(i) that the ~~closing officer~~ limited practice officer is not acting as the advocate or representative of either of the ~~parties~~ clients;

(ii) that the documents prepared by the ~~closing officer~~ limited practice officer will affect the legal rights of the ~~parties~~ clients;

(iii) that the ~~parties'~~ clients' interests in the documents may differ;

(iv) that the ~~parties~~ clients have a right to be represented by lawyers of their own selection; and

(v) that the ~~closing officer~~ limited practice officer cannot give legal advice as to the manner in which the documents affect the ~~parties~~ clients.

The written disclosure must particularly identify the documents selected, prepared, and/or completed by the limited practice officer and must include the name, signature and number of the limited practice officer.

(f) Continuing Certification Requirements.

(1) *Continuing Education.* Each ~~certified closing officer~~ limited practice officer must complete a minimum number of credit hours of approved or accredited education, as prescribed by regulation of the Board, during each calendar year in courses certified by the Board to be appropriate for study by ~~closing officers~~ limited practice officers providing services pursuant to this rule; provided, that the ~~certified closing officer~~ limited practice officer shall not be required to comply with this subsection during the calendar year in which he or she is initially certified.

(2) *Financial Responsibility.* Each ~~certified closing officer~~ limited practice officer or employer thereof shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rule. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe.

(3) *Annual Fee.* Each ~~certified closing officer~~ limited practice officer must pay the annual fee established by the Board.

(g) Existing Law Unchanged. This rule shall in no way expand, narrow or affect existing law in the following areas:

(1) The fiduciary relationship between a ~~certified closing officer~~ limited practice officer and his or her customers or clients;

(2) Conflicts of interest that may arise between the ~~certified closing officer~~ limited practice officer and a client or customer;

(3) The right to act as one's own attorney under the pro se exception to the unauthorized practice of law including but not limited to the right of a lender to prepare documents conveying or granting title to property in which it is taking a security interest;

(4) The lack of authority of a ~~certified closing officer~~ limited practice officer to give legal advice without being licensed to practice law;

(5) The standard of care which a ~~certified closing offic~~er limited practice officer must practice when carrying out the functions permitted by this rule.

(h) Treatment of Funds Received Incident to the Closing of Real or Personal Property Transactions. ~~Except to the extent certified closing officers are not required to be employed in the selection, preparation and completion of closing documents under APR 12 (g)(3), p~~ Persons admitted to practice under this rule shall comply with ~~APR 12.1~~ LPORPC 1.12A and B regarding the manner in which they identify, maintain and disburse funds received incidental to the closing of real and personal property transactions, unless they are acting pursuant to APR 12 (g)(3).

Comment

[1] Comment Re: APR 12(d)

Powers of attorney authorizing a person to negotiate and sign documents in anticipation of, or in the closing of, a transaction are included in the documents limited practice officers are authorized to prepare. Such documents may include, but are not limited to, purchase and sale agreements for real or personal property, loan agreements, and letters of intent.

[2] Comment Re: LPO Professional Standard Of Care

The purpose of this comment is to discuss the legal standard of care to which a limited practice officer is subject, while also clarifying the limited duties of a limited practice officer compared to an attorney when selecting and preparing legal documents and to show the greater breadth of a lawyer's duties and services which a party may not expect when engaging a limited practice officer.

Generally, when a non-lawyer selects and prepares a legal document for another, the non-lawyer engages in the unauthorized practice of law. Despite this, the non-lawyer (including a licensed limited practice officer) will be held to the standard of a lawyer——— "to comply with the duty of care, an attorney must exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in this jurisdiction…" Hizey v. Carpenter, 119 Wn.2d 251, at p. 261. However, when selecting and preparing approved forms a limited practice officer, though having a limited license to practice law as defined and limited in APR 12, will not be authorized nor charged with many of the duties of a lawyer. Except as provided otherwise in APR 12 rules and regulations, these include the duty to investigate legal matters, to form legal opinions (including but not limited to the capacity of an individual to sign for an entity or whether a legal document is effective), to give legal advice (including advice on how a legal document affects the rights or duties of a party), or to consult with a party on the advisability of a transaction. See also LPORPC 1.1, Competence, and LPORPC 1.3, Communication.

~~**RULE 12.1 PRESERVING IDENTITY OF FUNDS AND PROPERTY IN TRANSACTIONS CLOSED BY LIMITED PRACTICE OFFICERS**~~

~~**(a)** For the purposes of this rule, the following definitions apply:~~

~~"Certified Closing Officer" shall mean an officer licensed in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice Board.~~

~~"Closing Firm" shall mean any bank, depository institution, escrow agent, title company, or other business, whether public or private, that employs or contracts for the services of a certified closing officer for the purpose of providing real or personal property closing services.~~

~~"Party" shall mean any person, corporation, partnership, or other entity, including their authorized representatives, having an interest in the real or personal property that is the subject of the transaction being closed by the certified closing officer.~~

~~"Transaction" shall mean any real or personal property conveyance requiring the involvement of an attorney or certified closing officer to select, prepare or complete documents for the purpose of closing a loan, extension of credit, sale or other transfer of title to or interest in real or personal property.~~

~~**(b)** For all transactions in which a certified closing officer has prepared documents under the authorization set forth in rule 12(d), the certified closing officer shall insure that all funds received by the closing firm incidental to the closing of the transaction, including advances for costs and expenses, shall be deposited into one or more identifiable interest-bearing trust accounts maintained as set forth in rule 12.1(c), and no funds belonging to the certified closing officer or the closing firm shall be deposited therein except as follows:~~

~~(1) Funds reasonably sufficient to pay bank charges may be deposited therein;~~

~~(2) Funds belonging in part to the parties to the real estate or personal property transaction that is being closed and in part presently or potentially to the certified closing officer or the closing firm must be deposited therein, but the portion belonging to the certified closing officer or the closing firm may be withdrawn when due unless the right of the certified closing officer or the closing firm to receive it is disputed by the parties to the real or personal property transaction, in which event the disputed portion not be withdrawn until the dispute is finally resolved.~~

~~**(c)** Each trust account referred to in section (b) shall be an interest-bearing trust account in any bank, credit union or savings and loan association, selected by a certified closing officer or the closing firm by which he or she is employed to perform closing services in the exercise of ordinary prudence, authorized by federal or state law to do business in Washington and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Washington Credit Union Share Guaranty Association, or which is a qualified public depository as defined in RCW 39.58.010(2), or which bank, credit union, savings and loan association or qualified public depository has filed an agreement with the Disciplinary Board pursuant to rule 15.4 of the Rules for Enforcement of Lawyer Conduct. Interest-bearing trust funds shall be placed in accounts in which withdrawals or transfers can be made without delay when such funds are required, subject only to any notice period which the depository institution is required to reserve by law or regulation. Such account, if established in the name of the closing firm, must reference the name(s) of the certified closing officer(s) whose services are engaged in connection with the real or personal property closing activities of the closing firm.~~

~~(1) A certified closing officer who receives or whose closing firm receives funds associated with a transaction being closed by that officer shall maintain a pooled interest-bearing trust account for deposit of funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of reasonable check and deposit processing charges which shall only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, shall be paid to The Legal Foundation of Washington, as established by the Supreme Court of Washington. All other fees and transaction costs shall be paid by the certified closing officer or the closing firm by which he or she is employed to perform closing services. A certified closing officer or closing firm may, but shall not be required to, notify the parties to the transaction of the intended use of such funds.~~

~~(2) All funds received from the parties to a transaction being closed by the certified closing officer, whether received by the certified closing officer or the closing firm, shall be deposited in the account specified in subsection (1) unless they are deposited in:~~

~~(i) a separate interest-bearing trust account containing funds pertaining to a specific real or personal property closing if directed by written agreement signed by the parties to the transaction and specifying the manner of distribution of accumulated interest to the parties to the transaction;~~

~~(ii) a separate interest-bearing trust account for a particular party to a real or personal property closing on which accumulated interest will be paid to that party; or~~

~~(iii) a pooled interest-bearing account with subaccounting that will provide for computation of interest earned by each party's funds and the payment thereof to the respective party.~~

~~(3) In determining whether to use the account specified in subsection (1) or an account specified in subsection (2), a certified closing officer shall consider only whether the funds to be invested could be utilized to provide a positive net return to the client, as determined by taking into account the following factors:~~

~~(i) the amount of interest that the funds would earn during the period they are expected to be deposited;~~

~~(ii) the cost of establishing and administering the account, including the cost of the certified closing officer's services and the cost of preparing any tax reports required for interest accruing to the party(ies)' benefit; and~~

~~(iii) the capability of financial institutions to calculate and pay interest to individual parties in the manner contemplated by subsection (2).~~

~~(4) As to accounts created under rule 12.1(c), certified closing officers or the closing firms on whose behalf they are engaged in performing closing services shall direct the depository institution:~~

~~(i) to remit interest or dividends, net of reasonable check and deposit processing charges which shall only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, on the average monthly balance in the account, or as otherwise computed in accordance with an institutions standard accounting practice, at least quarterly, to The Legal Foundation of Washington. Other fees and transaction costs will be directed to the certified closing officer of the closing firm by which he or she is employed to perform closing services;~~

~~(ii) to transmit with each remittance to the Foundation a statement showing the name of the certified closing officer(s) for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any, and the account balance(s) of the period in which the report is made, with a copy of such statement to be transmitted to the depositing certified closing officer or closing firm.~~

~~**(d)** Notwithstanding any provision of any other rule, statute, or regulation, escrow and other funds held by a certified closing officer, or the closing firm, incident to the closing of any real or personal property transaction are funds subject to this rule regardless of how the certified closing officer, closing firm, or party(ies) view the funds.~~

SUGGESTED AMENDMENTS
APPENDIX APR 12. REGULATIONS OF THE APR 12 LIMITED PRACTICE BOARD

REGULATION 1: IN GENERAL

[No change].

REGULATION 2: APPLICATIONS

A. [No change].

B. [No change].

C. [No change].

D. Refunds and Transfers.

1. For all applicants there is a nonrefundable administration fee totaling one half the amount of the examination fee.

2. An applicant may withdraw from the current examination by written request received at least 14 days prior to the date set for the examination and may also request a refund of the fee less the administration fee.

3. An applicant may withdraw from the current examination and apply the examination fee to the next examination only, and only upon the following conditions: the written request to transfer must be received at least 14 days prior to the date set for the examination, and the applicant must repay the administration fee.

4. An applicant withdrawing an application or requesting to transfer to the next examination less than 14 days prior to the date set for the examination will receive no refund of any kind.

5. If the application is denied before the examination, the examination fee less the nonrefundable administration fee will be refunded. If the applicant reapplies to sit for the examination, the applicant will pay the full examination fee then required of all applicants.

6. If an applicant fails the examination and applies to repeat the next scheduled examination, the examination fee shall be the amount set by the Limited Practice Board with the approval of the Supreme Court.

7. Any applicant transferring to the next examination or repeating the examination ~~must~~ may execute and file a Supplemental Declaration in the form prescribed by the Limited Practice ~~Officer~~ Board in lieu of a new application provided not more than one year passes from the date the applicant submitted an application; otherwise, the applicant must submit a new application.

E. Filing Deadline. An applicant must file the application to take the LPO examination not less than 30 days prior to the examination date. No applications will be accepted less than 30 days prior to the examination date.

REGULATION 3: APPROVAL OR DENIAL OF APPLICATION

[No change].

REGULATION 4: DENIAL OF APPLICATION—RIGHT OF APPEAL

[No change].

REGULATION 5: ADMINISTRATION OF EXAMINATION

[No change].

REGULATION 6: EXAMINATION STANDARDS AND NOTIFICATION OF RESULTS

The passing standard for the examination is 75 percent for each section. A failing grade in one section shall result in

failure of the exam in which case grading of any remaining sections shall not be required. All applicants will be notified of the applicant's examination results. Those applicants who fail the examination ~~may request in writing that they~~ will be informed of their score on each graded section of the examination ~~by category~~. ~~Test~~ Examination scores shall not be disclosed to those applicants who pass the examination. Copies of the examination shall not be available to any applicant.

~~REGULATION 7: REAPPLICATION FOR EXAMINATION~~

~~Applicants who fail the examination may repeat the examination If more than one year passes from the date the applicant submitted an application, the applicant is required to make reapplication to sit for the examination.~~

REGULATION 7: FINANCIAL RESPONSIBILITY REQUIREMENT

Each limited practice officer shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 12 in one of the following described manners.

(1) Submitted an individual policy for Errors and Omissions insurance in the amount of at least $100,000;

(2) Submitted an Errors and Omissions policy of the employer or the parent company of the employer who has agreed to provide coverage for the applicant's ability to respond in damages in the amount of at least $100,000;

(3) Submitted the applicant's audited financial statement showing the applicant's net worth to be at least $200,000; or

(4) Submitted an audited financial statement of the employer or other surety who agrees to respond in damages for the applicant, indicating net worth of $200,000 per each limited practice officer employee to and including five and an additional $100,000 per each limited practice officer employee over five, who may be subject to the jurisdiction of the Limited Practice Board.

REGULATION 8: CERTIFICATION OF RESULTS TO SUPREME COURT; OATH

A. Admission Order.

The Limited Practice Board will submit to the Washington State Supreme Court the names of those persons who have passed the examination for admission pursuant to APR 12, taken the oath as prescribed by these rules, and furnished proof of the applicant's financial responsibility requirement pursuant to regulation 7.~~, individual policy for Errors and Omissions insurance in the amount of at least $100,000 or the Errors and Omissions policy of the employer or the parent company of the employer who has agreed to provide coverage for the applicant's ability to respond in damages in the amount of at least $100,000 pursuant to APR 12, or submitted the applicant's audited financial statement showing the applicant's net worth to be at least $200,000, or submitted an audited financial statement of the employer or other surety who agrees to respond in damages for the applicant, indicating net worth in the following amounts in relationship to the number of employees covered who may be subject to the jurisdiction of the Limited Practice Board:~~

~~Net Worth Number of Employees~~

~~$200,000 Each employee to and including five (5); and~~
~~$100,000 Each additional employee over five (5)~~

The names of successful applicants will be submitted only after compliance with APR 12 and these Regulations, and the applicants will be ~~duly~~ admitted under APR 12 only after the admission order has been ~~signed~~ entered by the ~~Chief Justice~~ Supreme Court.

Each successful applicant shall complete all the requirements for certification within nine (9) months of the date the applicant ~~successfully sat for examination~~ is notified of the examination results. If an applicant fails to satisfy all the requirements for certification within this period, the applicant shall not be eligible for admission under APR 12 without submitting a new application for admission.

B. Contents of Oath. The oath which all applicants shall take is as follows:

OATH FOR LIMITED PRACTICE OFFICERS

STATE OF WASHINGTON

COUNTY OF

I, _____, do solemnly declare:

1. I am fully subject to the laws of the ~~s~~State of Washington and ~~the~~ Rule 12 of the Admission to Practice Rules ~~12 and 12.1~~ and APR 12 Regulations adopted by the Washington State Supreme Court and will abide by the same.

2. I will support the constitutions of the S~~s~~tate of Washington and of the United States of America.

3. I will abide by the ~~Admission Rules and the Disciplinary Rules~~ Limited Practice Officer Rules of Professional Conduct and Rules for Enforcement of LPO Conduct approved by the Supreme Court of the ~~s~~State of Washington.

4. I will confine my activities as a Limited Practice Officer to those activities allowed by law, rule and regulation and will only utilize documents approved pursuant to APR 12.

5. I will faithfully disclose the limitations of my services, that I am not able to act as the advocate or representative of any party, that documents prepared will affect legal rights of the parties, that the parties' interests in the documents may differ, that the parties have a right to be represented by a lawyer of their own selection, and that I cannot give legal advice regarding the manner in which the documents affect the parties.

6. I understand that I may incur personal liability if I violate the applicable standard of care of a Limited Practice Officer. Also, I understand that I only have authority to act as a Limited Practice Officer during the times that my financial responsibility coverage is in effect. If I am covered under my employer's errors and omissions insurance policy or by my employer's certificate of financial responsibility, my coverage is limited to services performed in the course of my employment.

_____

Signature Limited Practice Officer

Subscribed and sworn to before me this ___ day of _____, ____.

_____

JUDGE

REGULATION 9: ANNUAL FEE

A. Except as set forth in section B of this Regulation, every Limited Practice Officer shall pay an annual fee in an amount set by the Limited Practice Board with the approval of the Supreme Court, which is due July 1 of each year. Annual fees paid after July 15 shall be subject to a late fee equal to one-half the annual fee. Failure to pay the annual fee shall subject the LPO to suspension from limited practice as a Limited Practice Officer. If the LPO fails to comply with conditions for reinstatement pursuant to Regulation 10 within 9 months of the date of suspension, the license of the suspended LPO will be revoked.

B. The prorated annual fee for LPOs who pass the qualifying examination given in the spring and who request active status prior to July 1 of that same calendar year shall be one half the amount of the annual fee. LPOs shall pay the annual fee set forth in Regulation ~~10~~ 9(A) to retain their active status after June 30 of the calendar year of their admission.

C. An LPO shall provide his or her residential address to the Board at the time of payment of the annual fee.

REGULATION 10: REINSTATEMENT AFTER SUSPENSION FOR NONPAYMENT OF ANNUAL FEE

An LPO who is suspended pursuant to Regulation 9(A) shall be reinstated if the LPO has within nine (9) months of the date of suspension:

1. submitted an application for reinstatement in the form prescribed by the Board;

2. continued to meet the qualifications set out in APR 12 and these Regulations; and

3. paid a sum equal to the amount of all delinquent annual fees, late fees, and any investigation fees as may be determined by the Board.

REGULATION 11: CONTINUING FINANCIAL RESPONSIBILITY

Each LPO shall either be insured or covered under the financial statement of an employer or employer's parent company or other surety at all times as specified in Regulation 7 ~~8~~. If the LPO is covered under a financial statement, the LPO, employer, employer's parent company or other surety who has assumed such financial responsibility shall annually file with the Limited Practice Board, by July 1, the audited financial statement for the most-recent fiscal year of the financially responsible party indicating net worth.

Each LPO shall notify the Limited Practice Board of any cancellation or lapse in coverage. During any period that an LPO is not covered in accordance with these Regulations, or is not on inactive status pursuant to Regulation 13, the license of the LPO shall be suspended. Each suspended LPO must demonstrate compliance with the requirements of APR 12 within nine (9) months of the date of the suspension or the license of the suspended LPO will be revoked.

REGULATION 12: CONTINUING EDUCATION

[No change].

REGULATION 13: INACTIVE STATUS

[No change].

REGULATION 14: VOLUNTARY CERTIFICATION CANCELLATION

Any Limited Practice Officer may voluntarily surrender the LPO certification ~~e~~ by notifying the Limited Practice Board in writing of the desire to cancel and returning the LPO ~~certificate~~ license with the request. The Limited Practice Board will notify the LPO of the effective date of the cancellation.

The former LPO shall then promptly notify by registered or certified mail, return receipt request, all clients being represented in pending matters, of the certification cancellation and the consequent inability to act as a Limited Practice Officer.

After entry of the cancellation order, the former LPO shall not accept any new clients or engage in work as an LPO in any matter.

Within ten (10) days after the effective date of the cancellation order, the former LPO shall file with the Limited Practice Board an affidavit showing:

1. The former LPO has fully complied with the provision of the order and with these Regulations;

2. The residence or other address of the former LPO for purposes of mailing or for service of process; and

3. Attaching to the affidavit a copy of the form of letter of notification sent to clients being represented in pending matters, together with a list of the names and addresses of all clients to whom the notice was sent.

The Board will cause a notice of the cancellation to be published in the ~~Eserow Association of Washington newsletter and a newspaper of general circulation in the county in which the former LPO worked~~ same manner as notices of discipline under ELPOC 3.5(b).

REGULATION 15: CHANGE IN STATUS

[No change].

~~**REGULATION 16: LPO NAME, SIGNATURE, AND NUMBER REQUIRED ON DISCLOSURE FORM**~~

~~The documents selected, prepared, and/or completed by the LPO shall be particularly identified on a disclosure which shall also include the name, signature, and number of the LPO.~~

REGULATION 16. REINSTATEMENT AFTER REVOCATION

16.1 RESTRICTIONS AGAINST PETITIONING

A. When Petition May Be Filed. No petition for reinstatement shall be filed within a period of two (2) years after revocation or within one (1) year after an adverse decision of the Supreme Court upon a former petition, or within a period of six (6) months after an adverse recommendation of the Board on a former petition when that recommendation is not submitted to the Supreme Court. If prior to revocation the LPO was suspended pursuant to the provisions of Title 7 of the Rules for Enforcement of LPO Conduct (ELPOC), or any comparable rule, the period of suspension shall be credited toward the two (2) years referred to above.

B. Payment of Obligations. No revoked LPO may file a petition for reinstatement until costs and expenses assessed pursuant to these rules, and restitution ordered as provided,

have been paid by the revoked LPO, or the revoked LPO has entered into a payment plan for any such obligations as provided for under ELPOC 13.9.

16.2 REVERSAL OF CONVICTION

If an LPO has been revoked solely because of the LPO's conviction of a crime and the conviction is later reversed and the charges dismissed on their merits, the Supreme Court may in its discretion, upon direct application by the LPO, enter an order reinstating the LPO to limited practice under APR 12. At the time such direct application is filed with the court, a copy shall be filed with the Board.

16.3 FORM OF PETITION

A petition for reinstatement as an LPO after revocation shall be in writing in such form as the Board may prescribe. The petition shall set forth the age, residence and address of the petitioner, the date of revocation, and a concise statement of facts claimed to justify reinstatement. The petition shall be accompanied by the total fees required for application under APR 12.

16.4 INVESTIGATION

The Board may, in its discretion, refer the petition for reinstatement for investigation and report to counsel appointed by the Board, if any, or such other person or persons as may be determined by the Board.

16.5 HEARING BEFORE BOARD

A. Notice. The Board may fix a time and place for a hearing on the petition and shall serve notice thereof ten (10) days prior to the hearing upon the petitioner and upon such other persons as may be ordered by the Board. Notice of the hearing shall also be published in such newspaper or periodical as the Board shall direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and shall give the date fixed for the hearing.

B. Statement in Support or Opposition. On or prior to the date of hearing, anyone wishing to do so may file with the Board a written statement for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of Regulation 16.6A. ~~Rule 5.6 A.~~ Except by its leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Board.

16.6 ACTION BY BOARD

A. Requirements for Favorable Recommendation. Reinstatement may be recommended by the Board only upon an affirmative showing that the petitioner possesses the qualifications and meets the requirements as set forth by the Board and APR 12, and that the LPO's reinstatement will not be contrary to the public interest.

B. Action on Recommendation. The recommendation of the Board shall be served upon the petitioner. If the Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Board recommends against reinstatement, the record and recommendation shall be retained by the Board unless the petitioner requests that it be submitted to the Supreme Court. If the petitioner so requests, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the petitioner does not so request, the examination fee shall be refunded to the petitioner, but the petitioner shall still be responsible for payment of costs incidental to the reinstatement proceeding as directed by the Board.

16.7 ACTION ON SUPREME COURT'S DETERMINATION

A. Petition Approved. If the petition for reinstatement is granted by the Supreme Court, the reinstatement shall be subject to the petitioner's taking and passing the examination for APR 12 applicants and paying the costs incidental to the reinstatement proceeding as directed by the Supreme Court.

B. Petition Denied. If the petition for reinstatement be denied, the examination fee shall be refunded to the petitioner, but the petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding

REGULATION 17: RECORDS DISCLOSURE

A. The Board shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of this Regulation or any other Rules and Regulations applicable to Limited Practice Officers (LPOs). A "public record" is defined as written information, regardless of physical form or characteristic, that has been made or received by the Limited Practice Board in connection with the transaction of public business.

B. To the extent required to prevent an unreasonable invasion of the privacy interests set forth in these Regulations, the Board shall delete identifying details in a manner consistent with the Regulations when it makes available or publishes any public record.

C. No fee shall be charged for the inspection of public records. The fee charged for the copying of public records shall be the same fee charged by the Washington State Bar Association for making copies of public records.

D. The Board shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate a statute, court order or rule which exempts or prohibits disclosure of specific information or records.

E. The following records are exempt from public inspection and copying:

1. Test questions, scoring keys and other examination data used by the Board to administer the qualifying examination.

2. Preliminary drafts, notes, recommendations, and intra-Board memorandums in which opinions are expressed or policies formulated or recommended.

3. Records which are relevant to a controversy to which the Board is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

4. The residential address and residential telephone number of a limited practice officer.

5. Membership information; however, status, business addresses, business telephone numbers, facsimile numbers, electronic addresses, license number and dates of admission shall not be exempt.

6. Applications for admission to limited practice and related records.

F. The disclosure of records in disciplinary files shall be governed by ~~Disciplinary Rules 1.8 and 8.6.~~ Title 3 of the Rules for Enforcement of LPO Conduct.

G. The exemptions to disclosure set forth in this Regulation shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or fall within an exemption, can be deleted from the specific records sought.

H. Responses to requests for public records shall be made promptly by the Board. Within five business days of receiving a public record request, the Board must respond by either (1) providing the record; or (2) acknowledging the request and providing a reasonable time estimate for responding to the request, or (3) denying the request. The Board may ask the requestor to clarify the request. If the requestor fails to clarify the request, the Board may deny the request. Denials of request must be accompanied by a written statement of the specific reasons therefore.

I. Whenever the ~~Board~~ Clerk concludes that a public record is exempt from inspection and copying, the person may appeal that decision to the Board, whose decision is final.

J. The disclosure of information under this section should not violate an individual's right to privacy by amounting to a disclosure of information about that person that would be highly offensive to a reasonable person and is not of legitimate concern to the public.

REGULATION 18: NOTICE AND FILING; ADMINISTRATION

All notices and filings required by these Regulations, including applications for admission as a Limited Practice Officer, shall be sent to the headquarters of the Washington State Bar Association. The Washington State Bar Association shall provide administrative support for the Limited Practice Board pursuant to APR 12 (b)(3). "Clerk" as used in these regulations means WSBA staff designated to support the Board.

REGULATION 19: AMENDMENT

[No change].

SUGGESTED AMENDMENTS (APR 12) DISCIPLINARY REGULATIONS APPLICABLE TO ~~APR 12.1~~ ELPOC TITLE 15

(~~Amended effective July 1, 2002~~)

REGULATION 101. DEFINITIONS

~~As used~~ The definitions in ELPOC 1.3 apply ~~in~~ to these Regulations.~~,~~ In addition, the following definitions shall apply:

~~A. The term "closing firm" is defined in APR 12.1.~~

~~B.~~(a) The "auditor" shall mean the person or accounting firm conducting the audits and examinations specified in ~~Disciplinary Rules~~ ELPOC Title 15~~1~~.

~~C.~~ (b) "Examination" shall mean a review and testing by the audit of the internal controls and procedures by an LPO or closing firm to receive, hold, disburse and account for money and property in which the client or other person has an interest using generally accepted auditing standards, to the extent they apply, without, however, making outside confirmations. In order to conduct such review and testing, the auditor shall have access to all of the internal books and records kept by the LPO or closing firm which comprise the LPO's or closing firm's financial records showing financial transactions involving the receipt of client's funds for fees, costs, or other purposes, either from the client or third persons and all expenditures by the closing firm or LPO for clients or third persons and all distributions to the LPO or LPOs including but not necessarily limited to all journals, ledgers, books of accounts, canceled checks, deposit slips, bank statements, check registers, cash accounts, receipts, correspondence, records of accounts receivable, income and expense statements, balance sheets, tax returns of all types, federal, state, county, and city excepting, however, income tax returns.

~~D~~. (c) "Audit" shall encompass "examination" but in addition may include positive or negative confirmation from external sources.

REGULATION 102. PERSONS AUTHORIZED TO CONDUCT AUDITS

Audits shall be conducted by ~~the Board's administrative support staff provided by the Washington State Bar Association.~~ an auditor or auditor(s) provided by the Board.

REGULATION 103. EXAMINATION AND AUDIT REPORTS

~~A.~~(a) The auditor shall furnish a written report of each examination or audit to the Board.

~~B.~~(b) The report shall contain the date of the audit or examination, the name of the closing firm or LPO, and a statement of the scope of the examination or audit. In respect to each examination, it shall include a statement to the effect that either 1) as a result of the examination, an audit or further examination is indicated, or 2) during the course of the examination, the auditor has not observed anything which would indicate a need for further examination or audit at this time. In respect to each audit, the report shall state either 1) as a result of the audit, the auditor concludes that ~~APR 12.1~~ LPORPC 1.12A and B have~~s~~ not been complied with (stating the particulars), or 2) as a result of the audit, the auditor has not observed anything which would indicate ~~APR 12.1~~ LPORPC 1.12A and B have~~s~~ not been complied with. The auditor shall further state an opinion, as to whether the LPO or closing firm has cooperated as required by ~~Disciplinary Rule 11.2~~ ELPOC 15.2, giving the particulars if lack of cooperation is claimed.

~~C.~~(c) Upon request by the Chair, the auditor shall make available the working papers in respect to particular examinations or audits, for review by the Board and shall consult with the Board in respect to particular examinations and audits.

~~D.~~(d) Upon conclusion of the examination or audit, the auditor shall make available to the LPO or closing firm a copy of the audit report.

~~E.~~(e) The auditor shall preserve inviolate all confidences and secrets of clients of the examined LPO or closing firm. No client name or information which would permit the identification of a particular client shall be revealed in the working papers or the report of the auditor, except that the name or names of clients who have filed complaints with the Board may be released.

~~F.~~(f) When the audit is concluded, if it is determined pursuant to Regulation 104 ~~A.~~ that no further investigation, examination or action is appropriate, the Board's copies of the audit report, working papers, or other materials relating to the audit shall be destroyed, except that the Board shall maintain a record showing the identity of any LPO or closing firm audited and the dates of the audit to ensure that the restrictions of Regulation 105 ~~A.~~ are complied with.

REGULATION 104. DETERMINATION THAT FURTHER EXAMINATION AND AUDIT OR OTHER ACTIONS ARE WARRANTED

(a) The Chair or a delegate shall review all reports of the auditor.~~,~~ After such review and upon further investigation, which the Chair may direct, and after such consultation, if any, as the Chair deems appropriate with the Board, the Chair shall make such order in respect to further examination and audit as the Chair deems appropriate, consistent with ~~Disciplinary Rule 11.1~~. ELPOC 15.1 In addition, the Chair may order other actions by the LPO and closing firm as are necessary to ensure that the LPO's or closing firm's handling of client funds complies with the requirements of the ~~Disciplinary Rules.~~ Limited Practice Officer Rules of Professional Conduct.

~~**REGULATION 104A. AUDITOR'S OPINIONS ADVISORY ONLY**~~

(b) **Auditor's Opinions Advisory Only**. The opinions expressed in the report of the Auditor shall be advisory only. They shall not in and of themselves constitute findings of fact in any disciplinary proceedings against any LPO unless so stipulated by the LPO or LPO's counsel.

REGULATION 105. METHOD OF SELECTION OF LPO AND CLOSING FIRMS TO BE EXAMINED

~~A.~~ (a) At such time and from time to time as the Board determines, random examination of LPOs or closing firms may be conducted. Procedures shall be established by the Board for the selection of the LPOs or closing firms to be examined which 1) will utilize the principle of random selection, and 2) will distribute the examinations among the congressional districts of the state substantially in the ratio that the number of LPOs in each district bears to the total number of active LPOs in the state. ~~For example, the Board may 1) determine the total number of examinations which can be made during the time period in question by the auditor or auditors, 2) allocate the number of examinations to each district substantially in the ratio that the number of active LPOs therein bears to all active LPOs in the state, and 3) select the LPOs by random within each group.~~ If the number drawn is that of an LPO who is an employee of a closing firm, the closing firm shall be examined. If the number is that of an active LPO who is an independent business owner, the active LPO's records shall be examined. If the number is that of an LPO who, either as an individual or as a closing firm employee, has been audited in the twenty-four (24) months immediately preceding the drawing, the Chair may in the Chair's discretion excuse the LPO or closing firm from examination.

~~B.~~(b) Upon consent of an active LPO, the LPO's books and records or those of a closing firm may be examined even though the active LPO's number has not been selected randomly.

~~C.~~(c) The Chair may at all times upon the receipt of information that a particular LPO or closing firm may not be in compliance with LPORPC 1.12A and B ~~APR 12.1~~ authorize an examination.

REGULATION 106. CONTENTS OF LPO DECLARATION

Annually, the Board shall mail to each active LPO, a written ~~questionnaire~~ declaration. ~~The~~ to be completed ~~questionnaire shall~~ and ~~be~~ delivered ~~by the LPO~~ to the Board on or before ~~January 3~~ July 1 of that year. The ~~questionnaire~~ declaration shall be comprised of two parts. Part~~s~~ One ~~and Two~~ shall be completed and signed by each active LPO.~~, provided that~~ Part Two~~,~~ shall be completed and signed by the individual who manages the trust accounts(s) for the ~~in lieu of completion and signing by each individual active LPO in a~~ closing firm, ~~may be completed and signed by an authorized member of the firm~~ on behalf of the closing firm and all LPOs employed in the firm. Parts One and Two each shall be separately signed and verified by the signer under penalty of perjury and shall require disclosure of the following information:

Part I - LPO Verification

1. Name, current address and telephone number of the LPO.

2. Whether the LPO is actively ~~closing real and/or personal property transactions~~ providing services authorized by APR 12(d).

3. If the answer to "(2)" is no, whether the LPO is nonetheless engaged in any LPO activities which involves or might involve the handling of client's funds or property.

4. Whether the LPO or closing firm maintain identifiable bank account(s) within the state for the deposit of funds of clients and third persons a record keeping system to record funds, securities and other properties of clients and third persons coming into the LPO's or closing firm's possession (to be answered by all LPOs unless the answers to both "(2)" and "(3)" are "no").

Part II - Account Information Verification

1. The name of the bank(s) and branch(es) and account number(s) where the separate identifiable bank accounts are maintained as the depository (or depositories) for client funds.

2. Whether the accounts identified in "1" above are maintained in the manner specified in ~~APR 12.1~~ LPORPC 1.12 A and B, and whether all clients' funds to the extent required by ~~APR 12.1~~ LPORPC 1.12 A and B, are kept therein.

3. Whether all funds, securities, and other properties of clients coming into the LPO's or closing firm's possession are held in the manner specified in LPORPC 1.12A and B ~~APR 12.1~~ and whether records in respect thereto are maintained in the manner specified in LPORPC 1.12A and B ~~APR 12.1~~.

4. That the signatories acknowledge they are subject to examination and audit under ELPOC Title 15 and these regulations to verify compliance with LPO RPC 1.12A and B.

~~Part Two may also require disclosure of the account numbers for each separate identifiable bank account maintained as a depository for client funds.~~

SUGGESTED AMENDMENTS
CONTINUING EDUCATION REGULATIONS OF THE LIMITED PRACTICE BOARD

REGULATION 101. DEFINITIONS

[No change].

REGULATION 102. CONTINUING EDUCATION REQUIREMENT

[No change].

REGULATION 103. CREDITS/COMPUTATION

A. Continuing education credit may be obtained by attending, teaching, or participating in, continuing education activities which have 1) been previously approved by the Committee, or 2) have been afforded retroactive approval by the Committee pursuant to APR 12 and these regulations.

B. A credit shall be awarded for each hour actually spent by an LPO in attendance at an approved education activity.

C. Credit will not be given for time spent in meal breaks. ~~Credit will not be given for speeches presented at meal functions.~~

D. Excess or "carry-over" credits may be applied to the succeeding calendar year's credit hour requirement. Such credits shall be reported to the Committee on or before January 31 as required by Regulation 108 A.

E. Credit toward the continuing education requirements set forth in APR 12 and Regulation 102 may be earned through teaching or participating in an approved continuing education activity on the following basis:

1. An LPO teaching in an approved education activity shall receive credit on the basis of one (1) credit for each hour actually spent by such LPO in attendance at and teaching in a presentation of such activity. Additionally, an LPO teaching in such an activity shall also be awarded further credit on the basis of one credit for each hour actually spent in preparation time, provided that in no event shall more than ten (10) hours of credit be awarded for the preparation of one (1) hour or less of actual presentation.

2. An LPO participating in an approved educational activity shall receive credit on the basis of one (1) credit for each hour actually spent by such LPO in attendance at a presentation of such activity. Additionally, an LPO participating in such an activity shall also be awarded further credit on the basis of one (1) credit for each hour actually spent in preparation time, provided that in no event shall more than five (5) hours of credit be awarded for such preparation time in any one such continuing education activity.

F. Service on the Limited Practice Board or Escrow Commission is considered an approved continuing education activity for both general and liability credits.

REGULATION 104. STANDARDS FOR APPROVAL

The following standards shall be met by any course or activity for which approval is sought:

A. The course shall have significant intellectual or practical content and its primary objective shall be to increase the attendee's professional competence as an LPO.

B. The course shall constitute an organized program of learning dealing with matters directly relating to the limited practice of law and/or to the professional responsibility or ethical obligations of an LPO, which may include continuing legal education seminars and courses approved by the Washington State MCLE Board.

C. Each faculty member shall be qualified by practical or academic experience to teach a specific subject.

D. Thorough, high quality, readable, and carefully prepared written materials should be distributed to all attendees at or before the time the course is presented. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written materials for distribution should, however, be the exception and not the rule.

E. Courses should be conducted in a setting physically suitable to the educational activity of the program. A suitable writing surface should be provided where feasible.

F. No course will be approved which involves solely television viewing in the home or office or correspondence work or self-study. Video, motion picture, or sound tape presentations may be approved, provided a teacher or moderator is in attendance at each presentation to comment thereon, answer questions, or conduct the discussion.

REGULATION 105. PROCEDURE FOR APPROVAL OF CONTINUING EDUCATION ACTIVITIES

A. An LPO or sponsoring agency desiring approval of a continuing education activity shall submit to the Committee all information called for by Form 1 at least thirty (30) days prior to the date scheduled for the class, along with an application fee ~~of $25.00~~ for each occurrence. The application fee shall be set by the Board with the approval of the WSBA Board of Governors.

B. Approval shall be granted or denied in accordance with the provisions of Regulation 107 herein. Upon approval of the activity, a list of certified limited practice officers will be provided to the class sponsor if requested in the initial application, along with written acknowledgment of approval.

C. As to a course that has been approved, the sponsoring agency may announce, in informational brochures and/or registration materials: "This course has been approved by the Continuing Education Committee of the Limited Practice Board for ___ hours of credit."

D. On the date of the continuing education activity, the sponsoring agency shall give a copy of the LPB course approval form to each LPO attending.

REGULATION 106. DELEGATION

[No change].

REGULATION 107. STAFF DETERMINATIONS AND REVIEW

[No change].

REGULATION 108. SUBMISSION OF INFORMATION—REPORTING OF ATTENDANCE

[No change].

REGULATION 109. SUBMISSION OF INFORMATION—CREDIT FOR TEACHING OR PARTICIPATING

[No change].

REGULATION 110. EXTENSIONS, WAIVERS, MODIFICATIONS

[No change].

REGULATION 111. NON-COMPLIANCE-BOARD PROCEDURES

[No change].

REGULATION 112. REINSTATEMENT OF LPOS SUSPENDED FROM PRACTICE FOR FAILURE TO COMPLY WITH THE CONTINUING EDUCATION REQUIREMENT

[No change].

REGULATION 113. APPEALS TO THE SUPREME COURT

[No change].

~~**REGULATION 114. REACTIVATION OF INACTIVE MEMBERS**~~

~~A person desiring transfer from inactive to active status must comply with the applicable rules and procedures of the Board pertaining to such change of membership status, including the filing of an application with the Board in such form as is prescribed by the Board. The Board shall determine whether such application shall be granted. Compliance with APR 12 and these regulations is only one factor pertaining to such determination.~~

REGULATION 11~~4~~5. EXEMPTIONS

New Admission. An LPO shall not be required to comply with the minimum continuing education requirements of APR 12, as implemented by these regulations, during the calendar year in which the LPO is admitted to practice.

REGULATION 11~~5~~6. RULEMAKING AUTHORITY

The Committee, subject to the approval of the Board, has continuing authority to make or amend regulations consistent with APR 12 in furtherance of the development of continuing education for LPO's and the regulation thereof.

REGULATION 11~~6~~7. CONFIDENTIALITY

The files and records of the Committee shall be deemed confidential and shall not be disclosed except in furtherance of the Committee's duties, or upon the request of an affected LPO member, or pursuant to a proper subpoena duces tecum, or as directed by the Supreme Court.

(NEW RULES)
LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL CONDUCT (LPORPC)

PREAMBLE TO LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL CONDUCT

Limited practice officers receive a limited license to practice law, and are held to the same standard of care as a lawyer when performing the legal services authorized by the limited practice officer license. A lawyer, as a member of the legal profession, is a representative of the client, an officer of the court, and a public citizen having a specific responsibility for the quality of justice. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct. Rules of Professional Conduct for lawyers have been adopted stating fundamental ethical principles which lawyers are professionally obligated to observe. In fulfilling professional responsibilities, a limited practice officer necessarily performs various roles that lawyers otherwise or also perform. Certain of the lawyer Rules of Professional Conduct, as modified to reflect the unique nature of the duties and provisions of APR 12, have been adopted as appropriate rules of professional conduct applicable to limited practice officers. These rules update standards for limited practice officer conduct and they set forth the minimum standard of conduct required of limited practice officers. Not every ethical situation that a limited practice officer may encounter can be foreseen; the fundamental ethical principles in the rules are intended to provide minimum standards to assist the limited practice officer in determining the appropriate conduct. So long as limited practice officers are guided by these principles, their conduct will assist in assuring the law continues to be a noble profession.

SCOPE

The Limited Practice Officer Rules of Professional Conduct, where mandatory in character, state the minimum level of conduct below which no limited practice officer can fall without being subject to disciplinary action. Other LPO RPC may afford the limited practice officer some discretion in exercising professional judgment and may provide guidance for compliance, rather than adding mandatory professional obligations.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a limited practice officer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a limited practice officer often has to act upon uncertain or incomplete knowledge of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations. Violation of a Rule should not itself give rise to a cause of action against a limited practice officer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a limited practice officer in a pending transaction. The Rules are designed to provide guidance to limited practice officers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Nothing in these Rules is intended to change existing Washington law on the use of rules of professional conduct in a civil action. Cf. *Hizey v. Carpenter*, 119 Wn.2d 251, 830 P.2d 646 (1992) (lawyer rules of professional conduct do not define standards of civil liability of lawyers for professional conduct, but provide only a public disciplinary remedy).

The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

LPO RPC 1.0 TERMINOLOGY

The following definitions apply to all rules and regulations governing limited practice officers under APR 12 except only where a term is expressly differently defined for use in particular provisions of any rule or regulation.

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Client(s)" when used in a purchase and sale transaction denotes the buyer and seller and may include the purchase money lender for the same transaction only if the limited practice officer accepts the duty to select, prepare, or complete legal documents for the purchase money loans. When used in a loan-only transaction, whether or not the limited practice officer accepts the duty to select, prepare, or complete legal documents, "Clients" are the borrower and lender.

(c) "Closing Firm" means any bank, depository institution, escrow agent, title company, law firm, or other business, whether public or private, that employs, or contracts for the services of, a limited practice officer for the purpose of providing real or personal property closing services for a transaction.

(d) "Fraud" or "fraudulent" denotes conduct that has a purpose to deceive and is fraudulent under the substantive or procedural law of Washington, except that it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

(e) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(f) "Limited Practice Officer" means a person licensed in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice Board.

(g) "LPO Services" means those documentation activities for use by others performed by a limited practice officer under the authorization of APR 12(d).

(h) "Party(ies)" or "Participant(s)" in a closing transaction includes persons other than "clients" from whom the limited practice officer accepts instructions or to whom the limited practice officer may make deliveries or disburse funds.

(i) "Reasonable" or "reasonably" when used in relation to conduct by a limited practice officer denotes the conduct of a reasonably prudent and competent limited practice officer performing the same LPO services.

(j) "Reasonable belief" or "reasonably believes" when used in reference to a limited practice officer denotes that the limited practice officer believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) "Reasonably should know" when used in reference to a limited practice officer denotes that a limited practice officer of reasonable prudence and competence would ascertain the matter in question.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Transaction" means any real or personal property closing requiring the involvement of a lawyer or limited practice officer to select, prepare or complete documents for the purpose of closing a loan, extension of credit, sale or other transfer of title to or interest in real or personal property.

(n) "Written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail.

Comment:

LPO services arise from a writing in which the clients have agreed to the basic terms of a transaction (APR 12 (e)(1)). In a sale transaction, LPO services arise from a purchase and sale agreement between the buyer and seller. Lenders and others involved (brokers, lien-holders, etc.) are accommodated parties.

In loan-only transactions, LPO services arise from closing instructions between the closing firm, lender and borrower. Thus, the lender and borrower each is a client; lienholders and non-borrowing owners, etc. are accommodated parties.

LPO RPC 1.1 COMPETENCE

A limited practice officer shall provide competent LPO services. Competence requires the knowledge, thoroughness and preparation reasonably necessary to provide the LPO services. Not every limited practice officer is competent to provide LPO services for every transaction.

Comment:

Continuing competence is an ongoing core professional obligation. To maintain the requisite knowledge and skill, a limited practice officer should keep abreast of changes in the law and its practice relevant to limited practice officer duties, engage in continuing study and education and comply with all continuing education requirements to which the limited practice officer is subject. The rule also reminds the limited practice officer that the competence required for a particular transaction is neither universal nor automatic.

LPO RPC 1.2 DILIGENCE

A limited practice officer must act with reasonable diligence and promptness in the performance of his or her duties, including the timely preparation of documents required to meet the closing date specified by the clients.

Comment:

Lack of diligence is a professional defect. A limited practice officer's work load must be controlled so that each transaction can be handled competently. However, timely action under this rule should be measured by circumstances under the limited practice officer's control (as distinguished from unreasonable timing demands imposed by employer work load, the parties or the terms of the transaction). Unless the client relationship is terminated as provided in Rule 1.6, a limited practice officer should carry through to conclusion all matters undertaken for a client. See also Rule 1.3, Communication with Clients, infra.

LPO RPC 1.3 COMMUNICATION WITH CLIENTS

(a) Upon reasonable request, a limited practice officer shall promptly provide relevant information to the clients regarding the documents selected, prepared, and completed for the transaction.

(b) A limited practice officer shall timely notify its clients of omissions or discrepancies in the documentation provided to the LPO which must be resolved before the LPO can provide LPO services in the transaction.

(c) A limited practice officer must inform a client to seek legal advice from a lawyer if the limited practice officer is reliably informed or, based on contact with the client reasonably believes, that the client does not understand or appreciate the meaning or effect of an instrument prepared by the limited practice officer for signature by the client.

Comment:

The performance of LPO services occasionally may require direct communication with multiple clients in a transaction. Proper focus for limited practice officer communication with clients is not as an advocate or advisor, but as necessary to clear up documentary discrepancies and insure that there is an adequate written agreement for the limited practice officer to select, prepare and complete the documentation for the transaction.

See also Rules 1.2, Diligence; 1.6, Declining Services, infra.

LPO RPC 1.4 CONFIDENTIALITY

These rules do not impose any duty of confidentiality on a limited practice officer. Any limited practice officer duty of confidentiality arising under common law, statute, or contract is not affected by these rules.

LPO RPC 1.5 CONFLICT OF INTEREST

(a) A limited practice officer shall not provide LPO services in a transaction where the LPO, or a member of the LPO's immediate family, is either a party or client.

(b) A limited practice officer shall not use information obtained from the provision of LPO services to a client in a transaction for personal gain to the disadvantage of the client.

(c) Where a limited practice officer's employer is a buyer or seller in a transaction, the LPO shall not provide LPO services unless the LPO provides written notice of the conflict to all other clients and obtains a written waiver of the conflict from all other clients. The notice and waiver shall be substantially in the form below.

As required by rule 1.5 of the Limited Practice Officer Rules of Professional Conduct, you are hereby notified that the limited practice officer providing LPO services for this transaction is employed by {name of closing firm}, which has an interest in this transaction. Specifically, {set forth the closing firm's interest in the transaction}.

By signing below, you acknowledge that you (1) understand and have received the notice of conflict of interest; (2) have been advised to seek legal counsel if you do not understand the conflict or this waiver; and (3) waive the conflict of interest created by the closing firm having an interest in the transaction.

LPO RPC 1.6 DECLINING OR TERMINATING SERVICES

(a) A limited practice officer shall decline to provide LPO services or, where LPO services have commenced, shall terminate LPO services if:

1. The LPO services will clearly result in violation of the Limited Practice Officer Rules of Professional Conduct or other law, including the unauthorized practice of law by the limited practice officer;

2. The limited practice officer's physical or mental condition materially impairs his or her ability to provide LPO services;

3. The limited practice officer reasonably believes that the documentation requirements of the transaction exceed the limited practice officer's competence;

4. The limited practice officer is discharged; or

5. A client insists on confidentiality of information disclosed to the limited practice officer to which the limited practice officer cannot agree.

(b) A limited practice officer may refuse to provide LPO services for any other reason, including without limitation the following, if:

(1) A client persists in a course of action involving the limited practice officer's services that the limited practice officer reasonably believes is criminal or fraudulent or illegal, or that might require the limited practice officer to exceed his or her authority as a limited practice officer;

(2) A client has used the services of the limited practice officer to perpetrate a crime or fraud;

(3) A client insists upon pursuing an objective or practice that the limited practice officer reasonably considers repugnant or with which a limited practice officer has a fundamental disagreement;

(4) A client fails substantially to fulfill an obligation to the limited practice officer regarding the limited practice officer's services and has been given reasonable warning that the limited practice officer will terminate services unless the obligation is fulfilled;

(5) The LPO services will result in an unreasonable financial burden on the limited practice officer or its services in the transaction have been rendered unreasonably difficult by the clients; or

(6) Other cause for refusal of services exists. Where the clients are unwilling or unable to correct the situation, other cause for refusal of services may include, but is not limited to: insufficient or conflicting documentation that is not timely corrected by the clients; direction from a client to use forms not approved by the Limited Practice Board or to make unauthorized alterations to approved forms; direction from a client that is inconsistent with the existing documentation; apparent lack of or defect in the capacity of a client or signatory; or failure of the clients to allow sufficient time for competent and orderly performance of LPO services.

(c) Upon termination of a limited practice officer's services, the limited practice officer must take steps to the extent reasonably practicable to protect the clients' interests, such as giving reasonable notice to the clients (as determined by the circumstances of the transaction), advising the clients that they can seek the advice of a lawyer regarding the transaction, allowing time for employment of a lawyer or another limited practice officer where reasonable, and surrendering papers and property to which the clients are entitled if requested and if all LPO fees and costs are paid.

Comment:

The rule first identifies situations where a limited practice officer must decline followed by situations where a limited practice officer may decline to provide LPO services. A limited practice officer ordinarily must decline or terminate services if a client demands that the limited practice officer engage in conduct that is illegal or violates the LPO Rules of Professional Conduct or other law, or in the other enumerated instances.

LPO RPC 1.7 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of performing LPO services in a transaction, a limited practice officer shall not knowingly fail to disclose all material facts to clients or any parties to the transaction, or make false statements of material facts to clients or any such party.

LPO RPC 1.8 UNAUTHORIZED PRACTICE OF LAW

A limited practice officer shall not:

(a) engage in, or assist others in, the unauthorized practice of law, including the giving of legal advice;

(b) permit his or her name, signature stamp or limited practice officer number to be used by any other person;

(c) select, prepare, or complete documents authorized by APR 12 for or together with any person whose limited practice officer certification has been revoked or suspended, if the limited practice officer knows, or reasonably should know, of such revocation or suspension; or

(d) work as a limited practice officer while on inactive status, or while his or her limited practice officer certification is suspended or revoked for any cause.

Comment:

"Clearly, the selection and completion of legal forms constitutes the practice of law." Bowers v Transamerica Title Insurance Co, 100 Wn.2d 582 (1983). Adjudicated cases finding limited practice officer unauthorized practice of law have involved limited practice officer use of unapproved forms and unapproved alterations of approved forms; see Bishop v Jefferson Title Co Inc, 107 Wash.App 833 (2001). Washington General Rule (GR) 24 sets forth the definition of the practice of law.

LPO RPC 1.9 LPO DUTIES AND AUTHORITY ARE NOT DELEGABLE

The powers, duties and responsibilities of a limited practice officer are personal to the limited practice officer and may not be assigned or delegated to a person who is not a limited practice officer. A limited practice officer may be supported and assisted by one or more persons who are not limited practice officers if the limited practice officer adequately supervises the assistants and retains sole and final responsibility for the work performed by the assistant(s). A limited practice officer must take all steps reasonably necessary to insure that an assistant's activities do not violate APR 12 and regulations of the Board and are consistent with the LPO's duties under these rules. A limited practice officer must review and approve the assistant's activities and document preparation. A limited practice officer should have no more assistants and support staff than the limited practice officer can adequately directly supervise, to insure that the assistant activities conform to assigned limited practice officer support tasks defined in writing. Nothing in this rule authorizes a limited practice officer assistant to exercise the authority or perform the duties of a limited practice officer independently.

LPO RPC 1.10 MISCONDUCT

It is professional misconduct for a limited practice officer to:

(a) violate or attempt to violate the rules of professional conduct for limited practice officers, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the limited practice officer's honesty, trustworthiness or fitness as a limited practice officer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) willfully disobey or violate a valid court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(e) violate his or her oath as a limited practice officer;

(f) violate a duty or sanction imposed by or under the Rules for Enforcement of Limited Practice Officer Conduct in connection with a disciplinary matter, including, but not limited to, the duties catalogued at ELPOC 1.5, Violation of Duties Imposed by These Rules;

(g) engage in conduct demonstrating unfitness to practice as a limited practice officer. "Unfitness to practice" includes but is not limited to the inability, unwillingness or repeated failure to perform adequately the material functions required of a limited practice officer or to comply with the LPO RPC and/or ELPOC;

(h) misrepresent or conceal a material fact made in an application for admission under APR 12 or in support thereof;

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act that reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a limited practice officer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding.

Comment:

Regarding subparagraph (d), it is common for courts to issue orders to the parties to engage in a transaction involving a closing agent. The limited practice officer should seek legal advice as to whether such orders are valid.

LPO RPC 1.11 REPORTING PROFESSIONAL MISCONDUCT

A limited practice officer who knows that another limited practice officer has committed repeated and material violations of the LPO Rules of Professional Conduct should inform the Limited Practice Board.

Comment:

The intent of this rule is to encourage a limited practice officer to report professional misconduct in order to ensure effective self-regulation of limited practice officers. Examples of misconduct include, but are not limited to use of unapproved forms, unauthorized delegation or performance of limited practice officer duties, use of a limited practice officer's name, signature stamp or identification number by unlicensed persons, or a limited practice officer acting as an limited practice officer while one's license is inactive or suspended. If a limited practice officer knows of the unauthorized practice of law by someone other than a limited practice officer, the limited practice officer should report the person to the Practice of Law Board (GR 25).

LPO RPC 1.12A SAFEGUARDING PROPERTY

(a) This Rule applies to (1) property of clients or third persons in possession of a limited practice officer or a Clos-

ing Firm in connection with a transaction, and (2) escrow and other funds held by a limited practice officer or a Closing Firm incident to a transaction. For all transactions in which a limited practice officer under the authorization set forth in APR 12(d) or a lawyer has selected, prepared, or completed documents, the limited practice officer must insure that all funds received by the closing firm incidental to the closing of the transaction, including advances for costs and expenses, are held and maintained as set forth in this rule.

(b) A limited practice officer or a Closing Firm must not use, convert, borrow or pledge client or third person property for the limited practice officer's or Closing Firm's own use.

(c) A limited practice officer or Closing Firm must hold property of clients and third persons separate from the limited practice officer's and Closing Firm's own property.

(1) A limited practice officer or Closing Firm must deposit and hold in a trust account funds subject to this Rule pursuant to paragraph (i) of this Rule.

(2) A limited practice officer or Closing Firm must identify, label and appropriately safeguard any property of clients or third persons other than funds. The limited practice officer or Closing Firm must keep records of such property that identify the property, the client or third person, the date of receipt and the location of safekeeping. The limited practice officer or Closing Firm must preserve the records for seven years after return of the property.

(d) A limited practice officer or Closing Firm must promptly notify a client or third person of receipt of the client or third person's property.

(e) A limited practice officer or Closing Firm must promptly provide a written accounting to a client or third person after distribution of funds or upon request. A limited practice officer or Closing Firm must provide at least annually a written accounting to a client or third person for whom the limited practice officer or Closing Firm is holding funds.

(f) Except as stated in this Rule, a limited practice officer or Closing Firm must promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive.

(g) If a limited practice officer or Closing Firm possesses property in which two or more persons (one of which may be the limited practice officer or Closing Firm) claim interests, the limited practice officer or Closing Firm must maintain the property in trust until the dispute is resolved. The limited practice officer or Closing Firm lawyer must promptly distribute all undisputed portions of the property. The limited practice officer or Closing Firm must take reasonable action to resolve the dispute, including, when appropriate, interpleading the disputed funds.

(h) A limited practice officer or Closing Firm must comply with the following for all trust accounts:

(1) No funds belonging to the limited practice officer or Closing Firm may be deposited or retained in a trust account except as follows:

(i) funds to pay bank charges, but only in an amount reasonably sufficient for that purpose;

(ii) funds belonging in part to a client or third person and in part presently or potentially to the limited practice officer or Closing Firm must be deposited and retained in a trust account, but any portion belonging to the limited practice officer or Closing Firm must be withdrawn at the earliest reasonable time; or

(iii) funds necessary to restore appropriate balances.

(2) A limited practice officer or Closing Firm must keep complete records as required by Rule 1.12B.

(3) A limited practice officer or Closing Firm may withdraw funds when necessary to pay client costs. The limited practice officer or Closing Firm may withdraw earned fees only after giving reasonable notice to the client of the intent to do so, through a billing statement or other document.

(4) Receipts must be deposited intact.

(5) All withdrawals must be made only to a named payee and not to cash. Withdrawals must be made by check or by bank transfer.

(6) Trust account records must be reconciled as often as bank statements are generated or at least quarterly. The limited practice officer or Closing Firm must reconcile the check register balance to the bank statement balance and reconcile the check register balance to the combined total of all client ledger records required by Rule 1.12B (a)(2).

(7) A limited practice officer or Closing Firm must not disburse funds from a trust account until deposits have cleared the banking process and been collected, unless the limited practice officer or Closing Firm and the bank have a written agreement by which the limited practice officer or Closing Firm personally guarantees all disbursements from the account without recourse to the trust account.

(8) Disbursements on behalf of a client or third person may not exceed the funds of that person on deposit. The funds of a client or third person must not be used on behalf of anyone else.

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation. In the exercise of ordinary prudence, the limited practice officer or Closing Firm may select any bank, savings bank, credit union or savings and loan association that is insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, is authorized by law to do business in Washington and has filed the agreement required by rule 15.4 of the Rules for Enforcement of Lawyer Conduct. Trust account funds must not be placed in mutual funds, stocks, bonds, or similar investments.

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest accruing on the IOLTA account, net of reasonable check and deposit processing charges which may only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, must be paid to the Legal Foundation of Washington. Any other fees and transaction costs must be paid by the limited practice officer or Closing Firm. A limited practice officer or closing firm may, but shall not be required to, notify the parties to the transaction of the intended use of such funds.

(2) Client or third-person funds that will produce a positive net return to the client or third person must be placed in

one of the following unless the client or third person requests that the funds be deposited in an IOLTA account:

(i) a separate interest-bearing trust account for the particular client or third person with earned interest paid to the client or third person; or

(ii) a pooled interest-bearing trust account with subaccounting that allows for computation of interest earned by each client or third person's funds with the interest paid to the appropriate client or third person.

(3) In determining whether to use the account specified in paragraph (i)(1) or an account specified in paragraph (i)(2), a limited practice officer or Closing Firm must consider only whether the funds will produce a positive net return to the client or third person, as determined by the following factors:

(i) the amount of interest the funds would earn based on the current rate of interest and the expected period of deposit;

(ii) the cost of establishing and administering the account, including the cost of the limited practice officer or Closing Firm services and the cost of preparing any tax reports required for interest accruing to a client or third person's benefit; and

(iii) the capability of financial institutions to calculate and pay interest to individual clients or third persons if the account in paragraph (i)(2)(ii) is used.

(4) As to IOLTA accounts created under paragraph (i)(1), the limited practice officer or Closing Firm must direct the depository institution:

(i) to remit interest or dividends, net of charges authorized by paragraph (i)(1), on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, monthly, to the Legal Foundation of Washington;

(ii) to transmit with each remittance to the Foundation a statement, on a form authorized by the Washington State Bar Association, showing details about the account, including but not limited to the name of the limited practice officer or Closing Firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any, and the balance used to compute the interest, with a copy of such statement to be transmitted to the depositing limited practice officer or Closing Firm; and

(iii) to bill fees and transaction costs not authorized by paragraph (i)(1) to the limited practice officer or Closing Firm.

Notwithstanding any provision of any other rule, statute, or regulation, escrow and other funds held by a limited practice officer, or the closing firm, incident to the closing of any real or personal property transaction are funds subject to this rule regardless of how the limited practice officer, closing firm, or party(ies) view the funds.

LPO RPC 1.12B REQUIRED TRUST ACCOUNT RECORDS

(a) A limited practice officer or Closing Firm must maintain current trust account records. They may be in electronic or manual form and must be retained for at least six years after the events they record. At minimum, the records must include the following:

(1) Checkbook register or equivalent for each trust account, including entries for all receipts, disbursements, and transfers, and containing at least:

(i) identification of the client matter for which trust funds were received, disbursed, or transferred;

(ii) the date on which trust funds were received, disbursed, or transferred;

(iii) the check number for each disbursement;

(iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and

(v) the new trust account balance after each receipt, disbursement, or transfer;

(2) Individual client ledger records containing either a separate page for each client or an equivalent electronic record showing all individual receipts, disbursements, or transfers, and also containing:

(i) identification of the purpose for which trust funds were received, disbursed, or transferred;

(ii) the date on which trust funds were received, disbursed or transferred;

(iii) the check number for each disbursement;

(iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and

(v) the new client fund balance after each receipt, disbursement, or transfer;

(3) Copies of any agreements pertaining to fees and costs;

(4) Copies of any statements or accountings to clients or third parties showing the disbursement of funds to them or on their behalf;

(5) Copies of bills for legal fees and expenses rendered to clients;

(6) Copies of invoices, bills or other documents supporting all disbursements or transfers from the trust account;

(7) Bank statements, copies of deposit slips, and cancelled checks or their equivalent;

(8) Copies of all trust account client ledger reconciliations; and

(9) Copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them.

(b) Upon any change in the limited practice officer or Closing Firm practice affecting the trust account, including dissolution or sale of a Closing Firm business, or suspension or other change in the license status of a limited practice officer, the limited practice officer or Closing Firm must make appropriate arrangements for the maintenance of the records specified in this Rule.

Comment:

[1] Limited practice officers must assure that IOLTA accounts are used in any transaction involving the practice of law for others. In addition to closings where legal documents have been selected, prepared or completed by limited practice officers, IOLTA accounts must hold funds for closings involving legal documents prepared by lawyers. Such transactions would include extensions of credit with loan documents prepared by a lender's lawyer, as well as sale closings with deeds and other legal documents prepared by the clients' lawyers.

[2] The Escrow Agent Registration Act under RCW 18.44 provides procedures for trust account recordkeeping substantially similar to the provisions contained within

LPORPC 1.12B. Compliance with the provisions under RCW 18.44 should meet the provisions of this rule.

RESCIND DISCIPLINARY RULES FOR LIMITED PRACTICE OFFICERS (LPO)

ADOPT NEW SET OF RULES
RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT (ELPOC)

TITLE 1 – SCOPE, JURISDICTION, AND DEFINITIONS

ELPOC 1.1 SCOPE OF RULES

These rules govern the procedure by which a Limited Practice Officer may be subjected to disciplinary sanctions or actions for violation of the Limited Practice Officer Rules of Professional Conduct (LPORPC) adopted by the Washington Supreme Court.

ELPOC 1.2 JURISDICTION

Any licensed limited practice officer permitted to engage in the limited practice of law in this state is subject to these Rules for Enforcement of Limited Practice Officer Conduct. Jurisdiction exists regardless of the limited practice officer's residency or authority to engage in the limited practice of law in this state.

ELPOC 1.3 DEFINITIONS

Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:

(a) "Association" means the Washington State Bar Association.

(b) "Public file" means the pleadings, motions, rulings, decisions, and other formal papers filed in a proceeding.

(c) "Board" when used alone means the Limited Practice Board.

(d) "Board of Governors" means the Board of Governors of the Washington State Bar Association.

(e) "Chair" when used alone means the Chair of the Limited Practice Board.

(f) "Clerk" when used alone means the Association's staff designated to work with the Limited Practice Board.

(g) "Closing firm" means any bank, depository institution, escrow agent, title company, law firm, or other business, whether public or private, that employs, or contracts for the services of, a limited practice officer for the purpose of providing real or personal property closing services for a transaction.

(h) "Court" unless otherwise specified, means the Supreme Court of Washington.

(i) "Disciplinary action" means sanctions under rule 13.1 and admonitions under rule 13.5.

(j) "ELC" means the Rules for Enforcement of Lawyer Conduct.

(k) "Final" means no review has been sought in a timely fashion or all appeals have been concluded.

(l) "Grievant" means the person or entity who files a grievance (except for a confidential source under rule 5.2).

(m) "Hearing officer" means the person assigned under rule 10.2 (a)(1) or, when a hearing panel has been assigned, the hearing panel chair.

(n) "Mental or physical incapacity" includes, but is not limited to, insanity, mental illness, senility, or debilitating use of alcohol or drugs.

(o) "Panel" means a hearing panel under rule 10.2 (a)(2).

(p) "Party" means disciplinary counsel or respondent, except in rule 2.3(f) "party" also includes a grievant.

(q) "Respondent" means a limited practice officer against whom a grievance is filed or a limited practice officer investigated by the clerk or disciplinary counsel.

(r) "APR" means the Admission to Practice Rules.

(s) "CR" means the Superior Court Civil Rules.

(t) "RAP" means the Rules of Appellate Procedure.

(u) "LPORPC" means the Limited Practice Officer Rules of Professional Conduct adopted by the Washington Supreme Court.

(v) Words of authority.

(1) "May" means "has discretion to," "has a right to," or "is permitted to".

(2) "Must" means "is required to".

(3) "Should" means recommended but not required.

ELPOC 1.4 NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.

ELPOC 1.5 VIOLATION OF DUTIES IMPOSED BY THESE RULES

A limited practice officer violates LPORPC 1.10 and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

- respond to inquiries or requests about matters under investigation, rule 5.3(e);
- file an answer to a formal complaint or to an amendment to a formal complaint, rule 10.5;
- cooperate with discovery and comply with hearing orders, rules 5.5 and 10.11(g);
- attend a hearing and bring materials requested by Association staff and/or disciplinary counsel, rule 10.13 (b) and (c);
- respond to subpoenas and comply with orders enforcing subpoenas, rule 10.13(e);
- notify clients and others of inability to act, rule 14.1;
- discontinue practice, rule 14.2;
- file an affidavit of compliance, rule 14.3;
- maintain confidentiality, rule 3.2;
- cooperate with an examination of books and records, rule 15.2;
- notify the Association of a trust account overdraft, rule 15.4(d);
- file a declaration or questionnaire certifying compliance with LPORPC 1.12A AND B, rule 15.5;
- comply with conditions of probation, rule 13.8
- comply with conditions of a stipulation, rule 9.1;
- pay restitution, rule 13.7; or
- pay costs, rule 5.3(e) or 13.9.

TITLE 2 - ORGANIZATION AND STRUCTURE

ELPOC 2.1 SUPREME COURT

The Washington Supreme Court has exclusive responsibility in the state to administer the limited practice officer discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of limited practice officer discipline and disability. Persons carrying out the functions set forth in these rules act under the Supreme Court's authority.

ELPOC 2.2 BOARD OF GOVERNORS

(a) Function. The Board of Governors of the Association:

(1) supervises the general functioning of the disciplinary counsel and Association staff; and

(2) performs other functions and takes other actions provided in these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Limitation of Authority. The Board of Governors has no right or responsibility to review hearing officer, hearing panel, or Limited Practice Board decisions or recommendations in specific cases.

ELPOC 2.3 LIMITED PRACTICE BOARD

(a) Function for purposes of these rules. The Board performs the functions provided under these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Membership.

(1) *Composition*. The Board is composed as set forth in APR 12 (b)(1).

(2) *Voting.* Each member, including the Chair, whether nonlawyer or lawyer, has one vote.

(3) *Quorum*. A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least five members vote.

(4) *Leave of Absence While Grievance Is Pending.* If a grievance is filed against a member of the Board, the following procedures apply:

(A) the member shall take a leave of absence until the matter is resolved.

(c) Disqualification.

(1) A Board member should disqualify him or herself from a particular matter in which the member's impartiality might reasonably be questioned, including, but not limited to, instances in which:

(A) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

(B) the member previously served as a lawyer or limited practice officer or was a material witness in the matter in controversy, or a lawyer or limited practice officer with whom the member works serves or has previously served as a lawyer or limited practice officer concerning the matter, or such lawyer or limited practice officer is or has been a material witness concerning the matter;

(C) the member knows that, individually or as a fiduciary, the member or the member's spouse or relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under section (d);

(D) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:

(i) is a party to the matter, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer or limited practice officer in the matter;

(iii) is to the member's knowledge likely to be a material witness in the matter;

(d) Remittal of Disqualification. A member disqualified under subsection (c)(1)(C) or (c)(1)(D) may, instead of withdrawing from consideration of the matter, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the member's participation, all agree in writing or on the record that the member's relationship is immaterial or that the member's economic interest is de minimis, the member is no longer disqualified, and may participate in the matter. If a party is not immediately available, the member may proceed on the assurance of the party's counsel that the party's consent will be subsequently given.

(e) Counsel and Clerk. The Executive Director of the Association, under the direction of the Association's Board of Governors, may appoint a suitable person or persons to act as counsel and clerk to the Board, to assist the Board and the discipline committee in carrying out their functions under these rules.

(f) Restriction on Representing Respondents. Former members of the Board are subject to the restrictions on representing respondents in rule 2.11(b).

ELPOC 2.4 DISCIPLINE COMMITTEE

(a) Function. The discipline committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.

(b) Membership. The Chair appoints a discipline committees of three members from among the Board members. At least one of the members must have substantial experience in the industry. The Chair may change the appointment of members to the discipline committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the discipline committee.

(c) Discipline Committee Chair. The Chair of the Limited Practice Board designates one member of the discipline committee with substantial experience in the industry to act as its chair.

(d) Terms of Office. A Limited Practice Board member may serves as a discipline committee member as long as the member is on the Board or for other shorter terms as determined by the Chair of the Limited Practice Board to be appropriate.

(e) Meetings. The discipline committee meets at times and places determined by the discipline committee chair, under the general direction of the Chair of the Limited Practice Board. In the discipline committee chair's discretion, the committee may meet and act through electronic, telephonic, written, or other means of communication.

ELPOC 2.5 HEARING OFFICER OR PANEL

(a) Function. A hearing officer or panel to whom a case has been assigned for hearing conducts the hearing and performs other functions as provided under these rules.

(b) Qualifications. A hearing officer must be an active hearing officer in the lawyer discipline system as set forth in rule 2.5 of the Rules for Enforcement of Lawyer Conduct (ELC), preferably with practice or adjudicative experience in law related to real estate transactions.

ELPOC 2.6 HEARING OFFICER CONDUCT

(a) Conduct of Those on Hearing Officer List. The duties and responsibilities imposed on hearing officers by ELC 2.6 apply to hearing officers for Limited Practice Officer disciplinary proceedings. Additionally, A a person on the hearing officer list should not:

(1) testify voluntarily as a character witness in a Limited Practice Officer disciplinary proceeding;

(2) serve as an expert witness related to the professional conduct of Limited Practice Officers in any proceeding; or

(3) serve as respondent's counsel in Limited Practice Officer disciplinary proceedings.

ELPOC 2.7 DISCIPLINARY COUNSEL

(a) Function. Association disciplinary counsel acts as counsel on the Board's behalf on all matters under these rules, and performs other duties as required by these rules, the Executive Director of the Association, the Board or the Board of Governors.

(b) Appointment. The Executive Director of the Association, under the direction of the Board of Governors in cooperation with the Board, employs a suitable member or members of the Association as disciplinary counsel for Limited Practice Officer disciplinary matters.

ELPOC 2.8 REMOVAL OF APPOINTEES

The power granted by these rules to any person, committee, or board to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform his or her duties, or for any other cause, and to fill the resulting vacancy.

ELPOC 2.9 COMPENSATION AND EXPENSES

Compensation and expenses of hearing officers will be as prescribed in ELC 2.11.

ELPOC 2.10 EXONERATION FROM LIABILITY

(a) Board and its Agents. The Limited Practice Board shall enjoy such judicial immunity as provided for in General Rule 12.2. The state shall provide a defense to any action brought against a member or agent of the Board for actions taken in good faith under these rules and the state shall bear the cost of the defense.

(b) Grievants and Witnesses. Communications to the Board, discipline committee, Association, Board of Governors, hearing officer, disciplinary counsel, Association staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness, or other person providing information.

ELPOC 2.11 RESPONDENT LIMITED PRACTICE OFFICER

(a) Right to Representation. A Limited Practice Officer may be represented by counsel during any stage of an investigation or proceeding under these rules.

(b) Restrictions on Representation of Respondent. A former Chair of the Board or Board member cannot represent a respondent Limited Practice Officer in any proceeding under these rules until three years after leaving office.

(c) Restriction on Charging Fee To Respond to Grievance. A respondent Limited Practice Officer may not seek to charge a grievant a fee or recover costs from a grievant for responding to a grievance unless otherwise permitted by these rules.

(d) Medical and Psychological Records. A respondent Limited Practice Officer must furnish written releases or authorizations to permit disciplinary counsel access to medical, psychiatric, or psychological records as may be relevant to the investigation or proceeding, subject to a motion to the chief hearing officer, or the hearing officer if one has been appointed, to limit the scope of the requested releases or authorizations for good cause shown.

TITLE 3 - ACCESS AND NOTICE

ELPOC 3.1 OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION

(a) Open Meetings. Disciplinary hearings of the Board are public. Except as otherwise provided in these rules, Supreme Court proceedings are public to the same extent as other Supreme Court proceedings. Deliberations of the Board, the discipline committee, a hearing officer, or court, and matters made confidential by other provisions of these rules, are not public.

(b) Public Disciplinary Information. The public has access to the following information subject to these rules:

(1) the record before the discipline committee and the order of the discipline committee in any matter that a discipline committee has ordered to hearing or ordered an admonition be issued;

(2) the record upon distribution to the discipline committee or to the Supreme Court in proceedings based on a conviction of a felony or serious crime, as defined in rule 7.1(a);

(3) the record upon distribution to the discipline committee or to the Supreme Court in proceedings under rule 7.2;

(4) the record and order upon approval of a stipulation for discipline imposing a sanction or admonition, and the order approving a stipulation to dismissal of a matter previously made public under these rules;

(5) the record before a hearing officer;

(6) the record and order before the Board in any matter reviewed under rule 10.9 or title 11;

(7) the public file and any exhibits and any Board or discipline committee order in any matter that the Board or the discipline committee has ordered to public hearing, or any matter in which disciplinary action has been taken, or any proceeding under rules 7.1-7.6;

(8) in any disciplinary matter referred to the Supreme Court, the file, record, briefs, and argument in the case;

(9) a Limited Practice Officer's voluntary cancellation in lieu of revocation under rule 9.2; and

(10) any sanction or admonition imposed on a respondent.

(c) Regulations. Public access to file materials and proceedings permitted by this rule may be subject to reasonable regulation as to time, place, and manner of access. Certified

copies of public file documents will be made available at the same rate as certified copies of superior court records. Uncertified copies of public bar file documents will be made available at a rate to be set by the Executive Director of the Association.

ELPOC 3.2 CONFIDENTIAL DISCIPLINARY INFORMATION

(a) Scope of Confidentiality. All disciplinary materials that are not public information as defined in rule 3.1(b) are confidential, and are held by the Board under the authority of the Supreme Court, including but not limited to materials submitted to the discipline committee under rule 8.9 or information protected by rule 3.3(b), rule 5.1 (c)(3), a protective order under rule 3.2(c), rule 3.2(b), court order, or other applicable law (e.g., medical records, police reports, etc.).

(b) Investigative Confidentiality. During the course of an investigation or proceeding, the Chair may direct that otherwise public information be kept confidential if necessary to further the purposes of the investigation. At the conclusion of the proceeding, those materials become public information unless subject to a protective order.

(c) Protective Orders. To protect a compelling interest of a grievant, witness, third party, respondent LPO, or other participant in an investigation, on motion and for good cause shown, the Board Chair, the chair of the discipline committee to which a matter is assigned, or a hearing officer to whom a matter is assigned may issue a protective order prohibiting the disclosure or release of specific information, documents, or pleadings, and direct that the proceedings be conducted so as to implement the order. Filing a motion for a protective order stays the provisions of this title as to any matter sought to be kept confidential until five days after a ruling is served on the parties. The Board reviews decisions granting or denying a protective order if either the respondent LPO, clerk or disciplinary counsel requests a review within five days of service of the decision. On review, the Board may affirm, reverse, or modify the protective order. The Board's decision is not subject to further review. A request for review by the Board stays the provisions of this title as to any matter sought to be kept confidential in that request, and the request itself is confidential until a ruling is issued.

ELPOC 3.3 APPLICATION TO STIPULATIONS, DISABILITY PROCEEDINGS, AND DIVERSION CONTRACTS

(a) Application to Stipulations. A stipulation under rule 9.1 providing for imposition of a disciplinary sanction or admonition is confidential until approved, except that a grievant may be advised concerning a stipulation and its proposed or actual content at any time. An approved stipulation is public, unless:

(1) it is approved before the filing of a formal complaint;

(2) it provides for dismissal of a grievance without a disciplinary sanction or admonition; and

(3) proceedings have not been instituted for failure to comply with the terms of the stipulation.

(b) Application to Disability Proceedings. Disability proceedings under title 8 are confidential. However, a grievant may be advised that a Limited Practice Officer against whom the grievant has complained is subject to disability proceedings. The following information is public:

(1) that a Limited Practice Officer has been transferred to disability inactive status, or has been reinstated to active status; and

(2) that a disciplinary proceeding is deferred pending supplemental proceedings under title 8.

(c) Diversion Contracts. Diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, despite rule 3.1 (b)(1), unless admitted into evidence in a disciplinary proceeding following termination of the diversion contract for material breach. When a matter that has previously become public under rule 3.1(b) is diverted by a diversion contract, that contract and the supporting documents are confidential but the fact that the matter was diverted from discipline is public information.

ELPOC 3.4 RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

(a) Disclosure of Information. The grievant, respondent Limited Practice Officer, or any witness may disclose the existence of proceedings under these rules or any documents or correspondence the person received.

(b) Investigative Disclosure. The Board or clerk may disclose information as necessary to conduct the investigation or to keep a grievant advised of the status of a matter except as prohibited by rule 3.3(b), or 5.1 (c)(3), other court order, or other applicable law.

(c) Release Based upon Limited Practice Officer's Waiver. Upon a written waiver by a Limited Practice Officer, the Board may release the status of otherwise confidential disciplinary proceedings and provide copies of nonpublic information to any agency that a Limited Practice Officer authorizes to investigate the Limited Practice Officer's disciplinary record.

(d) Response to Inquiry or False or Misleading Statement.

(1) The Board, the Chair, the President, the Board of Governors, the Executive Director, or Chief Disciplinary Counsel, or the Director of Regulatory Services or a designee of any of them, may release otherwise confidential information:

(A) to respond to specific inquiries about matters that are in the public domain; or

(B) if necessary to correct a false or misleading public statement.

(2) A respondent must be given notice of a decision to release information under this section unless the Board, the Chair, the President, the Board of Governors, the Executive Director, or the Chief Disciplinary Counsel, or the Director of Regulatory Services finds that notice would jeopardize serious interests of any person or the public or compromise an ongoing investigation.

(e) Discretionary Release. The Chair, the Director of Regulatory Services, the Executive Director or the Chief Disciplinary Counsel may authorize the general or limited release of any confidential information obtained during an investigation when it appears necessary to protect the interests of clients or other persons, the public, or the integrity of the disciplinary process. A respondent must be given notice of a decision to release information under this section before its release unless the Chair, the Director of Regulatory Services, the Executive Director or the Chief Disciplinary Coun-

sel finds that notice would jeopardize serious interests of any person or the public, or that the delay caused by giving the respondent notice would be detrimental to the integrity of the disciplinary process.

(f) Cooperation with Criminal Authorities. Except as provided in rule 3.2(c), information or testimony may be released to authorities in any jurisdiction authorized to investigate alleged criminal activity.

g) Release to Practice of Law Board. Information obtained in an investigation relating to possible unauthorized practice of law may be released to the Practice of Law Board. Such information shall remain under the control of the Office of Disciplinary Counsel and the Practice of Law Board must treat it as confidential unless this title or the Executive Director authorizes release.

ELPOC 3.5 NOTICE OF DISCIPLINE

(a) Notice to Supreme Court. The Clerk must provide the Supreme Court with:

(1) a copy of any decision imposing a disciplinary sanction when that decision becomes final;

(2) a copy of any admonition, together with the order issuing the admonition, when the admonition is accepted or otherwise becomes final.

(b) Notices of Suspension, Revocation, or Disability Inactive Status. The Board must publish a notice of the revocation, suspension, or transfer to disability inactive status of a Limited Practice Officer on the Association website. For a transfer to disability inactive status, no reference may be made to the specific disability. The Board may adopt formal publishing policies from time to time as consistent with this rule.

ELPOC 3.6 MAINTENANCE OF RECORDS

(a) Permanent Records. In any matter in which a disciplinary sanction has been imposed, the public file and transcripts of the proceeding are permanent records. Related file materials, including investigative files, may be maintained in the clerk's or disciplinary counsel's discretion. Exhibits may be returned to the party supplying them, but copies should be retained where possible.

(b) Destruction of Files. In any matter in which a grievance or investigation has been dismissed without the imposition of a disciplinary sanction, whether following a hearing or otherwise, file materials relating to the matter may be destroyed three years after the dismissal first occurred, and must be destroyed at that time on the respondent Limited Practice Officer's request unless the files are being used in an ongoing investigation or unless other good cause exists for retention. However, file materials on a matter concluded with an admonition must be retained at least five years after the admonition was issued. If disciplinary counsel or the clerk opposes a request by a respondent for destruction of files under this rule, the Board rules on that request.

(c) Retention of Docket. If a file on a matter has been destroyed under section (b), the Board may retain a docket record of the matter for statistical purposes only. That docket record must not include the name or other identification of the respondent.

(d) Deceased Limited Practice Officers. Records and files relating to a deceased Limited Practice Officer, including permanent records, may be destroyed at any time in the clerk's discretion.

TITLE 4 - GENERAL PROCEDURAL RULES

ELPOC 4.1 SERVICE OF PAPERS

(a) Service Required. Every pleading, every paper relating to discovery, every written request or motion other than one which may be heard ex parte, and every similar paper or document issued by the Board, the clerk, disciplinary counsel or the respondent Limited Practice Officer under these rules must be served on the opposing party. If a hearing is pending and a hearing officer has been assigned, except for discovery, the party also must serve a copy on the hearing officer.

(b) Methods of Service.

(1) *Service by Mail*.

(A) Unless personal service is required or these rules specifically provide otherwise, service may be accomplished by postage prepaid mail. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.

(B) Except as provided below, service by mail must be by certified or registered mail, return receipt requested. Service may be by first class mail if:

(i) the parties so agree;

(ii) the document is a notice of dismissal by the clerk or disciplinary counsel, a notice regarding deferral under rule 5.3(b), or a request for review of any of these notices;

(iii) one or more properly made certified mailings is returned as unclaimed; or

(iv) service is on a hearing officer.

(C) The address for service by mail is as follows:

(i) for the respondent, or his or her attorney of record, the address in the answer, a notice of appearance, or any subsequent document filed by the respondent or his or her attorney; or, in the absence of an answer, the respondent's address on file with the Association;

(ii) for the Board, the clerk or disciplinary counsel, at the address of the Association or other address that disciplinary counsel requests.

(2) *Service by Delivery.* If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

(3) *Personal Service*. Personal service on a respondent is accomplished as follows:

(A) if the respondent is found in Washington State, by personal service in the manner required for personal service of a summons in a civil action in the superior court;

(B) if the respondent cannot be found in Washington State, service may be made either by:

(i) leaving a copy at the respondent's place of usual abode in Washington State with a person of suitable age and discretion then resident therein; or

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at his or her last known place of abode, office address maintained for the practice as a Limited Practice Officer, post office address, or address on file with the Association.

(C) if the respondent is found outside of Washington State, then by the methods of service described in (A) or (B) above.

(c) Service Where Question of Mental Competence. If a guardian or guardian ad litem has been appointed for a respondent who has been judicially declared to be of unsound mind or incapable of conducting his or her own affairs, service under sections (a) and (b) above must also be made on the guardian or guardian ad litem.

(d) Proof of Service. If personal service is required, proof of service may be made by affidavit of service, sheriff's return of service, or a signed acknowledgment of service. In other cases, proof of service may also be made by certificate of a lawyer similar to that allowed by CR 5 (b)(2)(B), which certificate must state the form of mail used. Proof of service in all cases must be filed but need not be served on the opposing party.

ELPOC 4.2 FILING; ORDERS

(a) Filing Originals. Except in matters before the Supreme Court, the original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the Clerk. Filing may be made by first class mail and is deemed accomplished on the date of mailing. Filing of papers for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

(b) Filing and Service of Orders. Any written order, decision, or ruling, except an order of the Supreme Court or an informal ruling issued under rule 10.8(e), must be filed with the Clerk, and the Clerk serves it on the respondent Limited Practice Officer and disciplinary counsel.

ELPOC 4.3 PAPERS

All pleadings or other papers must be typewritten or printed, double spaced, on good quality 8 1/2 by 11-inch paper. The use of letter-size copies of exhibits is encouraged if it does not impair legibility.

ELPOC 4.4 COMPUTATION OF TIME

CR 6 (a) and (e) govern the computation of time under these rules.

ELPOC 4.5 STIPULATION TO EXTENSION OR REDUCTION OF TIME

Except for notices of appeal or matters pending before the Supreme Court, the respondent Limited Practice Officer and the Board, the clerk or disciplinary counsel may stipulate in any proceeding to extension or reduction of the time requirements.

ELPOC 4.6 ENFORCEMENT OF SUBPOENAS

(a) Authority. To enforce subpoenas issued under these rules, the Supreme Court delegates contempt authority to the Superior Courts as necessary for the Superior Courts to act under this rule.

(b) Procedure.

(1) If a person fails to obey a subpoena, or obeys the subpoena but refuses to testify or produce documents when requested, disciplinary counsel, the respondent Limited Practice Officer or the person issuing the subpoena may petition the Superior Court of the county where the hearing is being conducted, where the subpoenaed person resides or is found, or where the subpoenaed documents are located, for enforcement of the subpoena. The petition must:

(A) be accompanied by a copy of the subpoena and proof of service;

(B) state the specific manner of the lack of compliance; and

(C) request an order compelling compliance.

(2) Upon the filing of the petition, the Superior Court enters an order directing the person to appear before it at a specified time and place to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the Superior Court's show cause order must be served on the person.

(3) At the show cause hearing, if it appears to the Superior Court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the Superior Court enters an order requiring the person to appear at a specified time and place and testify or produce the required documents. On failing to obey this order, the person is dealt with as for contempt of court.

TITLE 5 - GRIEVANCE INVESTIGATIONS AND DISPOSITION

ELPOC 5.1 GRIEVANTS

(a) Filing of Grievance. Any person or entity may file a grievance against a LPO licensed in this state.

(b) Consent to Disclosure. By filing a grievance, the grievant consents to disclosure of the content of the grievance to the respondent LPO or to any other person contacted during the investigation of the grievance, or to any person under rules 3.1 - 3.4, unless a protective order is issued under rule 3.2(c) or the grievance was filed under rule 5.2. By filing a grievance, the grievant also agrees that the respondent may disclose to the Clerk or disciplinary counsel investigating the grievance any information relevant to the investigation, unless a protective order is issued under rule 3.2(c).

(c) Grievant Rights. A grievant has the following rights:

(1) to be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;

(2) to have a reasonable opportunity to speak with the person assigned to the grievance, by telephone or in person, about the substance of the grievance or its status;

(3) to receive a copy of any response submitted by the respondent, except:

(A) if the response contains information of a personal and private nature about the respondent; or

(B) if the discipline committee determines that the interests of justice would be better served by not releasing the response;

(4) to submit additional supplemental written information or documentation at any time;

(5) to attend any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(c);

(6) to provide relevant testimony at any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(c);

(7) to be notified of any proposed decision to refer the respondent to diversion and to be given a reasonable opportu-

nity to submit to the Clerk or disciplinary counsel a written comment thereon;

(8) to be advised of the disposition of the grievance; and

(9) to request reconsideration of a dismissal of the grievance as provided in rule 5.6(b).

(d) Grievant Duties. A grievant must do the following, or the grievance may be dismissed:

(1) give the person assigned to the grievance documents or other evidence in his or her possession, and witnesses' names and addresses;

(2) assist in securing relevant evidence; and

(3) appear and testify at any hearing resulting from the grievance.

ELPOC 5.2 CONFIDENTIAL SOURCES

If a person files a grievance or provides information to the Clerk, disciplinary counsel or the Board about a limited practice officer's possible misconduct or disability, and asks to be treated as a confidential source, an investigation may be conducted in the Board's name. The confidential source has neither the rights nor the duties of a grievant. Unless otherwise ordered, the person's identity may not be disclosed, either during the investigation or in subsequent formal proceedings. If the respondent requests disclosure of the person's identity, the Chair, the chair of the discipline committee, or a hearing officer before whom a matter is pending examines disciplinary counsel and any requested documents or file materials in camera without the presence of the respondent or respondent's counsel and may order disciplinary counsel or the clerk to reveal the identity to the respondent if doing so appears necessary for the respondent to conduct a proper defense in the proceeding.

ELPOC 5.3 INVESTIGATION OF GRIEVANCE

(a) Review and Investigation. The Chair of the Discipline Committee or the Chair's designee must review and may refer for investigation by the Clerk or disciplinary counsel any alleged or apparent misconduct by a LPO and any alleged or apparent incapacity of a LPO to practice as a LPO whether the Chair of the Discipline Committee learns of the misconduct by grievance or otherwise. If there is no grievant, the Chair of the Discipline Committee may refer the matter to the Board with a request that the Board open a grievance in the Board's name.

(b) Deferral.

(1) An investigation into alleged acts of misconduct by a LPO may be deferred by the chair of the discipline committee or disciplinary counsel, with the approval of the Chair of the Discipline Committee:

(A) if it appears that the allegations are related to pending civil or criminal litigation;

(B) if it appears that the respondent LPO is physically or mentally unable to respond to the investigation; or

(C) for other good cause, if it appears that the deferral will not endanger the public.

(2) The Clerk or Disciplinary counsel must inform the grievant and respondent of a decision to defer or a denial of a request to defer and of the procedure for requesting review. A grievant or respondent may request review of a decision on deferral. If review is requested, the Clerk or disciplinary counsel refers the matter to the Discipline committee for reconsideration of the decision on deferral. To request review, the grievant or respondent must deliver or deposit in the mail a request for review to the Board no later than 45 days after the Clerk mails the notice regarding deferral.

(c) Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance: the unwillingness of a grievant to continue the grievance, the withdrawal of the grievance, a compromise between the grievant and the respondent, or restitution by the respondent.

(d) Duty To Furnish Prompt Response. Any LPO must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation. Upon inquiry or request, any LPO must:

(1) furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

(2) permit inspection and copying of the LPO's business records, files, and accounts;

(3) furnish copies of requested records, files, and accounts;

(4) furnish written releases or authorizations if needed to obtain documents or information from third parties; and

(5) comply with discovery conducted under rule 5.5.

(e) Failure To Cooperate.

(1) *Noncooperation Deposition.* If a LPO has not complied with any request made under section (d) or rule 2.11(d) for more than 30 days, the Clerk or disciplinary counsel may notify the LPO that failure to comply within ten days may result in the LPO deposition or subject the LPO to interim suspension under rule 7.2. Ten days after this notice, disciplinary counsel may serve the LPO with a subpoena for a deposition. Any deposition conducted after the ten-day period and necessitated by the LPO's continued failure to cooperate may be conducted at any place in Washington State.

(2) *Costs and Expenses*.

(A) Regardless of the underlying grievance's ultimate disposition, a LPO who has been served with a subpoena under this rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, and the cost of transcribing the deposition, if ordered by disciplinary counsel. In addition, a LPO who has been served with a subpoena for a deposition under this rule is liable for a reasonable attorney fee of $500.

(B) The procedure for assessing costs and expenses is as follows:

(i) Disciplinary counsel applies to the discipline committee by itemizing the cost and expenses and stating the reasons for the deposition.

(ii) The LPO has ten days to respond to disciplinary counsel's application.

(iii) The discipline committee by order assesses appropriate costs and expenses.

(iv) Rule 13.9(e) governs Board review of the discipline committee order.

(3) *Grounds for Discipline.* A LPO's failure to cooperate fully and promptly with an investigation as required by section (d) or rule 2.11(d) is also grounds for discipline.

ELPOC 5.4 PRIVILEGES

Privilege Against Self-Incrimination. A LPO's duty to cooperate is subject to the LPO's privilege against self-incrimination, where applicable.

ELPOC 5.5 DISCOVERY BEFORE FORMAL COMPLAINT

(a) Procedure. Before filing a formal complaint, disciplinary counsel or the clerk may depose either a respondent LPO or a witness, or issue requests for admission to the respondent. To the extent possible, CR 30 or 31 applies to depositions under this rule. CR 36 governs requests for admission.

(b) Subpoenas for Depositions. Disciplinary counsel or the clerk may issue subpoenas to compel the respondent's or a witness's attendance, or the production of books, documents, or other evidence, at a deposition. Subpoenas must be served as in civil cases in the superior court and may be enforced under rule 4.6.

(c) Cooperation. Every LPO must promptly respond to discovery requests from disciplinary counsel or the clerk.

ELPOC 5.6 DISPOSITION OF GRIEVANCE

(a) Dismissal. The Chair of the discipline committee or Disciplinary counsel with the approval of the chair of the discipline committee may dismiss grievances with or without investigation. On dismissal, the Clerk or disciplinary counsel must notify the grievant of the procedure for review in this rule.

(b) Review of Dismissal. A grievant may request review of dismissal of the grievance by delivering or depositing in the mail a request for review to the Clerk no later than 45 days after the Clerk mails the notice of dismissal. Mailing requires postage prepaid first class mail. If review is requested, the chair of the discipline committee may either reopen the matter for investigation or refer it to the discipline committee.

(c) Report in Other Cases. The clerk or disciplinary counsel must report to the discipline committee the results of investigations except those dismissed or diverted.

(d) Authority on Review. In reviewing grievances under this rule, the discipline committee may:

(1) affirm the dismissal;

(2) issue an advisory letter under rule 5.7;

(3) issue an admonition under rule 13.5;

(4) order a hearing on the alleged misconduct; or

(5) order further investigation as may appear appropriate.

ELPOC 5.7 ADVISORY LETTER

An advisory letter may be issued when a hearing does not appear warranted but it appears appropriate to caution a respondent LPO concerning his or her conduct. An advisory letter may be issued by the discipline committee but may not be issued when a grievance is dismissed following a hearing. An advisory letter does not constitute a finding of misconduct, is not a sanction, is not disciplinary action, and is not public information.

TITLE 6—DIVERSION

ELPOC 6.1 REFERRAL TO DIVERSION

In a matter involving less serious misconduct as defined in rule 6.2, before filing a formal complaint, disciplinary counsel or the clerk may refer a respondent LPO to diversion. Diversion may include

- arbitration;
- mediation;
- psychological and behavioral counseling;
- monitoring;
- restitution;
- continuing education programs; or
- any other program or corrective course of action agreed to by disciplinary counsel and respondent to address respondent's misconduct.

Disciplinary counsel or the clerk may negotiate and execute diversion contracts, monitor and determine compliance with the terms of diversion contracts, and determine fulfillment or any material breach of diversion contracts, subject to review under rule 6.9.

ELPOC 6.2 LESS SERIOUS MISCONDUCT

Less serious misconduct is conduct not warranting a sanction restricting the respondent LPO's license to practice as a Limited Practice Officer. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

(A) the misconduct involves the misappropriation of funds;

(B) the misconduct results in or is likely to result in substantial prejudice to a third person, absent adequate provisions for restitution;

(C) the respondent has been sanctioned in the last three years;

(D) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned or admonished in the last five years;

(E) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

(F) the misconduct constitutes a "serious crime" as defined in rule 7.1(a); or

(G) the misconduct is part of a pattern of similar misconduct.

ELPOC 6.3 FACTORS FOR DIVERSION

Disciplinary counsel or the clerk considers the following factors in determining whether to refer a respondent LPO to diversion:

(A) whether participation in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of LPO discipline;

(B) whether aggravating or mitigating factors exist; and

(C) whether diversion was already tried.

ELPOC 6.4 NOTICE TO GRIEVANT

As provided in rule 5.1 (c)(7), disciplinary counsel or the clerk must notify the grievant, if any, of the proposed decision to refer the respondent LPO to diversion, and must give the grievant a reasonable opportunity to submit written comments. The grievant must be notified when the grievance is diverted and when the grievance is dismissed on completion of diversion. Such decisions to divert or dismiss are not appealable.

ELPOC 6.5 DIVERSION CONTRACT

(a) Negotiation. Disciplinary counsel or the clerk and the respondent LPO negotiate a diversion contract, the terms of which are tailored to the individual circumstances.

(b) Required Terms. A diversion contract must:

(1) be signed by the respondent and disciplinary counsel or the clerk;

(2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a practice

monitor and/or a recovery monitor and the monitor's responsibilities. If a recovery monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the recovery monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;

(3) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel or the clerk;

(4) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the grievances to be deferred; and

(5) include a specific acknowledgment that a material violation of a term of the contract renders the respondent's participation in diversion voidable by disciplinary counsel or the clerk.

(c) Amendment. The contract may be amended on agreement of the respondent and disciplinary counsel or the clerk.

ELPOC 6.6 AFFIDAVIT SUPPORTING DIVERSION

A diversion contract must be supported by the respondent LPO's affidavit or declaration as approved by disciplinary counsel or the clerk setting forth the respondent's misconduct related to the grievance or grievances to be deferred under this title. If the diversion contract is terminated due to a material breach, the affidavit or declaration is admissible into evidence in any ensuing disciplinary proceeding. Unless so admitted, the affidavit or declaration is confidential and must not be provided to the grievant or any other individual outside the Clerk and the Office of Disciplinary Counsel, but may be provided to the discipline committee or the Board considering the grievance.

ELPOC 6.7 EFFECT OF NON-PARTICIPATION IN DIVERSION

The respondent LPO has the right to decline the offer to participate in diversion. If the respondent chooses not to participate, the matter proceeds as though no referral to diversion had been made.

ELPOC 6.8 STATUS OF GRIEVANCE

After a diversion contract is executed by the respondent LPO and disciplinary counsel or the clerk, the disciplinary grievance is deferred pending successful completion of the contract.

ELPOC 6.9 TERMINATION OF DIVERSION

(a) Fulfillment of the Contract. The contract terminates when the respondent LPO has fulfilled the terms of the contract and gives disciplinary counsel or the clerk an affidavit or declaration demonstrating fulfillment. Upon receipt of this affidavit or declaration, disciplinary counsel or the clerk must acknowledge receipt and either dismiss any grievances deferred pending successful completion of the contract or notify the respondent that fulfillment of the contract is disputed. The grievant cannot appeal the dismissal. Successful completion of the contract is a bar to any further disciplinary proceedings based on the same allegations.

(b) Material Breach. A material breach of the contract is cause for termination of the diversion. After a material breach, disciplinary counsel or the clerk must notify the respondent of termination from diversion and disciplinary proceedings may be instituted, resumed, or reinstated.

(c) Review by the Chair. The Chair of the discipline committee may review disputes about fulfillment or material breach of the terms of the contract on the request of the respondent, the clerk or disciplinary counsel. The request must be filed with the Board within 15 days of notice to the respondent of the determination for which review is sought. Determinations by the Chair under this section are not subject to further review and are not reviewable in any proceeding.

TITLE 7 - INTERIM PROCEDURES

ELPOC 7.1 INTERIM SUSPENSION FOR CONVICTION OF A CRIME

(a) Definitions.

(1) "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(2) "Serious crime" includes any:

(A) felony;

(B) crime a necessary element of which, as determined by its statutory or common law definition, includes any of the following:

- interference with the administration of justice;
- false swearing;
- misrepresentation;
- fraud;
- deceit;
- bribery;
- extortion;
- misappropriation; or
- theft; or

(C) attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".

(b) Procedure upon Conviction.

(1) If a LPO is convicted of a felony, disciplinary counsel must file a formal complaint regarding the conviction. Disciplinary counsel must also petition the Supreme Court for an order suspending the respondent LPO during the pendency of disciplinary proceedings. The petition for suspension may be filed before the formal complaint.

(2) If a LPO is convicted of a crime that is not a felony but that reflects directly on the LPO's honesty, trustworthiness or fitness as a LPO in other respects, disciplinary counsel may refer the matter to the discipline committee to determine whether the crime is a serious crime. If so, disciplinary counsel proceeds in the same manner as for a felony.

(3) If a LPO is convicted of a crime that is neither a felony nor a serious crime, the discipline committee considers a report of the conviction in the same manner as any other report of possible misconduct by a LPO.

(c) Petition. A petition to the Supreme Court for suspension under this rule must include a copy of any available document establishing the fact of conviction. If the crime is not a felony, the petition must also include a copy of the discipline committee order finding that the crime is a serious crime. Disciplinary counsel may also include additional facts, statements, arguments, affidavits, and documents in the

petition. A copy of the petition must be personally served on the respondent, and proof of service filed with the Court.

(d) Immediate Interim Suspension. Upon the filing of a petition for suspension under this rule, the Court determines whether the crime constitutes a serious crime as defined in section (a).

(1) If the crime is a felony, the Court must enter an order immediately suspending the respondent's Limited Practice Officer license.

(2) If the crime is not a felony, the Court conducts a show cause proceeding under rule 7.2(b) to determine if the crime is a serious crime. If the Court determines the crime is a serious crime, the Court must enter an order immediately suspending the respondent's Limited Practice Officer license. If the Court determines that the crime is not a serious crime, upon being so advised, the Association processes the matter as it would any other grievance.

(3) If suspended, the respondent must comply with title 14.

(4) Suspension under this rule occurs:

(A) whether the conviction was under a law of this state, any other state, or the United States;

(B) whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and

(C) regardless of the pendency of an appeal.

(e) Duration of Suspension. A suspension under this rule must terminate when the disciplinary proceeding is fully completed, after appeal or otherwise.

(f) Termination of Suspension.

(1) *Petition and Response.* A respondent may at any time petition the Board to recommend termination of an interim suspension. Disciplinary counsel may file a response to the petition. The Chair may direct disciplinary counsel to investigate as appears appropriate.

(2) *Board Recommendation.* If either party requests, the Board must hear oral argument on the petition at a time and place and under terms as the Chair directs. The Board may recommend termination of a suspension only if the Board makes an affirmative finding of good cause to do so. There is no right of appeal from a Board decision declining to recommend termination of a suspension.

(3) *Court Action.* The Court determines the procedure for its consideration of a recommendation to terminate a suspension.

(g) Notice of Dismissal to Supreme Court. If disciplinary counsel has filed a petition for suspension under this rule, and the disciplinary proceedings based on the criminal conviction are dismissed, the Supreme Court must be provided a copy of the decision granting dismissal whether or not the respondent is suspended at the time of dismissal.

ELPOC 7.2 INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

(a) Types of Interim Suspension.

(1) *Discipline Committee Finding of Risk to Public.* Disciplinary counsel may petition the Supreme Court for an order suspending the respondent LPO during the pendency of any proceeding under these rules if:

(A) it appears that a respondent's continued practice as a LPO poses a substantial threat of serious harm to the public; and

(B) the discipline committee recommends an interim suspension.

(2) *Board Recommendation for Revocation.* When the Board enters a decision recommending revocation, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. The respondent must be suspended absent an affirmative showing that the respondent's continued practice as a LPO will not be detrimental to the the administration of justice or be contrary to the public interest. If the Board's decision is not appealed and becomes final, the petition need not be filed, or if filed may be withdrawn.

(3) *Failure To Cooperate with Investigation.* When any LPO fails without good cause to comply with a request under rule 5.3(e) for information or documents, or with a subpoena issued under rule 5.3(e), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the LPO pending compliance with the request or subpoena. If the LPO complies with the request or subpoena, the LPO may petition the Court to terminate the suspension on terms the Court deems appropriate.

(b) Procedure.

(1) *Petition.* A petition to the Court under this rule must set forth the acts of the LPO constituting grounds for suspension, and if filed under subsection (a)(2) must include a copy of the Board's decision. The petition may be supported by documents or affidavits. The Board must serve the petition by mail on the day of filing. In addition, a copy of the petition must be personally served on the LPO no later than the date of service of the show cause order.

(2) *Show Cause Order.* Upon filing of the petition, the Chief Justice orders the LPO to appear before the Court on a date set by the Chief Justice, and to show cause why the petition for suspension should not be granted. Disciplinary counsel must have a copy of the order to show cause personally served on the LPO at least ten days before the scheduled show cause hearing. Subsection (b)(5) notification requirements must be included in the show cause order.

(3) *Answer to Petition*. The LPO may answer the petition. An answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the show cause hearing.

(4) *Filing of Answer.* A copy of any answer must be filed with both the Court and disciplinary counsel by the date specified in the show cause order, which will be at least five days before the scheduled show cause hearing.

(5) *Notification*. The LPO must inform the court no less than 7 days prior to the show cause hearing whether the LPO will appear for the show cause hearing, or the hearing will be stricken and the Court will decide the matter without oral argument.

(6) *Application of Other Rules.* If the *Court* enters an order suspending the LPO, the rules relating to suspended LPOs, including title 14, apply.

ELPOC 7.3 AUTOMATIC SUSPENSION WHEN RESPONDENT ASSERTING INCAPACITY

When a respondent LPO asserts incapacity to conduct a proper defense to disciplinary proceedings, upon receipt of appropriate documentation of the assertion, the respondent

must be suspended on an interim basis by the Supreme Court pending the conclusion of the disability proceedings. However, if the hearing officer in the supplemental proceeding files a decision that the respondent is not incapacitated, on petition of either party, the Court may terminate the interim suspension.

ELPOC 7.4 STIPULATION TO INTERIM SUSPENSION

At any time a respondent LPO and disciplinary counsel may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a serious crime, or a substantial threat of serious harm to the public. A stipulation must state the factual basis for the stipulation and be submitted directly to the Supreme Court for expedited consideration. Stipulations under this rule are public upon filing with the Court, but the Court may order that supporting materials are confidential. Either party may petition the Court to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Court may terminate the suspension.

ELPOC 7.5 INTERIM SUSPENSIONS EXPEDITED

(a) Expedited Review. Petitions seeking interim suspension under this title receive an expedited hearing, ordinarily no later than 14 days from issuance of an order to show cause.

(b) Procedure During Court Recess. When a petition seeking interim suspension under this title is filed during a recess of the Supreme Court, the Chief Justice, the Acting Chief Justice, or the senior Justice under SAR 10, subject to review by the full Court on motion for reconsideration, may rule on the motion for interim suspension.

ELPOC 7.6 EFFECTIVE DATE OF INTERIM SUSPENSIONS

Interim suspensions become effective on the date of the Supreme Court's order unless the order provides otherwise.

TITLE 8 - DISABILITY PROCEEDINGS

ELPOC 8.1 ACTION ON ADJUDICATION OF INCOMPETENCY

(a) Grounds. The Board must automatically transfer a lawyer LPO from active to disability inactive membership status upon receipt of a certified copy of the judgment, order, or other appropriate document demonstrating that the lawyer LPO:

(1) was found to be incapable of assisting in his or her own defense in a criminal action;

(2) was acquitted of a crime based on insanity;

(3) had a guardian (but not a limited guardian) appointed for his or her person or estate on a finding of incompetency; or

(b) Notice to LPO. The Board must forthwith notify the disabled LPO and his or her guardian, if one has been appointed, of the transfer to disability inactive status. The Association must also notify the Supreme Court of the transfer and provide a copy of the judgment, order, or other appropriate document on which the transfer was based.

ELPOC 8.2 DETERMINATION OF INCAPACITY TO PRACTICE AS A LPO

(a) Discipline Committee May Order Hearing. The clerk or disciplinary counsel reports to the discipline committee on investigations into an active, suspended, or inactive respondent LPO's mental or physical capacity to practice as an LPO. The committee orders a hearing if it appears there is reasonable cause to believe that the respondent does not have the mental or physical capacity to practice as an LPO. In other cases, the committee may direct further investigation as appears appropriate or dismiss the matter.

(b) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(c) Procedure.

(1) *Applicable Rules.* Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) *Appointment of Counsel.* If counsel for the respondent does not appear within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent.

(3) *Health Records.* After a review committee orders a hearing under this rule, disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the inquiry, subject to a motion to the hearing officer, or if no hearing officer has been appointed, to the chief hearing officer, to limit the scope of the requested releases or authorizations for good cause.

(4) *Examination*. Upon motion, the hearing officer, or if no hearing officer has been appointed, the chief hearing officer as defined in ELC 2.5(f), may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in determining the respondent's capacity to practice as a LPO, Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(5) *Hearing Officer Recommendation.* If the hearing officer or panel finds that the respondent does not have the mental or physical capacity to practice as a LPO, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status.

(6) *Appeal Procedure.* The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(7) *Transfer Following Board Review.* If, after review of the decision of the hearing officer or panel, the Board finds that the respondent does not have the mental or physical capacity to practice as a LPO, it must enter an order immediately transferring the respondent to disability inactive status. The transfer is effective upon service of the order under rule 4.1.

(d) Interim Suspension.

(1) When the discipline committee orders a hearing on the capacity of a respondent to practice as a LPO, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a) unless the respondent is already suspended on an interim basis.

(2) Even if the Court previously denied a petition for interim suspension under subsection (d)(1), disciplinary counsel may petition the Court for the interim suspension of a respondent under rule 7.2 (a)(3) if the respondent fails:

(A) to appear for an independent examination under this rule;

(B) to waive health care provider-patient privilege as required by this rule; or

(C) to appear at a hearing under this rule.

(e) Termination of Interim Suspension. If the hearing officer or panel files a decision recommending that a respondent placed on interim suspension under this rule not be transferred to disability inactive status, upon either party's petition, the Court may terminate the interim suspension.

ELPOC 8.3 DISABILITY PROCEEDINGS DURING THE COURSE OF DISCIPLINARY PROCEEDINGS

(a) Supplemental Proceedings on Capacity To Defend. A hearing officer or hearing panel, or chief hearing officer if no hearing officer has been appointed, must order a supplemental proceeding on the respondent LPO's capacity to defend the disciplinary proceedings if the respondent asserts, or there is reasonable cause to believe, that the respondent is incapable of properly defending the disciplinary proceeding because of mental or physical incapacity.

(b) Purpose of Supplemental Proceedings. In a supplemental proceeding, the hearing officer or panel determines if the respondent:

(1) is incapable of defending himself or herself in the disciplinary proceedings because of mental or physical incapacity;

(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or

(3) is currently unable to practice as a LPO because of mental or physical incapacity.

(c) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(d) Procedure for Supplemental Proceedings.

(1) *Applicable Rules.* Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) *Deferral of Disciplinary Proceedings.* The disciplinary proceedings are deferred pending the outcome of the supplemental proceeding.

(3) *Appointment of Counsel.* If counsel for the respondent does not appear within 20 days of notice to the respondent of the issues to be considered in a supplemental proceeding under this rule, or within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent in the supplemental proceedings.

(4) *Health Records.* Disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the determination under section (b), subject to a motion to the hearing officer to limit the scope of the requested releases or authorizations for good cause. If the respondent asserted incapacity, there is a rebuttable presumption that good cause does not exist.

(5) *Examination.* Upon motion, the hearing officer may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in the determinations to be made under section (b). Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(6) *Failure To Appear or Cooperate.* If the respondent fails to appear for an independent examination, fails to waive health care provider-patient privilege as required in these rules, or fails to appear at the hearing, the following procedures apply:

(A) If the Association has the burden of proof, the hearing officer must hold a hearing and, if presented with sufficient evidence to determine incapacity, order the respondent transferred to disability inactive status. If there is insufficient evidence to determine incapacity, the hearing officer must enter an order terminating the supplemental proceedings and reinstating the disciplinary proceedings. A respondent who does not appear at the hearing may move to vacate the order of transfer under rule 10.6(c).

(B) If the respondent has the burden of proof, the hearing officer must enter an order terminating the supplemental proceedings and resuming the disciplinary proceedings.

(7) *Hearing Officer Decision*.

(A) Capacity To Defend and practice as a LPO. If the hearing officer or panel finds that the respondent is capable of defending himself or herself and has the mental and physical capacity to practice as a LPO, the disciplinary proceedings resume.

(B) Capacity To Defend with Counsel. If the hearing officer or panel finds that the respondent is not capable of defending himself or herself in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint a member of the Association as counsel for the respondent in the disciplinary proceeding.

(C) Finding of Incapacity. If the hearing officer or panel finds that the respondent either does not have the mental or physical capacity to practice as a LPO, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status. The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(8) *Transfer Following Board Review*.

(A) The Board must enter an order immediately transferring the respondent to disability inactive status if after review of a hearing officer's or panel's recommendation of transfer to disability inactive status, the Board finds that the respondent:

(i) does not have the mental or physical capacity to practice as a LPO; or

(ii) is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity.

(B) The transfer is effective upon service of the order on the respondent under rule 4.1.

(e) Interim Suspension. When supplemental proceedings have been ordered, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under

rule 7.2 (a)(1) or seek automatic suspension under rule 7.3 unless the respondent is already suspended on an interim basis.

ELPOC 8.4 APPEAL OF TRANSFER TO DISABILITY INACTIVE STATUS

The respondent LPO may appeal an order of transfer to disability inactive status by filing a request for the Court to review the record and order in the same manner as review by the court under rule 12.1. The Board's order remains in effect, regardless of the pendency of an appeal, unless and until reversed by the Supreme Court.

ELPOC 8.5 STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS

(a) Requirements. At any time a respondent LPO and disciplinary counsel may stipulate to the transfer of the respondent to disability inactive status under this title. The respondent and disciplinary counsel must sign the stipulation.

(b) Form. The stipulation must:

(1) state with particularity the nature of the respondent's incapacity to practice as a LPO and the nature of any pending disciplinary proceedings that will be deferred as a result of the respondent's transfer to disability inactive status;

(2) state that it is not binding on the Association as a statement of all existing facts relating to the professional conduct of the respondent and that any additional existing facts may be proved in a subsequent disciplinary proceeding; and

(3) fix the amount of costs and expenses to be paid by the respondent.

(c) Approval. The stipulation must be presented to the Board. The Board reviews the stipulation based solely on the record agreed to by the respondent and disciplinary counsel. The Board may either approve the stipulation or reject it. Upon approval, the transfer to disability inactive status is not subject to further review.

(d) Stipulation Not Approved. If the stipulation is rejected by the Board, the stipulation has no force or effect and neither it nor the fact of its execution is admissible in any pending or subsequent disciplinary proceeding or in any civil or criminal action.

ELPOC 8.6 COSTS IN DISABILITY PROCEEDINGS

When reviewing a matter under this title, the Board may authorize disciplinary counsel to seek assessment of the costs and expenses against the respondent LPO. If the Board authorizes, disciplinary counsel may file a statement of costs within 20 days of service of the Board's order. Rule 13.9 governs assessment of these costs and expenses. The respondent LPO is not required to pay the costs and expenses until 90 days after reinstatement to active status, or as otherwise approved by the Board.

ELPOC 8.7 BURDEN AND STANDARD OF PROOF

In proceedings under rules 8.2 or 8.3, the party asserting or alleging the incapacity has the burden of establishing it by a preponderance of the evidence. If the issue of incapacity is raised by a hearing officer or panel, the Association has the burden of proof.

ELPOC 8.8 REINSTATEMENT TO ACTIVE STATUS

(a) Right of Petition and Burden. A respondent LPO transferred to disability inactive status may resume active status only by Board or Supreme Court order. Any respondent transferred to disability inactive status may petition the Board for transfer to active status. The respondent has the burden of showing that the disability has been removed.

(b) Petition. The petition for reinstatement must:

(1) state facts demonstrating that the disability has been removed;

(2) include the name and address of each psychiatrist, psychologist, physician, or other person and each hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status; and

(3) be filed with the Clerk and served on disciplinary counsel.

(c) Waiver of Privilege. The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status waives any privilege as to treatment of any medical, psychological, or psychiatric condition during the period of disability. The respondent must furnish, if requested by the Board or disciplinary counsel, written consent to each treatment provider to divulge information and records relating to the disability.

(d) Initial Review by Chair. The Chair reviews the petition and any response by disciplinary counsel and directs appropriate action to determine whether the disability has been removed, including investigation by disciplinary counsel or any other person or an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition.

(e) Board Review.

(1) The respondent must have a reasonable opportunity to review any reports of investigations or examinations ordered by the Chair and submit additional materials before the matter is submitted to the Board.

(2) On submission, the Board reviews the petition and any reports as expeditiously as possible and takes one or more of the following actions:

(A) grants the petition;

(B) directs additional action as the Board deems necessary to determine whether the disability has been removed;

(C) orders that a hearing be held before a hearing officer or panel under the procedural rules for disciplinary proceedings;

(D) directs the respondent to establish proof of competence and learning in the practice of a LPO, which may include successful completion of the LPO examination;

(E) denies the petition;

(F) directs the respondent to pay the costs of the reinstatement proceedings; or

(G) approves or rejects a stipulation to reinstatement between the respondent and disciplinary counsel.

(3) The petition may be denied without the respondent having an opportunity for a hearing before a hearing officer or panel only if the Board determines that a hearing is not necessary because:

(A) the respondent fails to state a prima facie case for reinstatement in the petition; or

(B) the petition does not indicate a material change of circumstance since a previous denial of a petition for reinstatement.

(f) Petition Granted. If the petition for reinstatement is granted, the Court immediately restores the respondent to the respondent's prior status. If a disciplinary proceeding has been deferred because of the disability transfer, the proceeding resumes upon reinstatement.

(g) Review by Supreme Court. If the petition for reinstatement is not granted, the respondent may appeal the Board's decision to the Supreme Court, by filing a request for the Court to review the record and order in the same manner as review by the court under rule 12.1 within 15 days of service of the Board's decision on the respondent. Title 12 applies to review under this section.

TITLE 9 - RESOLUTIONS WITHOUT HEARING

ELPOC 9.1 STIPULATIONS

(a) Requirements. Any disciplinary matter or proceeding may be resolved by a stipulation at any time. The stipulation must be signed by the respondent LPO and approved by disciplinary counsel or the clerk. The stipulation may impose terms and conditions of probation and contain any other appropriate provisions.

(b) Form. A stipulation must:

(1) provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Board or hearing officer to form an opinion as to the propriety of the proposed resolution, and, if approved, to make the stipulation useful in any subsequent disciplinary proceeding against the respondent;

(2) set forth the respondent's prior disciplinary record or its absence;

(3) state that the stipulation is not binding on the Association as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding; and

(4) fix the amount of costs and expenses to be paid by the respondent.

(c) Approval.

(1) *By Hearing Officer.* A hearing officer or panel may approve a stipulation disposing of a matter pending before the officer or panel, unless the stipulation requires the respondent's license suspension or revocation. This approval constitutes a final decision and is not subject to further review.

(2) *By Board.* All other stipulations must be presented to the Board. The Board reviews a stipulation based solely on the record agreed to by the respondent LPO and disciplinary counsel. All parties to the stipulation may jointly ask the Chair to permit them to address the Board regarding a stipulation. Such presentations are at the Chair's discretion. The Board may approve, conditionally approve, or reject a stipulation. Regardless of the provisions of rule 3.3(a), the Board may direct that information or documents considered in reviewing a stipulation be kept confidential.

(d) Conditional Approval. The Board may condition its approval of a stipulation on the agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the Board deems necessary to accomplish the purposes of LPO discipline. If the Board conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the Chair, all parties to the stipulation serve on the Clerk written consent to the conditional terms in the Board's order.

(e) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, all parties to the stipulation may serve on the Clerk a joint motion for reconsideration and may ask to address the Board on the motion.

(f) Stipulation Rejected. The Board's order rejecting a stipulation must state the reasons for the rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any disciplinary, civil, or criminal proceeding.

(g) Failure To Comply. A respondent's failure to comply with the terms of an approved stipulation may be grounds for discipline.

ELPOC 9.2 VOLUNTARY CANCELLATION IN LIEU OF REVOCATION

(a) Grounds. A respondent LPO who desires not to contest or defend against allegations of misconduct may, at any time before the answer in any disciplinary proceeding is due, voluntarily cancel his or her certification as a LPO in lieu of further disciplinary proceedings.

(b) Process. The respondent first notifies the clerk or disciplinary counsel that the respondent intends to submit a voluntary cancellation request and asks the clerk or disciplinary counsel to prepare a statement of alleged misconduct and to provide a declaration of costs. After receiving the statement and the declaration of costs, if any, the respondent may resign by submitting to disciplinary counsel a signed voluntary cancellation, sworn to or affirmed under oath and notarized, that:

(1) includes disciplinary counsel's statement of the alleged misconduct and either an admission of that misconduct or a statement that while not admitting the misconduct the respondent agrees that the Board could prove by a clear preponderance of the evidence that the respondent committed violations sufficient to result in the revocation of respondent's LPO certification;

(2) affirmatively acknowledges that the voluntary cancellation is permanent including the statement:

"I understand that my voluntary cancellation is permanent and that any future application by me for reinstatement as a limited practice officer is currently barred. If the Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by one whose certification has been revoked for ethical misconduct, and that, if I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this voluntary cancellation was based.";

(3) assures that the respondent will:

(A) notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license of the voluntary cancellation in lieu of revocation;

(B) seek to resign permanently from any such license; and

(C) provide disciplinary counsel with copies of any of these notifications and any responses;

(4) states that when applying for any employment or license the respondent agrees to disclose the voluntary can-

cellation in lieu of revocation in response to any question regarding disciplinary action or the status of the respondent's limited license to practice law;

(5) states that the respondent agrees to pay any restitution or additional costs and expenses ordered by the discipline committee, and attaches payment for costs as described in section (f) below, or states that the respondent will execute a confession of judgment or deed of trust as described in section (f); and

(6) states that when the voluntary cancellation becomes effective, the respondent will be subject to all restrictions that apply to a LPO whose certification has been revoked.

(c) Public Filing. Upon receipt of a voluntary cancellation meeting the requirements set forth above, and any executed confession of judgment or deed of trust required under section (f), disciplinary counsel promptly causes it to be filed with the Clerk as a public and permanent record of the Board.

(d) Effect. A voluntary cancellation under this rule is effective upon its filing with the Clerk. All disciplinary proceedings against the respondent terminate except disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances to create a record of the respondent's actions. The Association immediately notifies the Supreme Court of a voluntary cancellation under this rule and the respondent's name is forthwith stricken from the roll of limited practice officers. Upon filing of the voluntary cancellation, respondent must comply with the same duties under title 14 as a LPO whose license has been revoked and comply with all restrictions that apply to a LPO whose license has been revoked. Notice is given of the voluntary cancellation in lieu of revocation under rule 3.5.

(e) Voluntary Cancellation is Permanent. Voluntary cancellation under this rule is permanent. A respondent who has voluntarily cancelled under this rule will never be eligible to apply and will not be considered for admission to the practice of law nor will the respondent be eligible for admission or reinstatement for any limited practice of law.

(f) Costs and Expenses.

(A) If a respondent voluntarily cancels under this rule, the expenses under rule 13.9(c) are $1,000 for any proceedings for which an answer was not due when the respondent notified disciplinary counsel of the respondent's intent to voluntarily cancel under section (b). With the voluntary cancellation, the respondent must pay this $1,000 expense, plus all actual costs for which disciplinary counsel provides documentation, up to an additional $1,000. If the respondent demonstrates inability to pay these costs and expenses, instead of paying this amount, the respondent must execute, in disciplinary counsel's discretion, a confession of judgment or a deed of trust for that amount. Disciplinary counsel may file a claim under section (g) for costs not covered by the payment, confession of judgment, or deed of trust.

(B) If at the time respondent serves the notice of intent to voluntarily cancel, an additional proceeding is pending against the respondent for which an answer has been filed or is due, disciplinary counsel may also file a claim under section (g) for costs and expenses for that proceeding.

(g) Review of Costs, Expenses, and Restitution. Any claims for restitution or for costs and expenses not resolved by agreement between the clerk or disciplinary counsel and the respondent may be submitted at any time, including after the voluntary cancellation, to the discipline committee in writing for the determination of appropriate restitution or costs and expenses. The discipline committee's order is not subject to further review and is the final assessment of restitution or costs and expenses for the purposes of rule 13.9 and may be enforced as any other order for restitution or costs and expenses. The record before the discipline committee and the discipline committee's order is public information under rule 3.1(b).

TITLE 10 - HEARING PROCEDURES

ELPOC 10.1 GENERAL PROCEDURE

(a) Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated, apply directly. A party may not move for summary judgment, but either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding. Motions for judgment on the pleadings and motions to dismiss based upon the pleadings are available only to the extent permitted in rule 10.10.

(b) Meaning of Terms in Civil Rules. In applying the civil rules to proceedings under these rules, terms have the following meanings:

(1) "Court" or "judge" means the hearing officer or hearing panel or its chair, as appropriate; and

(2) "Parties" means the respondent LPO and disciplinary counsel.

(c) Hearing Officer Authority. In addition to the powers specifically provided in these rules, the hearing officer may make any ruling that appears necessary and appropriate to insure a fair and orderly proceeding.

ELPOC 10.2 HEARING OFFICER OR PANEL

(a) Assignment.

(1) *Hearing Officer.* The chief hearing officer, as defined in ELC 2.5(f), ordinarily assigns a single hearing officer, from those eligible under rule 2.5, to hear a matter ordered to hearing.

(2) *Hearing Panel.* On either party's motion, or when otherwise deemed advisable, the chief hearing officer may assign a hearing panel. In determining whether to assign a hearing panel, the chief hearing officer considers whether public interest in the proceeding or other considerations makes a panel advisable. When a panel is assigned, the chief hearing officer designates one member as panel chair. The chief hearing officer's ruling on assigning a hearing panel is not subject to interim review. The chief hearing officer makes an assignment to fill any hearing officer or panel member vacancy.

(b) Disqualification and Removal.

(1) *Removal Without Cause.* Either party may have an assigned hearing officer or hearing panel member removed, without establishing cause for the removal, by filing a written request with the chief hearing officer within ten days of service on the moving party of that officer or panel member's assignment. A party may only once request removal without cause in any proceeding.

(2) *Disqualification for Cause.* Either party may seek to disqualify any assigned hearing officer or hearing panel

member for good cause. A motion under this subsection must be filed promptly after the party knows, or in the exercise of due diligence should have known, of the basis for the disqualification.

(3) *Removal.* The chief hearing officer decides all requests for removal and disqualification motions, except the Chair decides a request to remove or disqualify the chief hearing officer. The decision of the chief hearing officer or Chair on a request for removal or a motion to disqualify is not subject to interim review. Upon removal or disqualification of an assigned hearing officer or hearing panel member, the chief hearing officer assigns a replacement.

ELPOC 10.3 COMMENCEMENT OF PROCEEDINGS

(a) Formal Complaint.

(1) *Filing.* After a matter is ordered to hearing, disciplinary counsel files a formal complaint with the Clerk.

(2) *Service.* After the formal complaint is filed, it must be personally served on the respondent LPO, with a notice to answer.

(3) *Content.* The formal complaint must state the respondent LPO's acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct. Disciplinary counsel must sign the formal complaint, but it need not be verified.

(4) *Prior Discipline.* Prior disciplinary action against the respondent may be described in a separate count of the formal complaint if the respondent is charged with conduct demonstrating unfitness to practice as a LPO.

(b) Filing Commences Proceedings. A disciplinary proceeding commences when the formal complaint is filed.

(c) Joinder. The body ordering a hearing on alleged misconduct or the hearing officer or panel may in its discretion consolidate for hearing two or more charges against the same respondent, or may join charges against two or more respondents in one formal complaint.

ELPOC 10.4 NOTICE TO ANSWER

(a) Content. The notice to answer must be substantially in the following form:

BEFORE THE LIMITED PRACTICE BOARD OF WASHINGTON STATE

In re	)	NOTICE TO ANSWER;
	)	NOTICE OF HEARING OFFICER [OR
	)	PANEL];
_____,	)	NOTICE OF DEFAULT PROCEDURE
Lawyer LPO,	)	

To: The above named LPO:

A formal complaint has been filed against you, a copy of which is served on you with this notice. You are notified that you *must* file your answer to the complaint *within 20 days of the date of service on you*, by filing the original of your answer with the Clerk to the Limited Practice Board care of the Washington State Bar Association, [insert address] and by serving one copy [on the hearing officer] [on each member of the hearing panel] if one has been assigned and one copy on disciplinary counsel at the address[es] given below. Failure to file an answer may result in the imposition of a disciplinary sanction against you and the entry of an order of default under rule 10.6 of the Rules for Enforcement of Limited Practice Officer Conduct.

Notice of default procedure: Your default may be entered for failure to file a written answer to this formal complaint within 20 days of service as required by rule 10.6 of the Rules for Enforcement of Limited Practice Officer Conduct. The entry of an order of default may result in the charges of misconduct in the formal complaint being admitted and discipline being imposed or recommended based on the admitted charges of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of default is vacated on motion timely made under rule 10.6(c) of the Rules for Enforcement of Limited Practice Officer Conduct. The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by rule 10.6 (b)(2).

The [hearing officer] [hearing panel] assigned to this proceeding is: [insert name, address, and telephone number of hearing officer, or name, address, and telephone number of each hearing panel member with an indication of the chair of the panel].

Dated this _____ day of _____, 20___.

WASHINGTON STATE BAR ASSOCIATION

By _____
Disciplinary Counsel, Bar No.
Address: _____
Telephone: _____
_____

(b) Notice When Hearing Officer or Panel Not Assigned. If no hearing officer or panel has been assigned when a formal complaint is served, disciplinary counsel serves the formal complaint and a notice to answer as in section (a), but without reference to the hearing officer or panel.

ELPOC 10.5 ANSWER

(a) Time to Answer. Within 20 days of service of the formal complaint and notice to answer, the respondent LPO must file and serve an answer. Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6. The filing of a motion to dismiss for failure to state a claim stays the time for filing an answer during the pendency of the motion.

(b) Content. The answer must contain:

(1) a specific denial or admission of each fact or claim asserted in the formal complaint in accordance with CR 8(b);

(2) a statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition; and

(3) an address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.

(c) Filing and Service. The answer must be filed and served under rules 4.1 and 4.2. If a hearing panel has been assigned to hear a matter, the respondent must serve each member with a copy of the answer.

ELPOC 10.6 DEFAULT PROCEEDINGS

(a) Entry of Default.

(1) *Timing.* If a respondent LPO, after being served with a notice to answer as provided in rule 10.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, disciplinary counsel may serve the respondent with a written motion for an order of default.

(2) *Motion.* Disciplinary counsel must serve the respondent with a written motion for an order of default and a copy of this rule at least five days before entry of the order of default. The motion for an order of default must include the following:

(A) the dates of filing and service of the notice to answer, formal complaint, and any amendments to the complaint; and

(B) disciplinary counsel's statement that the respondent has not timely filed an answer as required by rule 10.5 and that disciplinary counsel seeks an order of default under this rule.

(3) *Entry of Order of Default.* If the respondent fails to file a written answer with the Clerk within five days of service of the motion for entry of an order of default, the hearing officer, or if no hearing officer or panel has been assigned, the chief hearing officer, on proof of proper service of the motion, enters an order finding the respondent in default.

(4) *Effect of Order of Default.* Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the respondent may not participate further in the proceedings unless the order of default is vacated under this rule.

(b) Proceedings After Entry of an Order of Default.

(1) *Service.* The Clerk serves the order of default and a copy of this rule under rule 4.2(b).

(2) *No Further Notices.* After entry of an order of default, no further notices must be served on the respondent except for copies of the decisions of the hearing officer or hearing panel and the Board.

(3) *Disciplinary Proceeding.* Within 60 days of the filing of the order of default, the hearing officer must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer or panel, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. Disciplinary counsel may present additional evidence including, but not limited to, requests for admission under rule 10.11(b), and depositions, affidavits, and declarations regardless of the witness's availability.

(c) Setting Aside Default.

(1) *Motion To Vacate Order of Default.* A respondent may move to vacate the order of default and any decision of the hearing officer or panel or Board arising from the default on the following grounds:

(A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;

(B) erroneous proceedings against a respondent who was, at the time of the default, incapable of conducting a defense;

(C) newly discovered evidence that by due diligence could not have been previously discovered;

(D) fraud, misrepresentation, or other misconduct of an adverse party;

(E) the order of default is void;

(F) unavoidable casualty or misfortune preventing the respondent from defending; or

(G) any other reason justifying relief from the operation of the default.

(2) *Time.* The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the respondent's motion is based on allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

(3) *Burden of Proof.* The respondent bears the burden of proving the grounds for setting aside the default. If the respondent proves that the default was entered as a result of a disability which made the respondent incapable of conducting a defense, the default must be set aside.

(4) *Service and Contents of Motion.* The motion must be filed and served under rules 4.1 and 4.2 and be accompanied by a copy of respondent's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the respondent's asserted defenses and any facts that respondent asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

(A) the date on which the respondent first learned of the entry of the order of default;

(B) the grounds for setting aside the order of default; and

(C) an offer of proof of the facts that the respondent expects to establish if the order of default is vacated.

(5) *Response to Motion.* Within ten days of filing and service of the motion to vacate, disciplinary counsel may file and serve a written response.

(6) *Decision.* The hearing officer or panel decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chief hearing officer assigns a hearing officer or panel to decide the motion. Pending a ruling on the motion, the hearing officer or panel may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer or panel has discretion to order appropriate conditions.

(7) *Appeal of Denial of Motion.* A respondent may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer or panel's decision. The respondent must file the notice of appeal within ten days of service on the respondent of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

(8) *Decision To Vacate Is Not Subject to Interim Review.* An order setting aside an order of default is not subject to interim review.

(d) Order of Default Not Authorized in Certain Proceedings. The default procedure in this rule does not apply to

a proceeding to inquire into a LPO's capacity to practice as a LPO under title 8 except as provided in that title.

ELPOC 10.7 AMENDMENT OF FORMAL COMPLAINT

(a) Right To Amend. Disciplinary counsel may, without discipline committee authorization, amend a formal complaint at any time to add facts or charges that relate to matters in the formal complaint or to the respondent LPO's conduct regarding the pending proceedings.

(b) Amendment with Authorization. Disciplinary counsel must seek discipline committee authorization for amendments other than those under section (a). The discipline committee may authorize the amendment or may require that the additional facts or charges be the subject of a separate formal complaint. The Chair, with the consent of the respondent, and after consultation with the hearing officer on the previously filed matter, may consolidate the hearing on the separate formal complaint with the hearing on the other pending formal complaint against the respondent.

(c) Service and Answer. Disciplinary counsel serves an amendment to a formal complaint on the respondent as provided in rule 4.1 but need not serve a Notice to Answer with the amendment. Rule 10.5 governs the answer to an amendment except that any part of a previous answer may be incorporated by reference.

ELPOC 10.8 MOTIONS

(a) Filing and Service. Motions to the hearing officer, except motions which may be made ex parte or motions at hearing, must be in writing and filed and served as required by rules 4.1 and 4.2.

(b) Response. The opposing party has five days from service of a motion to respond, unless the time is shortened by the hearing officer for good cause. A request to shorten time for response to a motion may be made ex parte.

(c) Consideration of Motion. Upon expiration of the time for response, the hearing officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by conference telephone call.

(d) Ruling. A ruling on a written motion must be in writing and filed with the Clerk.

(e) Minor Matters. Alternatively, motions on minor matters may be made by letter to the hearing officer, with a copy to the opposing party and to the Clerk. The provisions of sections (b) and (c) apply to these motions. A ruling on such motion may also be by letter to each party with a copy to the Clerk.

(f) Chief Hearing Officer Authority. Before the assignment of a hearing officer or panel, the chief hearing officer, as defined in ELC 2.5(f), may rule on any prehearing motion.

ELPOC 10.9 INTERIM REVIEW

Unless these rules provide otherwise, the Board may review any interim ruling on request for review by either party, if the Chair determines that review is necessary and appropriate and will serve the ends of justice.

ELPOC 10.10 PREHEARING DISPOSITIVE MOTIONS

(a) Respondent Motion. A respondent LPO may move for dismissal of all or any portion of one or more counts of a formal complaint for failure to state a claim upon which relief can be granted.

(b) Disciplinary Counsel Motion. Disciplinary counsel may move for an order finding misconduct based on the pleadings. In ruling on this motion, the hearing officer or panel may find that all or some of the misconduct as alleged in the formal complaint is established, but will determine the sanction after a hearing.

(c) Time for Motion. A motion under this rule must be filed within 30 days of the filing of the answer to a formal complaint or amended formal complaint. A respondent may, within the time provided for filing an answer, instead file a motion under this rule. If the motion does not result in the dismissal of the entire formal complaint, the respondent must file and serve an answer to the remaining allegations within ten days of service of the ruling on the motion.

(d) Procedure. Rule 10.8 and CR 12 apply to motions under this rule. No factual materials outside the answer and complaint may be presented. If the motion results in dismissal of part but not all of a formal complaint, the Board must hear an interlocutory appeal of the order by either party. The appeal must be filed within 15 days of service of the order.

ELPOC 10.11 DISCOVERY AND PREHEARING PROCEDURES

(a) General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.

(b) Requests for Admission. After a formal complaint is filed, the parties may request admissions under CR 36. Under appropriate circumstances, the hearing officer may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(c) Other Discovery. After a formal complaint is filed, the parties have the right to other discovery under the Superior Court Civil Rules, including under CR 27-31 and 33-35, only on motion and under terms and limitations the hearing officer deems just or on the parties' stipulation.

(d) Limitations on Discovery. The hearing officer may exercise discretion in imposing terms or limitations on the exercise of discovery to assure an expeditious, economical, and fair proceeding, considering all relevant factors including necessity and unavailability by other means, the nature and complexity of the case, seriousness of charges, the formal and informal discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise.

(e) Deposition Procedure.

(1) Subpoenas for depositions may be issued under CR 45. Subpoenas may be enforced under rule 4.6.

(2) For a deposition outside Washington State, a commission need not issue, but a copy of the order of the chief hearing officer or hearing officer, certified by the officer, is sufficient to authorize the deposition.

(f) CR 16 Orders. The hearing officer may enter orders under CR 16.

(g) Duty to Cooperate. A respondent LPO who has been served with a formal complaint must respond to discovery requests and comply with all lawful orders made by the hearing officer. The hearing officer or panel may draw

adverse inferences as appear warranted by the failure of either the Board or the respondent to respond to discovery.

ELPOC 10.12 SCHEDULING HEARING

(a) Where Held. All disciplinary hearings must be held in Washington State, unless the respondent LPO is not a resident of the state, or cannot be found in the state.

(b) Scheduling of Hearing. If possible, the parties should arrange a date, time, and place for the hearing by agreement among themselves and the hearing officer or panel members. Alternatively, at any time after the respondent has filed an answer to the formal complaint, or after the time to file the answer has expired, either party may move for an order setting a date, time, and place for the hearing. Rule 10.8 applies to this motion. The motion must state:

- the requested date or dates for the hearing;
- other dates that are available to the requesting party;
- the expected duration of the hearing;
- discovery and anything else that must be completed before the hearing; and
- the requested time and place for the hearing.

A response to the motion must contain the same information.

(c) Scheduling Order. The hearing officer must enter an order setting the date and place of the hearing. This order may include any prehearing deadlines the hearing officer deems required by the complexity of the case, and may be in the following form with the following timelines:

IT IS ORDERED that the hearing is set and the parties must comply with prehearing deadlines as follows:

1. **Witnesses**. A list of intended witnesses, including addresses and phone numbers, must be filed and served by [Hearing Date (H)-8 weeks].

2. **Discovery**. Discovery cut-off is [H-6 weeks].

3. **Motions**. Prehearing motions, other than motions to bifurcate, must be served by [H-4 weeks]. An exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing officer unless the motion concerns the exhibit's admissibility. The hearing officer will advise counsel whether oral argument is necessary, and, if so, the date and time, and whether it will be heard by telephone. (Rule 10.15 provides the deadline for a motion to bifurcate.)

4. **Exhibits**. A list of proposed exhibits must be filed and served by [H-3 weeks].

5. **Service of Exhibits/Summary**. Copies of proposed exhibits and a summary of the expected testimony of each witness must be served on the opposing counsel by [H-2 weeks].

6. **Objections**. Objections to proposed exhibits, including grounds, must be exchanged by [H-1 week].

7. **Briefs**. Any hearing brief must be served and filed by [H-1 week]. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the hearing officer before the hearing.

8. **Hearing**. The hearing is set for [H] and each day thereafter until recessed by the hearing officer, at [location].

(d) Motion for Hearing Within 120 Days. A respondent's motion under section (b) for a hearing within 120 days must be granted, unless disciplinary counsel shows good cause for setting the hearing at a later date.

(e) Notice. Service of a copy of an order or ruling of the hearing officer setting a date, time, and place for the hearing constitutes notice of the hearing. The respondent must be given at least ten days notice of the hearing absent consent.

(f) Continuance. Either party may move for a continuance of the hearing date. The hearing officer has discretion to grant the motion for good cause shown.

ELPOC 10.13 DISCIPLINARY HEARING

(a) Representation. The Board is represented at the hearing by disciplinary counsel. The respondent LPO may be represented by counsel.

(b) Respondent Must Attend. A respondent given notice of a hearing must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. If, after proper notice, the respondent fails to attend the hearing, the hearing officer or panel:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and

(2) must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:

(A) the facts stated are within the witness's personal knowledge;

(B) the facts are set forth with particularity; and

(C) it shows affirmatively that the witness could testify competently to the stated facts.

(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

(d) Witnesses. Except as provided in subsection (b)(2) and rule 10.6, witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by CR 32. Testimony must be recorded by a court reporter or, if allowed by the hearing officer, by tape recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(e) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this rule and with all lawful orders made by the hearing officer under this rule. Subpoenas may be enforced under rule 4.6. The hearing officer or panel may additionally draw adverse inferences as appear warranted by the respondent's failure to respond.

(f) Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the hearing officer or panel files a decision.

ELPOC 10.14 EVIDENCE AND BURDEN OF PROOF

(a) Proceedings Not Civil or Criminal. Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis hearings to determine if a LPO's conduct should have an impact on his or her license to practice as a LPO.

(b) Burden of Proof. Disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a formal complaint charges a respondent LPO with an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.

(d) Rules of Evidence. Consistent with section (a) of this rule, the following rules of evidence apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if in the hearing officer's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(2) if not inconsistent with subsection (1), the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings;

(3) documents may be admitted in the form of copies or excerpts, or by incorporation by reference;

(4) Official Notice.

(A) official notice may be taken of:

(i) any judicially cognizable facts;

(ii) technical or scientific facts within the hearing officer's or panel's specialized knowledge; and

(iii) codes or standards adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association.

(B) the parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material noticed and the sources thereof, including any staff memoranda and data, and they shall have an opportunity to contest the facts and material noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(e) APA as Guidance. The evidence standards in this rule are based on the evidence provisions of the Washington Administrative Procedures Act, which, when not inconsistent with these standards, should be looked to for guidance. "Shall" has the meaning in this rule ascribed to it in the APA.

ELPOC 10.15 BIFURCATED HEARINGS

(a) When Allowed. Upon written motion filed no later than 60 days before the scheduled hearing, either party may request that the disciplinary proceeding be bifurcated. The hearing officer or panel must weigh the reasons for bifurcation against any increased cost and delay, inconvenience to participants, duplication of evidence, and any other factors, and may grant the motion only if it appears necessary to insure a fair and orderly hearing because the respondent has a record of prior disciplinary sanction or because either party would suffer significant prejudice or harm.

(b) Procedure.

(1) *Violation Hearing.*

(A) A bifurcated proceeding begins with an initial hearing to make factual determinations and legal conclusions as to the violations charged, including the mental state necessary for the violations. During this stage of the proceedings, evidence of a prior disciplinary record is not admissible to prove the respondent's character or to impeach the respondent's credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) At the conclusion of that hearing, the hearing officer or panel files findings and conclusions.

(i) If no violation is found, the proceedings are concluded, the findings and conclusions are the decision of the hearing officer or panel, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under rule 10.16(c), or after ruling on that motion, the findings and conclusions as to those violations are not subject to reconsideration by the hearing officer.

(2) *Sanction Hearing.* If any violation is found, a second hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings and conclusions as to the violations. At the conclusion of the sanction hearing, the hearing officer or panel files findings and conclusions as to a sanction recommendation, that, together with the previously filed findings and conclusions, is the decision of the hearing officer or panel.

(3) *Timing.* If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing officer must set a date and place for the sanction hearing. Absent extraordinary circumstances, the sanction hearing should be held no later than 45 days after the anticipated last day of the violation hearing.

ELPOC 10.16 DECISION OF HEARING OFFICER OR PANEL

(a) **Decision.** Within 20 days after the proceedings are concluded, unless extended by agreement, the hearing officer should file with the Clerk a decision in the form of findings of fact, conclusions of law, and recommendation.

(b) Preparation of Findings. The hearing officer or hearing panel write their own findings of fact, conclusions of law, and recommendations. At the request of the hearing officer, or without a request, either party may submit proposed findings, conclusions, and recommendation.

(c) Amendment.

(1) *Timing of Motion.* Either party may move to modify, amend, or correct the decision as follows:

(A) In a proceeding not bifurcated, within ten days of service of the decision on the respondent LPO;

(B) In a bifurcated proceeding, within five days of service of:

(i) the violation findings of fact and conclusions of law; or

(ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings or conclusions.

(C) If a hearing panel member dissents from a decision of the majority, the five or ten day period does not begin until the written dissent is filed or the time to file a dissent has expired, whichever is sooner.

(2) *Procedure.* Rule 10.8 governs this motion, except that all members of a hearing panel must be served with the motion and any response and participate in a decision on the motion. A panel's deliberation may be conducted through telephone conference call. The hearing officer or panel should rule on the motion within 15 days after the filing of a timely response or after the period to file a response under rule 10.8(b) has expired. The ruling may deny the motion or may amend, modify, or correct the decision.

(3) *Effect of Failure To Move.* Failure to move for modification, correction, or amendment does not affect any appeal to the Board or review by the Supreme Court.

(d) Dissent of Panel Member. Any member of a hearing panel who dissents from the decision of the majority of the panel should file a dissent, which may consist of alternative findings, conclusions, or recommendation. A dissent should be filed within ten days of the filing of the majority's decision and becomes part of the record of the proceedings.

(e) Panel Members Unable To Agree. If no two panel members are able to agree on a decision, each panel member files findings, conclusions, and a recommendation, and the Board reviews the matter whether or not an appeal is filed.

(f) When Final. If a hearing officer or panel recommends reprimand or an admonition, or recommends dismissal of the charges, the recommendation becomes the final decision if neither party files an appeal and if the Chair does not refer the matter to the Board for consideration within the time permitted by rule 11.2 (b)(3). If the Chair refers the matter to the Board for consideration of a sua sponte review, the decision is final upon entry of an order dismissing sua sponte review under rule 11.3 or upon other Board decision under rule 11.12(g).

TITLE 11 - REVIEW BY BOARD

ELPOC 11.1 SCOPE OF TITLE

This title provides the procedure for Board review following a hearing officer or panel's findings of fact, conclusions of law, and recommendation. It does not apply to Board review of interim rulings under rule 10.9.

ELPOC 11.2 DECISIONS SUBJECT TO BOARD REVIEW

(a) Decision. For purposes of this title, "Decision" means the hearing officer or panel's findings of fact, conclusions of law, and recommendation, provided that if either party properly files a motion to amend under rule 10.16(c), the "Decision" includes the ruling on the motion, and becomes subject to Board review only upon the ruling on the motion.

(b) Review of Decisions. The Board reviews the following Decisions:

(1) those recommending suspension or revocation;

(2) those in which no two members of a hearing panel are able to agree on a Decision; and

(3) all others if within 15 days of service of the Decision on the respondent:

(A) either party files a notice of appeal; or

(B) the Chair files a notice of referral for sua sponte consideration of the Decision.

ELPOC 11.3 SUA SPONTE REVIEW

(a) Procedure. Sua sponte review commences when the Chair files a notice of referral under rule 11.2 (b)(3). Upon this filing, the Chair causes a copy to be served on the parties and schedules the matter for consideration by the Board. On consideration, the Board either issues an order for sua sponte review setting forth the issues to be reviewed or dismisses the sua sponte review. If the Board issues an order for sua sponte review, the procedures of rule 11.9 apply unless otherwise modified by the order, except either party may raise any issue for Board review.

(b) Standards. The Board uses sua sponte review only in extraordinary circumstances to prevent substantial injustice or to correct a clear error. Sua sponte review uses the same standards of review as other cases.

ELPOC 11.4 TRANSCRIPT OF HEARING

(a) Ordering Transcript. A hearing transcript or partial transcript may be ordered at any time by the hearing officer or panel, respondent LPO, disciplinary counsel, or the Board. Disciplinary counsel must order the entire transcript if the hearing officer or panel recommends suspension or revocation or if no two panel members can agree on a Decision. If a notice of appeal is filed under rule 11.2 (b)(1), disciplinary counsel must order the entire transcript unless the parties agree that no transcript or only a partial transcript is necessary for review. For sua sponte review, the Chair determines the procedure for ordering the transcript if not already ordered.

(b) Filing and Service. The original of the transcript is filed with the Clerk. Disciplinary counsel must cause a copy of the transcript to be served on the respondent except if the respondent ordered the transcript.

(c) Proposed Corrections. Within ten days of service of a copy of the transcript on the respondent, or within ten days of filing the transcript if the respondent ordered the transcript, each party may file any proposed corrections to the transcript. Each party has five days after service of the opposing party's proposed corrections to file objections to those proposed corrections.

(d) Settlement of Transcript. If either party files objections to any proposed correction under section (c), the hearing officer, upon review of the proposed corrections and objections, enters an order settling the transcript. Otherwise, the transcript is deemed settled and any proposed corrections deemed incorporated in the transcript.

ELPOC 11.5 RECORD ON REVIEW

(a) Generally. The record on review consists of:

(1) any hearing transcript or partial transcript; and

(2) public file documents and exhibits designated by the parties.

(b) References to the Record. Briefs filed under rules 11.8 and 11.9 must specifically refer to the record if available, using the designations TR for transcript of hearing, EX for exhibits, and PF for public file documents.

(c) Avoid Duplication. Material appearing in one part of the record on review should not be duplicated in another part of the record on review.

(d) No Additional Evidence. Evidence not presented to the hearing officer or panel must not be presented to the Board.

ELPOC 11.6 DESIGNATION OF PUBLIC FILE DOCUMENTS AND EXHIBITS

The parties designate public file documents and exhibits for Board consideration under the procedure of RAP 9.6 with the following adaptations and modifications:

(a) Public File Documents. The public file documents are considered the clerk's papers.

(b) Limited Practice Board and Clerk. The Limited Practice Board is considered the appellate court and the Clerk to the Limited Practice Board is considered the trial court clerk.

(c) Time for Designation.

(1) *Review of Suspension or Revocation Recommendation.* When review is under rule 11.2 (b)(1), the respondent LPO must file and serve the respondent's designation of public file documents and exhibits within 30 days of service of the Decision.

(2) *Review Not Involving Suspension or Revocation Recommendation.* When review is under rule 11.2 (b)(3)(A), the party seeking review must file and serve that party's designation of public file documents and exhibits within 15 days of filing the notice of appeal. When review is under rule 11.2 (b)(2) or 11.2 (b)(3)(B), the respondent is considered the party seeking review for designating public file documents and exhibits.

(d) Hearing Officer Recommendation. The public file documents must include the hearing officer or panel's recommendation.

ELPOC 11.7 PREPARATION OF BAR PUBLIC FILE DOCUMENTS AND EXHIBITS

(a) Preparation. The Clerk prepares the public file documents and exhibits in the format required by RAP 9.7 (a) and (b), and distributes them to the Board. The Clerk provides the parties with a copy of the index of the public file documents and the cover sheet listing the exhibits.

(b) Costs. Costs for preparing public file documents and exhibits may be assessed as costs under rule 13.9 (b)(9).

ELPOC 11.8 BRIEFS FOR REVIEWS INVOLVING SUSPENSION OR REVOCATION RECOMMENDATION

(a) Caption of Briefs. Parties should caption their briefs as follows:

[Name of Party] Brief [in Support of/in Opposition to] Hearing [Officer's] [Panel's] Decision

[Name of Party] Reply Brief

(b) Briefs in Support or Opposition. In a matter before the Board under rule 11.2 (b)(1), each party may file a brief in support of or in opposition to the Decision, or any part of it.

(c) Time for Filing Briefs. Briefs, if any, must be filed as follows:

(1) The respondent LPO must file a brief within 20 days of service on the respondent of the later of:

(A) a copy of the hearing transcript; or

(B) the Decision.

(2) Disciplinary counsel must file a brief within 15 days of service on disciplinary counsel of the respondent's brief, or, if no brief is filed by the respondent, within 15 days of the expiration of the period for the respondent to file a brief.

(3) The respondent may file a reply to disciplinary counsel's brief within ten days of service of that brief on the respondent.

ELPOC 11.9 BRIEFS FOR REVIEWS NOT INVOLVING SUSPENSION OR REVOCATION RECOMMENDATION

(a) Caption of Briefs. The parties should caption briefs as follows:

[Name of Party] Brief in Opposition to Hearing [Officer's] [Panel's] Decision

[Name of Party] Response

[Name of Party] Reply

(b) Brief in Opposition.

(1) The party seeking review must file a brief in opposition to the Decision within 20 days of the later of:

(A) service on the respondent LPO of a copy of the transcript, unless the parties have agreed that no transcript is necessary; or

(B) filing of the notice of appeal.

(2) Failure to file a brief within the required period constitutes an abandonment of the appeal.

(c) Response. The opposing party has 15 days from service of the statement of the party seeking review to file a brief responding to the issues raised on appeal.

(d) Reply. The party seeking review may file a reply to the response within ten days of service of the response.

(e) Procedure when Both Parties Seek Review or When No Two Panel Members Can Agree. When both parties file notices of appeal under rule 11.2 (b)(3)(A) or when no two panel members are able to agree on a Decision, the respondent is considered the party seeking review and disciplinary counsel is considered the opposing party. In that case, disciplinary counsel's response may raise any issue for Board review, and the respondent has an additional five days to file the reply permitted by section (d).

ELPOC 11.10 SUPPLEMENTING RECORD ON REVIEW

The record on review may be supplemented under the procedures of RAP 9.6 except that leave to supplement is freely granted. The Board may direct that the record be supplemented with any portion of the record before the hearing officer, including any public file documents and exhibits.

ELPOC 11.11 REQUEST FOR ADDITIONAL PROCEEDINGS

In any brief permitted in rules 11.8 and 11.9, either party may request that an additional hearing be held before the hearing officer or panel to take additional evidence based on newly discovered evidence. A request for an additional hearing must be supported by affidavit describing in detail the additional evidence sought to be admitted and any reasons why it was not presented at the previous hearing. The Board may grant or deny the request in its discretion.

ELPOC 11.12 DECISION OF BOARD

(a) Basis for Review. Board review is based on the hearing officer or panel's Decision, any hearing panel member's dissent, the parties' briefs filed under rule 11.8 or 11.9, and the record on review.

(b) Standards of Review. The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer or panel cannot be considered by the Board.

(c) Oral Argument. The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to file his or her last brief, including a response or reply, under rule 11.8 or

11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the time, place, and terms for oral argument.

(d) Action by Board. Neither the Chair nor any members of the Board who also serve on the Discipline Committee are, by virtue of that office or service, disqualified from participating in the review before the Board or from participating in the Board's vote on a matter. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer or panel. The Board may also direct that the hearing officer or panel hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) Order or Opinion. The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer or panel, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. The Board shall not file a decision recommending a suspension or revocation unless and until a transcript of the testimony before the hearing officer or panel has been ordered and settled pursuant to rule 11.4. A copy of the complete decision is served by the Clerk on the parties.

(f) Procedure to Amend, Modify, or Reverse if No Appeal.

(1) If the Board intends to amend, modify, or reverse the hearing officer or panel's recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.

(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.

(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.

(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request for reconsideration, the Board issues an order or opinion after reconsideration under section (e).

(g) Decision Ordering Dismissal, Admonition or Reprimand Final Unless Appealed. The Board's decision of dismissal, admonition or reprimand is final if neither party files a petition for review within the time permitted by title 12 or upon the Supreme Court's denial of a petition for discretionary review.

(h) Decision Requiring Supreme Court Action. If the recommendation of the Board is that the respondent LPO's certification be suspended or revoked, that recommendation along with the record shall be transmitted to the Supreme Court for entry of an appropriate order or other action as the Court deems appropriate under Title 12.

ELPOC 11.13 CHAIR MAY MODIFY REQUIREMENTS

Upon written motion filed with the Clerk by either party, for good cause shown, the Chair may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review. However, the time period for filing a notice of appeal in rule 11.2 (b)(3)(A) may not be extended or altered.

TITLE 12 - REVIEW BY SUPREME COURT

ELPOC 12.1 APPLICABILITY OF RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure serve as guidance for review under this title except as to matters specifically dealt with in these rules.

ELPOC 12.2 METHODS OF SEEKING REVIEW

(a) Two Methods for Seeking Review of Board Decisions. The methods for seeking Supreme Court review of Board decisions entered under rule 11.12(e) are: review as a matter of right, called "appeal", and review with Court permission, called "discretionary review". Both "appeal" and "discretionary review" are called "review".

(b) Power of Court Not Affected. This rule does not affect the Court's power to review any Board decision recommending suspension or disbarment and to exercise its inherent and exclusive jurisdiction over the LPO discipline and disability system. The Court notifies the respondent LPO and disciplinary counsel of the Court's intent to exercise sua sponte review within 90 days of the Court receiving notice of the decision under rule 3.5(a), rule 7.1(h), or otherwise.

ELPOC 12.3 APPEAL

(a) Respondent's Right to Appeal. The respondent LPO has the right to appeal a Board decision recommending suspension or disbarment. There is no other right of appeal.

(b) Notice of Appeal. To appeal, the respondent must file a notice of appeal with the Clerk within 15 days of service of the Board's decision on the respondent.

ELPOC 12.4 DISCRETIONARY REVIEW

(a) Decisions Subject to Discretionary Review. Board decisions under rule 11.12(e) not recommending suspension or disbarment are subject to Supreme Court review only through discretionary review. The Court accepts discretionary review only if:

(1) the Board's decision is in conflict with a Supreme Court decision;

(2) a significant question of law is involved;

(3) there is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or

(4) the petition involves an issue of substantial public interest that the Court should determine.

(b) Petition for Review. Either party may seek discretionary review by filing a petition for review with the Court within 25 days of service of the Board's decision.

(c) Content of Petition; Answer; Service; Decision. A petition for review should be substantially in the form prescribed by RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in that rule to the Court of Appeals are considered references to the

Board. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4 (d) - (h) govern answers and replies to petitions for review and related matters including service and decision by the Court.

(d) Acceptance of Review. The Court accepts discretionary review of a Board decision by granting a petition for review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

ELPOC 12.5 RECORD TO SUPREME COURT

(a) Transmittal. The Clerk should transmit the record to the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the transcript of oral argument before the Board, if any.

(b) Content. The record transmitted to the Court consists of:

(1) the notice of appeal, if any;

(2) the Board's decision;

(3) the record before the Board;

(4) the transcript of any oral argument before the Board; and

(5) any other portions of the record before the hearing officer, including any bar file documents or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within ten days of entry of an order assessing costs under rule 13.9(e), the Clerk should transmit it to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under rule 13.9(d).

(e) Additions to Record. Either party may at any time move the Court for an order directing the transmittal of additional portions of the record to the Court.

ELPOC 12.6 BRIEFS

(a) Brief Required. The party seeking review must file a brief stating his or her objections to the Board's decision.

(b) Time for Filing. The brief of the party seeking review should be filed with the Supreme Court within 30 days of service under rule 12.5(c) of the list of portions of the record transmitted to the Court.

(c) Answering Brief. The answering brief of the other party should be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. A reply brief of a party seeking review should be filed with the Court within the sooner of 20 days after service of the answering brief or 14 days before oral argument. A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.

(e) Briefs When Both Parties Seek Review. When both the respondent LPO and disciplinary counsel seek review of a Board decision, the respondent is deemed the party seeking review for the purposes of this rule. In that case, disciplinary counsel may file a brief in reply to any response the respondent has made to the issues presented by disciplinary counsel, to be filed with the Court the sooner of 20 days after service of the respondent's reply brief or 14 days before oral argument.

(f) Form of Briefs. Briefs filed under this rule must conform as nearly as possible to the requirements of RAP 10.3 and 10.4. Bar file documents should be abbreviated BF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Clerk. The Supreme Court clerk reproduces and distributes briefs as provided in RAP 10.5.

ELPOC 12.7 ARGUMENT

(a) Rules Applicable. Oral argument before the Supreme Court is conducted under title 11 of the Rules of Appellate Procedure, unless the Court directs otherwise.

(b) Priority. Disciplinary proceedings have priority and are set upon compliance with the above rules.

ELPOC 12.8 EFFECTIVE DATE OF OPINION

(a) Effective when Filed. An opinion in a disciplinary proceeding takes effect when filed unless the Court specifically provides otherwise.

(b) Motion for Reconsideration. A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment unless the Court enters a stay.

ELPOC 12.9 VIOLATION OF RULES

Sanctions for violation of these rules may be imposed on a party under RAP 18.9. Upon dismissal under that rule of a review sought by a respondent LPO and expiration of the period to file objections under RAP 17.7, or upon dismissal of review by the Court if timely objections are filed, the Board's decision is final.

TITLE 13 - SANCTIONS AND REMEDIES

ELPOC 13.1 SANCTIONS AND REMEDIES

Upon a finding that a LPO has committed an act of misconduct, one or more of the following may be imposed:

(a) Sanctions.

(1) Revocation;

(2) Suspension under rule 13.3; or

(3) Reprimand.

(b) Admonition. An admonition under rule 13.5.

(c) Remedies.

(1) Restitution;

(2) Probation;

(3) Limitation on practice as a LPO;

(4) Requirement that the LPO attend continuing legal education courses;

(5) Assessment of costs; or

(6) Other requirements consistent with the purposes of LPO discipline.

ELPOC 13.2 EFFECTIVE DATE OF SUSPENSIONS AND REVOCATIONS

Suspensions and revocations are effective on the date set by the Supreme Court's order, which will ordinarily be seven days after the date of the order. If no date is set, the suspension or disbarment is effective on the date of the Court's order.

ELPOC 13.3 SUSPENSION

(a) Term of Suspension. A suspension must be for a fixed period of time not exceeding one years.

(b) Reinstatement.

(1) After the period of suspension, the Clerk may submit to the Court a recommendation that the respondent LPO be returned to the respondent's status before the suspension upon:

(A) the respondent's compliance with all current licensing requirements; and

(B) disciplinary counsel's certification that the respondent has complied with any specific conditions ordered, and has paid any costs or restitution ordered or is current with any costs or restitution payment plan.

(2) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the Chair may modify the terms of the payment plan if warranted. The Chair determines the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

ELPOC 13.4 REPRIMAND

(a) **Administration**. The Board administers a reprimand to a respondent LPO by written statement signed by the Chair.

(b) **Notice and Review of Contents**. The Association Clerk must serve the respondent with a copy of the proposed reprimand. Within five days of service of the proposed reprimand, the respondent may file a request for review of the content of the proposed reprimand. This request stays the administration of the reprimand. When timely requested, the Disciplinary Board reviews the proposed reprimand in light of the decision or stipulation imposing the reprimand and may take any appropriate action. The Board's action is final and not subject to further review. If no request is received, the content of the reprimand is final, and the reprimand is administered.

ELPOC 13.5 ADMONITION

(a) By the Discipline Committee.

(1) The discipline committee may issue an admonition when investigation of a grievance shows misconduct.

(2) A respondent LPO may protest either the discipline committee's or the Board's prehearing issuance of an admonition by filing a notice to that effect with the Clerk within 30 days of service of the admonition. Upon receipt of a timely protest, the admonition is rescinded, and the grievance is deemed ordered to hearing.

(b) Following a Hearing. A hearing officer or panel may recommend that a respondent receive an admonition following a hearing.

(c) By Stipulation. The parties may stipulate to an admonition under rule 9.1.

(d) Effect. An admonition is admissible in subsequent disciplinary or disability proceedings involving the respondent. Rule 3.6(b) governs destruction of file materials relating to an investigation or hearing concluded with an admonition, including the admonition.

(**e) Action on Board Review.** Upon review under title 11, the Board may dismiss, issue an admonition, or impose sanctions or other remedies under rule 13.1.

(f) Signing of Admonition. The discipline committee chair signs an admonition issued by the discipline committee. The Board Chair or the Chair's designee signs all other admonitions.

ELPOC 13.7 RESTITUTION

(a) Restitution May Be Required. A respondent LPO who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be ordered to make restitution to persons financially injured by the respondent's conduct.

(b) Payment of Restitution.

(1) A respondent ordered to make restitution must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if:

(A) the respondent demonstrates in writing present inability to pay restitution and

(B) disciplinary counsel consults with the persons owed restitution.

(3) A respondent may ask the Chair to review an adverse determination by disciplinary counsel of the reasonableness of a proposed periodic payment plan for restitution. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

(c) Failure To Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

ELPOC 13.8 PROBATION

(a) Conditions of Probation. A respondent LPO who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be placed on probation for a fixed period of two years or less.

(1) Conditions of probation may include, but are not limited to requiring:

(A) alcohol or drug treatment;

(B) medical care;

(C) psychological or psychiatric care;

(D) professional office practice or management counseling; or

(E) periodic audits or reports.

(2) Upon disciplinary counsel's request, the Chair may appoint a suitable person to supervise the probation. Cooperation with a person so appointed is a condition of the probation.

(b) Failure To Comply. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.

ELPOC 13.9 COSTS AND EXPENSES

(a) Assessment. The Board's and the Association's costs and expenses may be assessed as provided in this rule against any respondent LPO who is ordered sanctioned or admonished.

(b) Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except attorney

fees, reasonably and necessarily incurred by the Board or the Association in the complete performance of its duties under these rules, whether incurred before or after the filing of a formal complaint. Costs include, by way of illustration and not limitation:

(1) court reporter charges for attending and transcribing depositions or hearings;

(2) process server charges;

(3) necessary travel expenses of hearing officers, hearing panel members, disciplinary counsel, adjunct investigative counsel, or witnesses;

(4) expert witness charges;

(5) costs of conducting an examination of books and records or an audit under title 15;

(6) costs incurred in supervising probation imposed under rule 13.8;

(7) telephone toll charges;

(8) fees, costs, and expenses of a lawyer appointed under rule 8.2 or rule 8.3;

(9) costs of copying materials for submission to the discipline committee, a hearing officer or panel, or the Board; and

(10) compensation provided to hearing officers or panel members under rule 2.9.

(c) Expenses Defined. "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Board or the Association, but in any case cannot be less than the following amounts:

(1) for an admonition that is accepted under rule 13.5(a), $750;

(2) for a matter that becomes final without review by the Board, $1,500;

(3) for a matter that becomes final following Board review, without review by the Supreme Court, a total of $2,000;

(4) for a matter reviewed by the Supreme Court but not requiring briefing, a total of $2,500; and

(5) for a matter reviewed by the Supreme Court in which briefing is required, a total of $3,000.

(d) Statement of Costs and Expenses, Exceptions, and Reply.

(1) *Timing.* Disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:

(A) an admonition is accepted;

(B) the decision of a hearing officer or panel or the Board imposing an admonition or a sanction becomes final;

(C) a notice of appeal from a Board decision is filed and served; or

(D) the Supreme Court enters an order requiring briefing in a matter it is reviewing.

(2) *Content.* A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. Disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.

(3) *Service.* The Clerk serves a copy of the statement on the respondent.

(4) *Exceptions.* The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.

(5) *Reply.* Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

(e) Assessment. The Chair enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

(f) Review of Chair's Decision.

(1) *Matters Reviewed by Court.* In matters reviewed by the Supreme Court, the Chair's decision is subject to review only by the Court.

(2) *All Other Matters.* In all other matters, the following procedures apply:

(A) Request for Review by Board. Within 20 days of service on the respondent of the order assessing costs and expenses, either party may file a request for Board review of the order.

(B) Board Action. Upon the timely filing of a request, the Board reviews the order assessing costs and expenses, based on disciplinary counsel's statement of costs and expenses and any exceptions or reply, the decision of the hearing officer or panel or of the Board, and any written statement submitted by either party within the time directed by the Chair. The Board may approve or modify the order assessing costs and expenses. The Board's decision is final when filed and not subject to further review.

(g) Assessment in Matters Reviewed by the Court. When a matter is reviewed by the Court, any order assessing costs and expenses entered by the Chair under section (e) and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion by the Court imposing a sanction or admonition, costs and expenses may be assessed in favor of the Association under the procedures of RAP Title 14, except that "costs" as used in that title means any costs and expenses allowable under this rule.

(h) Assessment Discretionary. Assessment of any or all costs and expenses may be denied if it appears in the interests of justice to do so.

(i) Payment of Costs and Expenses.

(1) A respondent ordered to pay costs and expenses must do so within 30 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) The respondent must pay interest on any amount not paid within 30 days of the date the assessment is final at the maximum rate permitted under RCW 19.52.020.

(3) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(B) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding specific con-

ditions for a periodic payment plan. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review, and the Board's decision is not subject to further review.

(j) Failure To Comply. A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

(k) Costs in Other Cases. Rule 9.1 governs costs and expenses in cases resolved by stipulation. Rule 8.6 governs assessment of costs and expenses in disability proceedings.

(l) Money Judgment for Costs and Expenses. After the assessment of costs and expenses is final, upon application by the Association, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and expenses if the respondent has failed to pay the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

TITLE 14 - DUTIES ON SUSPENSION OR REVOCATION

ELPOC 14.1 NOTICE TO CLIENTS IN WHICH LPO IS PROVIDING SERVICES; PROVIDING PROPERTY BELONGING TO CLIENTS IN WHICH LPO IS PROVIDING SERVICES

(a) Providing Clients' Property. A LPO who has been suspended, revoked, or transferred to disability inactive status must provide each client client to a transaction in which the LPO is providing services with the client's assets, files, and other documents in the LPO's possession.

(b) Notice if Suspended for 60 Days or Less. A LPO who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client to a transaction in which the LPO is providing services, of the suspension, the reason therefor, and of the LPO's consequent inability to act as a LPO after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another LPO; and

(2) notify the LPO's employer and all others seeking to employ the LPO of the suspension, the reason therefor, and consequent inability to act during the suspension.

(c) Notice if Otherwise Suspended or Revoked A LPO who has been suspended as a disciplinary sanction for more than 60 days or revoked, for suspended for nonpayment of fees or under title 7 or APR 12 must within ten days of the effective date of the revocation or suspension notify every client to a transaction in which the LPO is providing services of the LPO's inability to act as the LPO for the transaction and the reason therefor, and advise the client to seek LPO services elsewhere;.

(d) Notice if Transferred to Disability Inactive Status. A LPO transferred to disability inactive status, or his or her guardian if one has been appointed, must give all notices required by section (c), except that the notices need not refer to disability.

ELPOC 14.2 LPO TO DISCONTINUE PRACTICE AS A LPO

A revoked or suspended LPO, or a LPO transferred to disability inactive status, must not practice as a LPO after the effective date of the revocation, suspension, or transfer to disability inactive status, and also must take whatever steps are necessary to avoid any reasonable likelihood that anyone will rely on him or her as a LPO. This rule does not preclude a revoked or suspended LPO, or a LPO transferred to disability inactive status, from disbursing assets held by the LPO to parties to transactions or other persons.

ELPOC 14.3 AFFIDAVIT OF COMPLIANCE

Within 10 days of the effective date of a, LPO's revocation, suspension, or transfer to disability inactive status, the LPO must serve on the clerk an affidavit stating that the LPO has fully complied with the provisions of this title. The affidavit must also provide a mailing address where communications to the LPO may thereafter be directed. The LPO must attach to the affidavit copies of the form letters of notification sent to the parties to transactions in which the LPO was providing services together with a list of names and addresses of all persons, entities or parties to whom notices were sent. The affidavit is a confidential document except the LPO's mailing address is treated as a change of mailing address.

ELPOC 14.4 LPO TO KEEP RECORDS OF COMPLIANCE

When a LPO's certification has been revoked, suspended, or transferred to disability inactive status the LPO must maintain written records of the various steps taken by him or her under this title, so that proof of compliance will be available in any subsequent proceeding.

TITLE 15 - AUDITS AND TRUST ACCOUNT OVERDRAFT NOTIFICATION

ELPOC 15.1 AUDIT AND INVESTIGATION OF BOOKS AND RECORDS

The Board and its Chair have the following authority to examine, investigate, and audit the books and records of any LPO and closing firm to ascertain and obtain reports on whether the LPO or closing firm has been and is complying with LPORPC 1.12A and B:

(a) Random Examination. The Board may authorize examinations of the books and records of any LPO or closing firm selected at random. Only the books and records of transactions in which a LPO participated may be examined in an examination under this section.

(b) Particular Examination. Upon receipt of information that a particular LPO or closing firm may not be in compliance with LPORPC 1.12A and B the Chair may authorize an examination limited to the LPO or closing firm's books and records. Information may be presented to the Chair without notice to the LPO or closing firm. Disclosure of this information is subject to rules 3.1 - 3.4.

(c) Audit. After an examination under section (a) or (b), if the Chair determines that further examination is warranted, the Chair may order an appropriate audit of the LPO's or closing firm's books and records, including verification of the information in those records from available sources.

ELPOC 15.2 COOPERATION OF LPO

Any LPO or closing firm who is subject to examination, investigation, or audit under rule 15.1 must cooperate with the person conducting the examination, investigation, or audit, subject only to the proper exercise of any privilege against self-incrimination, by:

(a) producing forthwith all evidence, books, records, and papers requested for the examination, investigation, or audit;

(b) furnishing forthwith any explanations required for the examination, investigation, or audit;

(c) producing written authorization, directed to any bank or depository, for the person to examine, investigate, or audit trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the LPO or closing firm in the bank or depository.

ELPOC 15.3 DISCLOSURE

The examination and audit report are only available to the Board, clerk, disciplinary counsel, and the LPO or closing firm examined, investigated, or audited, and to the Board of Governors or Supreme Court on its request, unless a disciplinary proceeding is commenced in which case the disclosure provisions of title 3 apply.

ELPOC 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION

(**a) Overdraft Notification Agreement Required.** Every bank, credit union, savings and loan association, or qualified public depository referred to in LPORPC 1.12A(i) will be approved as a depository for LPO trust accounts if it files with the Association Disciplinary Board an agreement as provided for under ELC 15.4 (a) and (b). The Association Disciplinary Board annually publishes a list of approved financial institutions.

(b) Costs. Nothing in these rules precludes a financial institution from charging a particular LPO or closing firm for the reasonable cost of producing the reports and records required by this rule, but those charges may not be a transaction cost charged against funds payable to the Legal Foundation of Washington under LPORPC 1.12A (i)(1).

(c) Notification by LPO. Every LPO or closing firm who receives notification that any instrument presented against the LPO's or closing firm's trust account was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Clerk of the Limited Practice Board of the following information:

(A) the identity of the financial institution;

(B) the identity of the LPO or employer;

(C) the account number; and

(D) either:

(i) the amount of overdraft and date created; or

(ii) the amount of the returned instrument(s) and the date returned.

The LPO or closing firm must include a full explanation of the cause of the overdraft.

ELPOC 15.5 DECLARATION

(a) Declaration. The Association annually sends each active LPO a written declaration designed to determine whether the LPO or the LPO's closing firm is complying with LPORPC 1.12A & B. Each active LPO must complete, execute, and deliver to the Association this declaration by the date specified in the declaration.

(b) Noncompliance. Failure to file the declaration by the date specified in section (a) is grounds for discipline. This failure also subjects the LPO who has failed to comply with this rule to a full audit of his or her books and records, or the closing firm's records, as provided in rule 15.1(c), upon request of the clerk or disciplinary counsel to the discipline committee. A copy of any request made under this section must be served on the LPO. The request must be granted on a showing that the LPO has failed to comply with section (a) of this rule. If the LPO should later comply, the discipline committee has discretion to determine whether an audit should be conducted, and if so the scope of that audit. A LPO or closing firm audited under this section is liable for all actual costs of conducting such audit, and also a charge of $100 per day spent by the auditor in conducting the audit and preparing an audit report. Costs and charges are assessed in the same manner as costs under rule 5.3(e).

ELPOC 15.6 REGULATIONS

The Board may adopt regulations regarding the powers in this title subject to the approval of the Board of Governors and the Supreme Court.

TITLE 16 - EFFECT OF THESE RULES ON PENDING PROCEEDINGS

ELPOC 16.1 EFFECT ON PENDING PROCEEDINGS

These rules and any subsequent amendments will apply in their entirety, on the effective date as ordered by the Supreme Court, to any pending matter or investigation that has not yet been ordered to hearing. They will apply to other pending matters except as would not be feasible or would work an injustice. The hearing officer or panel chair assigned to hear a matter, or the Chair in a matter pending before the Board, may rule on the appropriate procedure with a view to insuring a fair and orderly proceeding.

RESCIND RULES DISCIPLINARY RULES FOR LIMITED PRACTICE OFFICERS (LPO)

~~TITLE 1. GROUNDS AND JURISDICTION~~

~~RULE 1.1 GROUNDS~~

~~A Limited Practice Officer (LPO) may be subjected to the disciplinary actions or sanctions set forth in Rule 1.10 for any of the following causes or actions:~~

~~A. The commission of any act involving moral turpitude, dishonesty, corruption, or other act which reflects disregard for the rule of law, whether the act be committed in the course of an LPO's conduct or otherwise; and whether or not the act constitutes a felony or misdemeanor; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding. Upon such conviction, however, the judgment and sentence shall be con-~~

clusive evidence at the ensuing disciplinary hearing of the guilt of the respondent LPO of the crime described in the indictment or information, and of the violation of the statute upon which it is based. A disciplinary hearing as provided in Rule 1.8 of these Rules shall be had to determine:

1. Whether moral turpitude was in fact an element of the crime committed by the respondent LPO; and

2. The disciplinary action recommended to result therefrom;

B. Violation of the oath or duties as an LPO;

C. Permitting an LPO's name to be used as an LPO by another person who is not an LPO authorized under APR 12;

D. Misrepresentation or concealment of a material fact made in the application for admission under APR 12 or in support thereof;

E. Suspension, revocation or other disciplinary sanction by competent authority in any state, federal or foreign jurisdiction;

F. Selecting, preparing, or completing documents authorized by APR 12 for or together with any person whose LPO certification has been revoked or suspended, if the certified LPO has knowledge of such revocation or suspension;

G. Willful disregard of a subpoena or notice of the Disciplinary Panel or the Limited Practice Board (hereinafter referred to as Board) or the making of a false statement under oath in any document filed with the Board;

H. Conduct demonstrating unfitness to work as an LPO;

I. Working as an LPO while on inactive status;

J. Failure to cooperate during the course of an investigation as required by this rule shall also constitute grounds for discipline.

RULE 1.2 JURISDICTION

An LPO shall be subject to these rules. Jurisdiction shall continue whether or not the LPO retains his or her license under APR 12, and regardless of the residence of the LPO.

RULE 1.3 DISCIPLINARY PANEL

A. Appointment. The Chair of the Board shall appoint from its members not less than three persons to act as members of the Disciplinary Panel; one of whom shall be appointed Chair by the other members of the Panel.

B. Term. The members of the Disciplinary Panel shall serve until replaced by the Chair of the Board or for a two-year period from the date of their appointment.

C. Duties. It shall be the duty of the Disciplinary Panel to:

1. Take cognizance of any alleged or apparent violations of these rules coming to its attention, whether by grievance or otherwise, to investigate the same promptly and to submit a report to the full Board within sixty (60) days from the date the matter first came to the attention of the Disciplinary Panel unless the time is extended by the Chair of the Board; and

2. Submit reports to the Board which shall be in such form and pursuant to such procedures as may from time to time be prescribed by the Board; such reports shall form a part of the permanent records of the Board and may be used as a basis for the commencement of disciplinary proceedings.

D. Testimony. Where, in the discretion of the Disciplinary Panel, there is reasonable cause to believe that testimony should be perpetuated, the Disciplinary Panel may, upon reasonable notice to the LPO investigated, cause the deposition of any witness to be taken under oath before a Notary Public or before any other officer authorized by the law of the jurisdiction where the deposition is taken to administer an oath, and have the same transcribed for use in further proceedings under these Rules to which the LPO may be a party.

E. Authority. The authority of the Disciplinary Panel shall include, but not be limited to, the power conditionally to settle and dispose of grievances of a trivial nature without a hearing; provided, that a complete report of the disposition of each grievance shall be made to the Board; upon the filing of the report with the Board, such conditional disposition shall be deemed conclusive unless the Board acts otherwise within sixty (60) days from receipt of such report. Settlement of, compromise of, or restitution in a matter shall not justify the Disciplinary Panel in failing to undertake or complete its investigation and report thereof to the Board.

F. Matters Involving Related Pending Civil or Criminal Liability. Processing of grievances involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation may be deferred when authorized by the Board. In such event, the respondent LPO shall make all reasonable efforts to obtain a prompt trial and disposition of such pending litigation. The acquittal of the respondent LPO on criminal charges or a verdict or a judgment in the LPO's favor in a civil litigation involving substantially similar material allegations shall not in and of itself justify abatement of a disciplinary investigation predicated upon the same material allegations.

RULE 1.4 SUPREME COURT

The Supreme Court of Washington has exclusive responsibility within the state for the administration of the LPO discipline and disciplinary system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of LPO discipline. The Board carrying out the functions set forth in these rules are acting under the authority of the Supreme Court.

RULE 1.5 RESPONDENT LIMITED PRACTICE OFFICER

It shall be the duty and the obligation of an LPO who is the subject of a disciplinary investigation to cooperate with the Board and Disciplinary Panel as requested, subject only to the proper exercise of the LPO's privilege against self-incrimination where applicable by:

A. Furnishing any papers or documents, permitting inspection and copying of his or her business records, files and accounts;

B. Furnishing, in writing, or orally if requested, a full and complete explanation covering the matter contained in such grievance;

C. Furnishing written releases or authorizations where needed to obtain access to documents or information in the possession of third parties; and

D. Appearing before the Disciplinary Panel or Board at the time and place designated;

E. An LPO may be represented by counsel during any stage of an investigation or proceeding under these rules.

RULE 1.6 DUTIES OF GRIEVANT

Upon request, the person complaining shall furnish to the Board or Disciplinary Panel documentary and other evidence in the complainant's possession and the names and addresses of witnesses, and assist in securing evidence in

relation to the facts charged; and appear and testify at any proceeding resulting from the grievance. Failure to fulfill these duties may be grounds for the dismissal of a grievance.

RULE 1.7 PLEADINGS

The only permissible pleadings upon proceedings before the Disciplinary Panel are a formal complaint, a notice to answer, answer to complaint and motions to make more definite and certain, or in the alternative, for a bill of particulars. Informality in the complaint or answer shall be disregarded.

A. Formal Complaint. If the Disciplinary Panel determines a hearing should be had to ascertain whether a violation of these Rules has occurred, a formal complaint shall be prepared and filed with the Board, and proceedings shall be had thereon as hereinafter provided. The formal complaint, which need not be verified, shall set forth the particular acts or omissions of the respondent LPO in such detail as to enable the LPO to know the charge and shall be signed by the Chair of the Disciplinary Panel.

1. Prior Record of a Separate Count. Prior disciplinary proceedings and grievances against a respondent LPO, excluding dismissals after a hearing before the Disciplinary Panel or Board, shall be made a separate count of the complaint if they indicate conduct demonstrating unfitness to act as an LPO.

2. Prior Record *as Professional History*. If a prior record of the respondent LPO is not made a separate count of the complaint, any prior record of admonition, letters of censure, reprimand, suspension of further proceedings, suspension or revocation or any absence of such record, shall be made a part of the record prior to the recommendations of the Disciplinary Panel to the Board.

3. Joinder. The Disciplinary Panel in its discretion may consolidate for hearing two or more charges as to the same LPO, or may join the charges as to two or more LPO's in one formal complaint.

4. Commencement of Proceedings. A disciplinary action shall be deemed commenced when the formal complaint has been filed.

5. Procedural Irregularity. No technical irregularity shall affect the validity of such complaint or of any proceedings pursuant thereto.

B. Answer. The answer must contain:

1. Denials. A general or specific denial of each material allegation of the complaint that is controverted by the respondent LPO, or a denial of knowledge or information thereof sufficient to form a belief. Any allegation, not denied will be deemed admitted;

2. Affirmative Defenses. A statement of any matter constituting a defense or justification in ordinary and concise language without repetition;

3. Address. An address at which all further pleadings, notices or other documents in relation to the proceedings may be served upon the respondent LPO;

4. The answer with two copies shall be filed with the Board;

5. The Chair of the Disciplinary Panel may at any time allow or require amendments to the complaint or to the answer;

6. If personal service is made on the respondent LPO in the state of Washington, the LPO shall be allowed twenty (20) days from the date of service, exclusive of the date of service, in which to answer; if service be made in any other manner or place, the respondent LPO shall be allowed thirty (30) days from the date of service, or the date of mailing, exclusive of the date of service, or mailing, in which to answer; and

7. For good cause, the Chair of the Disciplinary Panel may extend the time for any pleading.

C. Service.

1. Formal Complaint. A copy of the formal complaint with notice to answer shall be served on the respondent LPO in the following manner.

a. Personal Service in Washington. If the respondent LPO be found in the state of Washington, by personal service upon the LPO in the manner as is required for personal service of a summons in civil actions in the Superior Court;

b. Service If Not Found in Washington. If the respondent LPO cannot be found in the state of Washington, then by leaving a copy thereof at the LPO's place of usual abode in the state of Washington, with some person of suitable age and discretion then resident therein, or by mailing by registered or certified mail, postage prepaid, a copy addressed to the LPO at the LPO's last known 1) place of abode, 2) office address maintained by the LPO as an LPO, or 3) post office address;

c. Service Outside Washington. If the respondent LPO be found outside of the state of Washington, then by personal service or by mail as set forth in subsection b. above; or

d. Service When Question of Mental Competence. If a guardian or guardian ad litem has been duly approved for the respondent LPO who has been judicially declared to be of unsound mind, or incapable of conducting the LPO's own affairs, service as above shall be had on the guardian or guardian ad litem. Where a complaint is filed under Rule 1.6 A, service as above shall also be had on the person having the care and custody of the respondent LPO, if there be such a person.

2. Other Pleadings, Notices or Other Documents. Service upon the respondent LPO of any pleadings, notices or other documents required by these rules to be served, other than the formal complaint and notice to answer, may be made by mailing the same postage prepaid to, or leaving the same at, the address set forth in the LPO's answer, or in the absence of an answer, by mailing the same postage prepaid to, or leaving the same at, the address of the respondent LPO on file with the Board.

3. Service on the Board or Disciplinary Panel. Service on the Board or Disciplinary Panel of any pleadings, notices or documents shall be made by filing the same with the Board at the offices of the Washington State Bar Association.

4. Mailing. When such other pleadings, notices, or documents are to be served by mail, they shall be sent by registered or certified mail with postage prepaid.

5. Proof of Service. Proof of service by Affidavit of Service, Sheriff's Return of Service or a signed Acknowledgment of Service, shall be filed with the Board.

RULE 1.8 HEARINGS

A. Where Held. All disciplinary hearings shall be held within the state of Washington at such place as may be directed by the Board or Disciplinary Panel Chair.

B. Date of Hearing. The Chair of the Disciplinary Panel shall cause notice of the time and place of the hearing to be given to the respondent LPO at least ten (10) days prior thereto. The hearing shall occur not earlier than thirty (30) days or later than sixty (60) days after service of the complaint, unless delayed for good cause.

C. Postponements. At the time and place approved for the hearing the Disciplinary Panel may grant a postponement, but no postponement shall be for longer than thirty (30) days, and the total period of time of all postponements shall not exceed sixty (60) days unless approved by the Board. An application for postponement by the respondent LPO or by the complainant shall be supported by affidavit and served and filed at least seven (7) days prior to the scheduled hearing, unless such time is shortened by the Chair of the Disciplinary Panel.

D. Representation. The complainant may be present at the hearing(s) before the Disciplinary Panel and may be represented by counsel. The respondent LPO may be present at the hearing(s) before the Disciplinary Panel and may be represented by counsel.

E. Default. In no event shall a default be entered against the respondent LPO. If the LPO fails to answer the complaint within the time allowed by these rules, the Disciplinary Panel shall proceed to a determination of the matter in the same manner as though the respondent LPO were present and had answered by a general denial. No notice of the date of hearing or of the taking of depositions of witnesses to be used at the hearing shall be required to be given to such respondent LPO failing to answer. If the respondent LPO has answered but fails to attend the hearing at the time set, the Disciplinary Panel shall proceed to a determination of the matter in the same manner as though the respondent LPO were present.

F. Proceedings Public. Upon the filing and service of a formal complaint and after the LPO has answered that complaint, or failed to answer within the time required, a disciplinary proceeding shall be public, subject to the provisions of any protective order as may be entered pursuant to Section I. The filing of a motion for a protective order shall stay the provisions of this rule with regard to any matter sought to be kept confidential in that motion, and the motion itself shall be confidential until ruled upon.

G. Matters Which Are Public. In a matter which is public pursuant to section (F), any person may have access to the contents of the Disciplinary Panel's file in the pending proceeding, and may attend any hearing on the charges against the LPO, except a hearing on a motion. In any disciplinary matter referred to the Supreme Court, the file, record, briefs, and argument in the case shall also be public except to the extent previously made confidential by a protective order or as otherwise ordered by the court.

H. Matters Which Are Not Public. In no case shall deliberations of a hearing panel, board or court, or matters made confidential by a protective order, be public.

I. Protective Orders. In order to protect a compelling interest of a complainant, witness, third party, or respondent, the panel chair or the chair of the Board when a matter is before a panel or the Board for review, may, upon motion and for good cause shown, issue a protective order prohibiting the disclosure of specific information or specific documents or pleadings, and direct that the proceedings be conducted so as to implement the order.

J. Procedure. Each member of the Disciplinary Panel shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books or documents at such hearings. The respondent LPO shall have the opportunity to make a defense, and upon timely application may have issued such subpoenas as any member of the Disciplinary Panel deems necessary. Subpoenas shall be served in the same manner as in civil cases in Superior Court. Witnesses shall testify under oath administered by the Chair of the Disciplinary Panel. Testimony shall be electronically recorded and may be taken by deposition in accordance with these rules.

K. Depositions. Depositions for use at the hearing may be taken either within or without the state upon either written or oral interrogatories before any member of the Disciplinary Panel or before any other officer authorized to administer an oath by the law of the jurisdiction where the deposition is taken. Any member of the Disciplinary Panel shall have the power to order the taking of a deposition.

L. Discovery, Admissions, Inspection of Documents. After the filing of the formal complaint against an LPO, the parties shall have the rights afforded to Superior Court litigants under Rules 33, 34, and 36 of the Superior Court Civil Rules, limited and prescribed as follows: Such rights may be limited to the extent the Chair of the Disciplinary Panel deems just who shall do so by order.

M. LPO Duties. The respondent LPO shall bring to the hearing such documents, files, records, or other written materials or things as the Chair of the Disciplinary Panel may request in writing. The written request shall be served on the respondent LPO at least five (5) working days before the scheduled hearing.

N. Cooperation. It shall be the duty of an LPO who has been served with a formal complaint to respond to all lawful orders made by the Chair of the Disciplinary Panel as provided in the paragraphs L and M. Should such LPO fail to do so, the Chair of the Disciplinary Panel shall report the same to the Board, and such failure may constitute a separate violation of these rules.

O. Standard of Proof. The burden of establishing an act of misconduct shall be by a clear preponderance of the evidence.

P. Rules of Evidence. The following rules of evidence shall apply during disciplinary hearings:

1. The Chair of the Disciplinary Panel may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Chair of the Disciplinary Panel may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

2. All evidence, including but not limited to records and documents in the possession of the Board of which it desires to avail itself, shall be offered and made a part of the record in the case and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the forms of copies or excerpts or by incorporation by reference.

3. The LPO (or the LPO's counsel) shall have the right of cross examination of witnesses who testify and shall have the right to submit rebuttal evidence.

4. The Chair of the Disciplinary Panel may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within the panel's specialized knowledge. The LPO (or the LPO's counsel) shall be notified either before or during hearing, or otherwise, of the material so noticed and shall be afforded an opportunity to contest the facts so noticed.

Q. Findings, Conclusions and Recommendation. Within twenty (20) days after the hearing, the Chair of the Disciplinary Panel shall cause findings, conclusions and recommendation to be filed with the Board.

RULE 1.9 STIPULATIONS

A. Requirements. Any disciplinary matter may be disposed of by a stipulation for discipline entered into at any time by the respondent LPO and by the Board or the attorney appointed to represent the Board if one has been so appointed. No such stipulation shall be effective unless approved by the Board, and no stipulation for suspension or revocation shall be effective unless approved by the Supreme Court. The stipulation may be presented to the Board and the Supreme Court for approval without notice.

B. Form. A stipulation for discipline shall:

1. Set forth the material facts relating to the particular acts or omissions of the respondent LPO in such detail as to enable the Board and the Supreme Court to form an opinion as to the propriety of the discipline being agreed upon, and if approved, to make the stipulation useful in any subsequent disciplinary proceedings against the respondent LPO;

2. Set forth the respondent LPO's prior record of admonition, censure, reprimand, suspension, revocation or any absence of such record;

3. State the stipulation is not binding as a statement of all existing facts relating to the conduct of the respondent LPO, but that any additional existing acts may be proven in any subsequent disciplinary proceedings; and

4. Fix the amount of costs and expenses to be paid by the respondent LPO.

C. Stipulation Approved. If the stipulation is approved by the Board and/or the Supreme Court, the disciplinary action agreed to in the stipulation shall follow. If the stipulation is for admonition or reprimand, the stipulation shall be retained by the Board with notice thereof sent to the Supreme Court.

D. Stipulation Not Approved. If the stipulation is not approved by the Board or the Supreme Court, as the case may be, then the stipulation shall be of no force and effect and neither it nor the fact of its execution shall be admissible in evidence in any pending disciplinary proceeding, in any subsequent disciplinary proceeding or in any criminal or civil action.

E. Failure to Comply. Failure of a respondent LPO to comply with the terms of a stipulation for discipline entered into and approved as provided in this rule may constitute grounds for discipline.

RULE 1.10 SANCTIONS AND OTHER REMEDIES

A. Sanctions. The disciplinary sanctions or actions affecting the status of an LPO are admonitions, reprimands and recommendations to the Supreme Court for the suspension or revocation of the certification.

B. Restitution. An LPO who has been found to have committed an act of misconduct and who has been sanctioned pursuant to this rule may in addition be ordered to make restitution to persons financially injured by the LPO's conduct. The Chair of the Disciplinary Panel may order the terms of payment of restitution. Failure of an LPO to make restitution when ordered to do so, or failure to comply with the terms entered, may constitute grounds for discipline.

RULE 1.11 TRANSFER TO DISABILITY INACTIVE STATUS

A. Automatic Transfer. In the event an active LPO 1) has been found to be incapable of assisting in the LPO's own defense in a criminal action, 2) has been acquitted of a crime on the ground of insanity, 3) has had a guardian (but not a limited guardian) appointed for the LPO's person or estate upon a finding of incompetency, or 4) has been found to be mentally incapable of conducting the work of an LPO in any other jurisdiction, the LPO shall automatically be transferred from active status to disability inactive status upon receipt by the Board of a certified copy of the judgment, order or other appropriate document demonstrating that one or more of the above events has occurred.

The LPO and the LPO's guardian, if one has been appointed, shall forthwith be notified of the transfer to disability inactive status. The Supreme Court shall be notified of the transfer to disability inactive status and shall be provided with a copy of the judgment, order or other appropriate document upon which the transfer was based.

B. Discretionary Transfer.

1. Disciplinary Panel May Order Inquiry. When it appears to the Disciplinary Panel that there is reasonable cause to believe that an active LPO is unable to adequately engage in the work of an LPO because of insanity, mental illness, senility, excessive use of alcohol or drugs, or other mental or physical incapacity, the Disciplinary Panel shall order that a hearing be held to inquire into the capacity of the LPO to engage in the limited practice of law.

2. Inquiry During Disciplinary Proceeding. When it appears to the Disciplinary Panel or Board that there is reasonable cause to believe a respondent LPO is incapable of conducting a proper defense to a disciplinary proceeding against the LPO because of insanity, mental illness, senility, excessive use of alcohol or drugs or other mental or physical incapacity, the Disciplinary Panel or Board shall order that a supplemental hearing be held to inquire into the capacity of the LPO to conduct a proper defense. Such hearing shall be automatic where the respondent LPO alleges in the course of a disciplinary proceeding that the LPO is unable to conduct a proper defense because of such mental or physical incapacity.

3. Procedure. Proceedings conducted pursuant to this rule are not disciplinary proceedings but shall be conducted under the same procedural rules as disciplinary proceedings. Any hearing held under subsection (2) above may be treated either as a new proceeding or as part of an existing proceeding, at the discretion of the Disciplinary Panel or Board, and the disciplinary hearing shall be held in abeyance pending the outcome of the supplemental proceeding. A recommendation of the Disciplinary Panel that an LPO be transferred to disability inactive status under this rule shall be treated as a

recommendation for suspension for the procedural purposes of these rules, including Rules 2.4 and 3.1.

4. Appointment of Counsel. In the event the respondent LPO does not appear with counsel within the time required by these rules for the filing of an answer, or within twenty (20) days of being notified of the issues to be considered in a supplemental proceeding under subsection (2) above, the Chair of the Board shall appoint a member of the Washington State Bar Association as counsel for the respondent LPO.

5. Finding of Incapacity. If after review of the decision of the Disciplinary Panel, the Board finds an LPO does not have adequate mental or physical capacity to engage in the work of an LPO or to conduct a proper defense to disciplinary charges, it shall enter an order immediately transferring the LPO to disability inactive status. Such transfer shall become effective upon service of such order upon the LPO or the LPO's counsel.

6. Appeal to Supreme Court. The LPO may appeal an order of transfer to disability inactive status pursuant to the provisions of Rule 3.1. The order of the Board shall remain in effect, regardless of the pendency of such appeal unless and until reversed by the Supreme Court.

7. Proceedings Confidential. All proceedings conducted pursuant to this rule shall be confidential except as otherwise provided for herein.

RULE 1.12 REINSTATEMENT TO ACTIVE STATUS

A. Restriction, Right of Petition, and Burden. No LPO transferred to disability inactive status may resume active status except by order of the Board or the Supreme Court. Any LPO transferred to disability inactive status shall be entitled to petition the Board for transfer to active status. The LPO shall have the burden of showing that the disability has been removed.

B. Petition and Initial Review. The petition for reinstatement shall set forth the facts demonstrating that the disability has been removed. The petition shall be filed with the Board. Upon the filing of the petition, the Chair of the Board shall direct whatever action appears necessary or proper to determine whether the disability has been removed. Such actions include, but are not limited to, direction: 1) that an appointed counsel for the Board or any other person conduct an investigation and file a report, 2) that an examination of the LPO be conducted by a qualified expert or experts, and 3) that a hearing be held before the Disciplinary Panel or Board.

C. Waiver of Doctor-Patient Privilege. The filing of a petition for reinstatement to active status by an LPO transferred to disability inactive status shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the LPO during the period of the LPO's disability. The LPO shall be required to disclose the name of each psychiatrist, psychologist, physician or other person and each hospital or other institution by whom or in which the LPO has been examined or treated since the LPO's transfer to disability inactive status. The LPO shall furnish, if requested by the Board or its appointed attorney, if there be one, written consent to each person or hospital to divulge information and records relating to the disability.

D. Review of Record. Prior to the submission of the petition and any report to the Board, the LPO shall have a reasonable opportunity to review the report and to make any additional submissions deemed desirable.

E. Board Review. The Board shall review the petition and report as expeditiously as possible and take one or more of the following actions:

1. Grant the petition;

2. Direct whatever additional action the Board deems necessary or proper to determine whether the disability has been removed;

3. Direct that the LPO establish proof of competence and learning in the area of work of an LPO, which proof may include certification by the APR 12 examiners of the LPO's successful completion of an examination for a limited admission to practice under APR 12;

4. Deny the petition, but no such denial shall occur except as hereinafter provided without the LPO having the opportunity for a hearing before the Board or Disciplinary Panel. A hearing is not necessary if the LPO has failed to state a prima facie case for reinstatement in the LPO's petition, or if the petition does not indicate a material change of circumstance since a previous denial of a petition for reinstatement filed by an LPO; and/or

5. Direct the LPO to pay the costs of the reinstatement proceedings.

F. Petition Granted. If the petition for reinstatement be granted, the respondent LPO shall immediately be transferred to active status and the Supreme Court notified thereof. If a disciplinary proceeding has been held in abeyance because of a disability inactive transfer, the proceeding shall go forward upon reinstatement.

G. Review by Supreme Court. If the petition for reinstatement is not granted, the respondent LPO shall have the right to appeal the decision of the Board to the Supreme Court by filing a notice of appeal with the Board within fifteen (15) days of service of the decision of the Board upon the respondent LPO. Review shall be conducted pursuant to the procedures of Title 3 herein.

H. Continuing Education Requirements. All of the required continuing education requirements occurring during the disability inactive status of an LPO must be made up within one (1) year of transfer to active status by the LPO.

I. Length of Inactive Status. No LPO shall remain on disability inactive status for longer than one (1) year from the date of transfer to disability inactive status. If an LPO remains on disability inactive status for a period longer than one (1) year from the date of transfer to disability inactive status, the LPO can be returned to active status only after successfully taking the examination required for certification under APR 12.

TITLE 2. REVIEW BY THE BOARD

RULE 2.1 NOTICES

When the findings, conclusions and recommendation of the Disciplinary Panel are with the Board, a copy thereof and a notice of filing, with a copy of Rules 2.1 through 2.6, shall be served upon the respondent LPO or the LPO's counsel.

RULE 2.2 STATEMENT IN SUPPORT OR OPPOSITION

At any time within ten (10) days after the service of the above-mentioned notice, the counsel appointed by the Board, if any, or the respondent LPO shall have the right to file with the Board a typewritten statement in support of or in opposi-

tion to the findings, alleged errors of law or any other matter in support of such statement. A copy of such statement, when filed, shall be served on the counsel appointed by the Board, if any, or the respondent LPO or the LPO's counsel.

RULE 2.3 ADDITIONAL HEARING

In making the above statement in support of or in opposition to the findings, conclusions and recommendation of the Disciplinary Panel, the counsel appointed by the Board, if any, or the respondent LPO may request an additional hearing before the Disciplinary Panel based on newly discovered evidence; provided however, that such statement shall contain a complete outline of such newly discovered evidence and shall set forth the reasons why the same was not presented at the hearing, all supported by affidavit. Such request may be granted or denied at the discretion of the Board.

RULE 2.4 BOARD REVIEW

Each proceeding in which a hearing has occurred shall be reviewed by the Board upon the record, together with the statements in support of or in opposition to such findings, conclusions and recommendation as provided by these rules. No person shall be entitled to be heard orally in such review, unless ordered by the Board.

RULE 2.5 TRANSCRIPT OF THE RECORD

The Board may have all the testimony transcribed. If a transcript be made, a copy thereof shall be served upon the respondent LPO or the LPO's counsel and the counsel appointed by the Board, if any, each of whom shall have ten (10) days from the date of service of the transcript to file objections to the contents thereof with the Board.

RULE 2.6 BOARD ACTION

A. Decision of Board. Prompt decision of the Board upon such review shall be made. The Board shall adopt, modify or reverse the findings, conclusions and recommendation of the Disciplinary Panel by written order, a copy of which shall be served upon the respondent LPO or the LPO's counsel.

B. Transcript Required for Suspension or Revocation. No suspension or revocation shall be recommended by the Board unless and until a transcript of the testimony before the Disciplinary Panel shall have been reduced to writing and settled as provided in Rule 2.5.

C. Dissent. If any member or members of the Board shall dissent from the findings, conclusions and recommendation of the majority, the member or members shall state briefly the reasons therefore and such dissent or dissents shall be made a part of the record.

D. Disposition Not Requiring Supreme Court Action. If the formal complaint is dismissed or if there is no recommendation of discipline by the Board or if the recommendation is that the respondent LPO be admonished or reprimanded, the record of the proceeding shall be retained by the Board.

E. Disposition Requiring Supreme Court Action. If the recommendation of the Board is that the respondent LPO be suspended or revoked, that recommendation along with the record shall be transmitted to the Supreme Court.

F. Chair Not Disqualified. Neither the Chair of the Board nor a member or members of the Board who also serve on the Disciplinary Panel are, by virtue of that office or service, disqualified from participating in the review before the Board of that Disciplinary Panel's findings, conclusions and recommendation or from participating in that Board's vote on the matter.

G. Information to Grievant. The grievant in all cases shall be advised by the Board of the final disposition of the complaint.

TITLE 3. REVIEW BY THE SUPREME COURT

RULE 3.1 PROCEDURE

A. Notification of Filing. Upon the filing of the recommendation of suspension or revocation and of the record, the Clerk of the court shall mail written notice to the counsel appointed by the Board, if any, and the respondent LPO and the LPO's counsel.

B. Review on the Record. The Supreme Court shall review the recommendation of the Board for suspension or revocation together with the record. The Supreme Court shall adopt, modify or reverse the recommendation of the Board by written order. A copy of the order shall be mailed to the respondent LPO and the Board by the Clerk of the court.

C. Finality. An opinion in a disciplinary proceeding is final when filed unless the court specifically provides otherwise.

RULE 3.2 SUSPENDED OR REVOKED LPOS

A. A revoked LPO, or one that is suspended for longer than thirty (30) days, shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters of the revocation or suspension and the consequent inability to act as a Limited Practice Officer after the effective date of the revocation or suspension and shall advise clients to seek services elsewhere.

B. The revoked or suspended LPO, after entry of the revocation or suspension order, shall not accept any new clients or engage in work as an LPO in any matter.

C. Within ten (10) days after the effective date of the revocation or suspension order, the revoked or suspended LPO shall file with the Board an affidavit showing:

1. That the LPO has fully complied with the provision of the order and with these rules;

2. The residence or other address of the revoked or suspended LPO where communications may hereafter be directed to the LPO; and

3. Attaching to such affidavit a copy of the form of letter of notification sent to clients, together with a list of the names and addresses of all clients to whom such notice was sent.

D. The Board shall cause a notice of the suspension or revocation to be published in the Washington State Escrow Association newsletter and a newspaper of general circulation in the county in which the disciplined LPO worked. However, if the Board determines that the LPO no longer resides in Washington State at the conclusion of the disciplinary process, then the notice may be published solely on the electronic website maintained by the Washington State Bar Association.

E. A revoked or suspended LPO shall keep and maintain written records of the various steps taken by the LPO under these rules so that, upon any subsequent proceeding instituted by or against the LPO, proof of compliance with these rules and with the revocation or suspension order will be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

TITLE 4. COSTS

RULE 4.1 COSTS AND EXPENSES

In all cases resulting in the administration of admonition, reprimand, suspension or revocation pursuant to these rules, the Chair of the Board shall serve upon the respondent LPO and file with the Board the verified statement of cost and expenses for the disciplinary proceedings to the time the Board makes its recommendation.

A. Costs and Expenses Defined. The term "costs" is defined to be all sums so taxable in civil proceedings. The term "expenses" is defined as all other obligations in money reasonably and necessarily incurred by the Board in the complete performance of its duties under these rules; such as but not limited to necessary expenses of the Disciplinary Panel or Board members, charges of expert witnesses, charges of court reporters, reasonable attorney's fee, as well as other direct provable expenses. The Board may waive payment of any and all costs and expenses if it deems such waiver to be in the interests of justice.

B. Statement of Costs and Expenses. In all cases in which the Board determines that an admonition or reprimand should be administered, the statement of costs and expenses shall be served on the respondent LPO at the time the LPO is notified of the Board's recommendation, together with a statement by said Board as to the amount of said costs and expenses which it, in its discretion, deems just to assess against the respondent LPO.

C. Assessment on Suspension or Revocation. In all cases in which the Board recommends suspension or revocation, the statement of costs and expenses together with a statement by the Board as to the amount of the costs and expenses which it, in its discretion, deems just to assess against the respondent LPO at the time the LPO is notified of the recommendation of the Board, shall be a part of the record sent to the Clerk of the Supreme Court.

D. Payment of Costs and Expenses. In all cases where disciplinary action results, the respondent LPO shall pay the assessed costs and expenses within thirty (30) days or such longer period of time as is determined by the Board in its discretion. Should the respondent LPO fail to pay the costs and expenses as herein provided, such failure shall be grounds for suspension, and the Board may move the Supreme Court for an order suspending the LPO until the costs and expenses are paid.

E. Determination of Costs by Supreme Court. The Board shall submit a verified cost statement to the Clerk of the Supreme Court which shall be served on the respondent LPO within ten (10) days after the cause has been submitted to that court. The respondent LPO shall have ten (10) days after such service within which to file exceptions thereto. The judgment of the Supreme Court, in any suspension or revocation proceeding, shall fix the amount of the costs and expenses to be paid as it shall deem just.

RULE 4.2 TERMINATION OF SUSPENSION

No suspended LPO shall resume working as a Limited Practice Officer until the amount of the costs and expenses fixed pursuant to these rules has been fully paid.

TITLE 5. REINSTATEMENT AFTER REVOCATION

RULE 5.1 RESTRICTIONS AGAINST PETITIONING

A. When Petition May Be Filed. No petition for reinstatement shall be filed within a period of two (2) years after revocation or within one (1) year after an adverse decision of the Supreme Court upon a former petition, or within a period of six (6) months after an adverse recommendation of the Board on a former petition when that recommendation is not submitted to the Supreme Court. If prior to revocation the LPO was suspended pursuant to the provisions of Rule 6.2 herein, or any comparable rule, the period of suspension shall be credited toward the two (2) years referred to above.

B. Payment of Obligations. No revoked LPO may file a petition for reinstatement until costs and expenses assessed pursuant to these rules, and restitution ordered as provided, have been paid by the revoked LPO.

RULE 5.2 REVERSAL OF CONVICTION

If an LPO has been revoked solely because of the LPO's conviction of a crime and the conviction is later reversed and the charges dismissed on their merits, the Supreme Court may in its discretion, upon direct application by the LPO, enter an order reinstating the LPO to limited practice under APR 12. At the time such direct application is filed with the court, a copy shall be filed with the Board.

RULE 5.3 FORM OF PETITION

A petition for reinstatement as an LPO after revocation shall be in writing in such form as the Board may prescribe. The petition shall set forth the age, residence and address of the petitioner, the date of revocation, and a concise statement of facts claimed to justify reinstatement. The petition shall be accompanied by the total fees required for application under APR 12.

RULE 5.4 INVESTIGATION

The Board may, in its discretion, refer the petition for reinstatement for investigation and report to counsel appointed by the Board, if any, or such other person or persons as may be determined by the Board.

RULE 5.5 HEARING BEFORE BOARD

A. Notice. The Board may fix a time and place for a hearing on the petition and shall serve notice thereof ten (10) days prior to the hearing upon the petitioner and upon such other persons as may be ordered by the Board. Notice of the hearing shall also be published in such newspaper or periodical as the Board shall direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and shall give the date fixed for the hearing.

B. Statement in Support or Opposition. On or prior to the date of hearing, anyone wishing to do so may file with the Board a written statement for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of Rule 5.6 A. Except by its leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Board.

RULE 5.6 ACTION BY BOARD

A. Requirements for Favorable Recommendation. Reinstatement may be recommended by the Board only upon an affirmative showing that the petitioner possesses the qualifications and meets the requirements as set forth by the Board and APR 12, and that the LPO's reinstatement will not be contrary to the public interest.

B. Action on Recommendation. The recommendation of the Board shall be served upon the petitioner. If the Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Board recommends against reinstatement, the record and recommendation shall be retained by the Board unless the petitioner requests that it be submitted to the Supreme Court. If the petitioner so requests, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the petitioner does not so request, the examination fee shall be refunded to the petitioner, but the petitioner shall still be responsible for payment of costs incidental to the reinstatement proceeding as directed by the Board.

RULE 5.7 ACTION ON SUPREME COURT'S DETERMINATION

A. Petition Approved. If the petition for reinstatement is granted by the Supreme Court, the reinstatement shall be subject to the petitioner's taking and passing the examination for APR 12 applicants and paying the costs incidental to the reinstatement proceeding as directed by the Supreme Court.

B. Petition Denied. If the petition for reinstatement be denied, the examination fee shall be refunded to the petitioner, but the petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding.

TITLE 6. SUSPENSION

RULE 6.1 SUSPENSION FOR CONVICTION OF FELONY

A. Suspension Automatic. An LPO shall be automatically suspended under APR 12 upon the conviction of a felony under either state or federal law, whether such conviction be after a plea of guilty, nolo contendere, not guilty, or otherwise, and regardless of the pendency of an appeal, and upon the filing of a certified copy of such conviction with the Clerk of the Supreme Court. Provided, however, that the Board may recommend to the Supreme Court for final disposition the prevention or termination of the suspension if the Board affirmatively finds that moral turpitude was not an element of the crime of which the LPO was convicted, or if the Board affirmatively finds that there is other good cause for preventing or terminating the suspension. Suspension in this manner shall not be a substitute or alternative for disciplinary proceedings against the LPO, but such proceedings shall be commenced upon the conviction, or prior thereto if reasonable cause therefor exists and shall proceed without regard to the suspension.

B. Duration. When an LPO is suspended upon conviction of a felony as provided in this rule, the duration of such suspension shall not exceed final disposition of the disciplinary proceedings commenced against the LPO. When the disciplinary proceedings are fully completed, after appeal or otherwise, the suspension occurring in this manner shall end and such disciplinary action as then occurs shall commence.

C. Petition for Reinstatement. A petition for reinstatement after automatic suspension for conviction of a felony pending completion of disciplinary proceedings shall be in writing and verified by the petitioner and filed with the Board. The petition shall set forth the age, residence and address of the petitioner, the date of the conviction and a concise statement of the facts claimed to justify reinstatement pending completion of the disciplinary proceedings. The petition shall be accompanied by the application for admission and the total fees required for certification under APR 12.

D. Investigation. In its discretion, the Board may refer the petition for reinstatement for investigation and report to the Disciplinary Panel or to such other person or persons as may be determined by the Board.

E. Notice of Hearing. The Board shall fix a time and place for hearing of the petition by the Board and shall serve notice thereof ten (10) days prior to the hearing upon the petitioner and upon such persons as may be ordered by the Board.

F. Requirements and Procedure. Such petition for reinstatement shall be recommended to the Supreme Court only upon affirmation showing to the satisfaction of the Board that the petitioner possesses the qualifications and requirements for certification under APR 12 and that the LPO's reinstatement will not be detrimental to the integrity of the profession or be contrary to the public interest.

G. Granting or Denial of the Petition by the Supreme Court. The Board shall keep a record of the hearing upon the petition for reinstatement and shall make and file its findings, conclusions and recommendation thereon with the Supreme Court for final disposition.

RULE 6.2 SUSPENSION DURING PENDENCY OF DISCIPLINARY PROCEEDINGS

A. Supreme Court May Suspend. At any time after institution of the disciplinary proceeding under Rule 1.6, where it appears that a continuation of certification under APR 12 by an LPO will result in substantial risk of injury to the public, the Board may recommend on petition to the Supreme Court for an order suspending the respondent LPO during the pendency of the disciplinary proceedings. If the court finds a risk of injury to the public, it may enter an order suspending the LPO from certification under APR 12. Such suspension shall not continue beyond the conclusion of the disciplinary proceedings.

B. Petition and Notice to Answer. The petition to the Supreme Court under this rule shall set forth the acts and omissions of the respondent LPO contained in the pending complaint, together with such other facts as may constitute grounds for suspension pending disciplinary proceedings. The petition may be supported by documents or affidavits. An order to show cause to be signed by the Chief Justice of the Supreme Court shall be issued thereon requiring the respondent LPO to be and appear before the Supreme Court on that court's first motion day following the expiration of seven (7) calendar days after the date on which the show cause order was signed, or on such other date as the Chief Justice may set, then and there to show cause why the prayer of the Petition for Suspension Pending Disciplinary Proceedings should not be granted.

C. Service. Service of the petition and order to show cause shall be by service of a certified copy of such order to show cause and an uncertified copy of such petition served in the manner provided in Rule 1.7 C(1) at least five (5) calendar days before the scheduled show cause hearing.

D. Answer to Petition. The answer may contain additional facts relating only to the issue of substantial risk of injury to the public, shall be verified by the respondent LPO or the LPO's counsel, and may be supported by documents or affidavits. The answer shall be filed with the Clerk of the

Supreme Court at least three (3) days before the scheduled show cause hearing. For good cause shown, the Chief Justice may extend the time for answer.

E. Service of Answer. A copy of the answer shall be served on the Board.

F. Costs. No costs shall be assessed.

TITLE 7. SUSPENSION FOR CUMULATIVE DISCIPLINE

RULE 7.1 CRITERIA

An LPO disciplined who has a record of:

A. Three or more admonitions, censures, and/or reprimands, or

B. Any combination of a suspension or revocation plus one or more admonitions, censures and/or reprimands, shall be subject to suspension from limited practice under APR 12.

RULE 7.2 PROCEDURE

A. Upon an LPO's accumulation of discipline as provided in Rule 7.1, the Board may recommend to the Supreme Court suspension of the LPO.

B. The Board shall file with the Supreme Court the respondent LPO's prior record of discipline and its recommendation for suspension. The respondent LPO shall be served in the manner provided in Rule 1.6 C(1) with a copy of the record filed with the Supreme Court.

C. The Supreme Court shall allow the Board and the respondent LPO the opportunity to submit written briefs or oral arguments under such conditions and within such time as the court directs.

TITLE 8. GENERAL PROVISIONS

RULE 8.1 RESIDENCE

For the purposes of these rules, an LPO is a resident of that county, district or congressional district in which the LPO maintains, or last maintained, the LPO's principal office whether or not that be the LPO's place of abode.

RULE 8.2 PAPERS

All pleadings, briefs, documents or notices in these rules provided for must be typewritten or printed on 8 1/2 by 11 inch paper.

RULE 8.3 FILING OF DOCUMENTS WITH THE BOARD

Whenever in these rules it is required that any document shall be filed with the Board, such documents shall be served on the Board at the office of the Washington State Bar Association.

RULE 8.4 REPRESENTATION OF RESPONDENT

A former member of the Board who is also a licensed attorney in Washington shall not represent a respondent LPO in proceedings under these rules until after the lapse of two (2) years following expiration of the former Board member's term of office.

RULE 8.5 RECIPROCAL DISCIPLINE

A. Upon receipt of a certified copy of an order demonstrating that an LPO admitted to limited practice in this state has been disciplined in another jurisdiction, the Supreme Court shall forthwith direct the Board to issue a notice directed to the respondent LPO containing:

1. A copy of the order from the other jurisdiction; and

2. An order directing that the respondent LPO inform the court within thirty (30) days from service of the notice, of any claim by the respondent LPO that the imposition of the identical discipline in this state would be unwarranted, and the reasons therefore.

The Board shall cause this notice to be served upon the respondent LPO in the manner provided in Rule 1.7 C(1).

B. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this state shall be deferred until such stay expires.

C. In all other respects, a final adjudication in another jurisdiction that an LPO has been found guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

RULE 8.6 DISCLOSURE

A. Disciplinary Files and Records Confidential. Except as otherwise provided in these rules, the file in a disciplinary proceeding and a disciplinary record shall be open only to the Board, Disciplinary Panel, administrative staff and the Supreme Court if filed for recommendation or review or requested by a member of the Supreme Court; however,

1. The respondent LPO or the LPO's counsel may have access to the file consisting of the formal complaint, and all other pleadings, documents and instruments filed in the proceeding subsequent thereto.

2. When requested by the official disciplinary body of another state in connection with a pending disciplinary action in that state, the Clerk of the Supreme Court will certify and transmit to the official disciplinary body of that state the record of the LPO involved.

B. Disclosure. Notwithstanding all existing rules relating to confidentiality of these proceedings, the Board may inform the public of disciplinary investigation or proceedings against any LPO when, in the judgment of the Board, it is determined that the matters involved are of such grave importance that the public interest is affected thereby.

C. Notice of Disciplinary Action Taken.

1. If an LPO be permitted to resign during the pendency of disciplinary hearings, or upon suspension or revocation, the fact of such resignation, suspension or revocation, including the LPO's name, shall be published in the Washington State Escrow Association publication.

2. If an admonition is given to an LPO who has previously been suspended or revoked or reprimanded, notice of such admonition, including the LPO's name, shall be published in the publication of the Washington State Escrow Association.

3. Notice of all reprimands, including the LPO's name, shall be published in the publication of the Washington State Escrow Association.

D. Disciplinary Records. The disciplinary record of an LPO shall consist of a brief summary of any grievance made against the LPO and the disposition or status thereof. Information with reference thereto may be released by the Board when:

1. Specified by these rules;

2. Requested in writing by the LPO;

3. Requested by the Chair of the Disciplinary Panel;

4. Requested by a licensing authority or law enforcement agency;

5. Directed by the Board in the public interest; or

6. Directed by the Supreme Court.

E. Contempt. Disclosure, except as herein provided, of any matter made confidential by these rules by any person

whomsoever shall subject such person to a proceeding as for contempt.

TITLE 9. EXONERATION FROM LIABILITY

RULE 9.1 EXONERATION FROM LIABILITY

A. Board and its Agents. No cause of action shall accrue in favor of a respondent LPO or any other person arising from an investigation or proceeding pursuant to these rules against the Limited Practice Board, its members or agents (including, but not limited to, its staff, Disciplinary Panel or staff of the Washington State Bar Association) provided that such Board or individual shall have acted in good faith. The burden of proving bad faith in this context shall be upon the party asserting same. The state shall provide a defense to any action brought against a member or agent of the Board for actions taken in good faith under these rules and the state shall bear the cost of the defense.

B. Complainants and Witnesses. Communications to the Board, Disciplinary Panel, staff, or any other individual acting under authority of these rules, are absolutely privileged and no lawsuit predicated thereon may be instituted against any grievant, witness or other person providing information.

TITLE 10. EXAMINATION OF BOOKS AND RECORDS

RULE 10.1 EXAMINATION AND INVESTIGATION OF BOOKS AND RECORDS

The Board and its Chair shall have the following authority to examine and investigate the books and records of any LPO, with or without notice. The Board may authorize examinations of documents selected, prepared, and completed by authority of APR 12 of any LPO or firm by which LPO's are employed in conjunction with an investigation. Such examination shall extend only to documents selected, prepared, and completed by authority of APR 12 of such LPO or firm. Upon the examination set forth above, if the Chair of the Board shall determine that further examination is warranted, the Chair may then order an appropriate examination of the LPO's or the firm's documents which were selected, prepared, and completed by authority of APR 12, including verification of the information therein from available sources.

RULE 10.2 COOPERATION OF LPO

It shall be the duty and obligation of any LPO or firm who is subject to examination and investigation under Rule 10.1 to cooperate with the person conducting the examination, investigation or examination subject only to the proper exercise of any privilege against self incrimination where applicable, by:

A. Producing to such person forthwith all evidence and documents selected, prepared, and completed by authority of APR 12 as such person shall request for the purpose of the examination and investigation; and

B. Furnishing forthwith explanations as such person may require for the purpose of the examination and investigation.

RULE 10.3 DISCLOSURE

The examination and investigation report shall be open to the Disciplinary Panel, the Board and the LPO examined unless a disciplinary proceeding be commenced in which event the disclosure provision of Rule 8.6 shall apply.

RULE 10.4 REGULATIONS

The Board may adopt regulations pursuant to its powers set forth in this rule subject to the approval of the Supreme Court.

TITLE 11. AUDITS AND TRUST ACCOUNT

RULE 11.1 AUDITS AND INVESTIGATION OF BOOKS AND RECORDS

The Board and its chairperson shall have the following authority to examine, investigate and audit the books and records of any LPO for the purpose of ascertaining and reporting whether APR 12.1 has been or is being complied with by such LPO:

A. Random Examination. The Board may from time to time authorize examinations of the books and records of any LPO or closing firm selected at random. Such examination shall extend only to books and records of such LPO and to all transactions of the closing firm in which an LPO participated.

B. Particular Examination. The Chair of the Board may, upon receipt of information that a particular LPO or closing firm may not be in compliance with APR 12.1, authorize an examination limited to the scope set forth in Section A. Such information may be presented to the Chair without notice to the LPO or closing firm.

C. Audit. Upon the examination set forth in Section A or B, if the Chair of the Board shall determine that further examination is warranted, the Chair may then order an appropriate audit of the LPO's or closing firm's books and records, including verification of the information therein from available sources.

RULE 11.2 COOPERATION OF LPO

It shall be the duty and obligation of any LPO or closing firm who is subject to examination, investigation and audit under Rule 11.1 to cooperate with the person conducting the examination, investigation or audit, subject only to the proper exercise of any privilege against self-incrimination where applicable, by:

A. Producing for such person forthwith all evidence, books, records and papers as such person shall request for the purpose of his or her examination, investigation or audit;

B. Furnishing forthwith such explanations as the person may require for the purpose of his or her examination, investigation or audit;

C. Producing, in those cases where the examination, investigation or audit is being conducted pursuant to Rule 11.1, to such person forthwith written authorization, directed to any bank or depository, for the person to examine, investigate or audit trust and general accounts, safe deposit boxes and other forms of maintaining trust property by the LPO or closing firm in such bank or depository.

RULE 11.3 DISCLOSURE

The examination and audit report shall be open to the Board, the LPO or closing firm examined, investigated or audited.

RULE 11.4 DECLARATION OR QUESTIONNAIRE

A. Questionnaire. The Board shall cause to be directed annually to each active LPO a written declaration or questionnaire designed to determine whether such LPO is complying with APR 12.1. Such declaration or questionnaire shall be completed, executed and delivered to the Board on or

~~before the date of delivery specified in such declaration or questionnaire.~~

~~B. If an active LPO fails to comply with the requirements of Rule 11.4.A., compliance may still be accomplished by:~~

~~1. Submitting to the Board by April 30 the completed declaration or questionnaire called for by Rule 11.4.A., and~~

~~2. Paying at the time of filing such declaration or questionnaire a special $50 service fee.~~

~~C.~~ Noncompliance. ~~An active LPO who has failed to file the declaration or questionnaire on or before the date specified in Section B may be removed (or conditionally removed) from the roll of certified LPOs and suspended until in compliance with Rule 11.4.~~

~~1. To effect such removal, the Board shall send to the non-complying LPO by certified mail, directed to the LPO's last known address as maintained on the records of the Washington State Bar Association, a written notice of non-compliance. The notice shall advise such active LPO of the pendency of removal proceedings unless within ten (10) days of receipt of such notice such active LPO completes and returns to the Board an accompanying form of petition, to which supportive affidavit(s) may be attached for extension of time for, or waiver of, compliance with the requirements of Rule 11.4 or for a ruling by the Board of substantial compliance with the requirements.~~

~~2. If such petition is not filed, such lack of action shall be deemed acquiescence by the active LPO in the finding of non-compliance. The Board shall take such action as it deems appropriate.~~

~~3. If such petition is filed, the Board may, at its discretion, approve the same without hearing or may enter into an agreement on terms with such active LPO as to time and other requirements for achieving compliance with Rule 11.4.~~

~~4. If the Board does not approve such petition or enter into such agreement, the affected LPO may request a hearing before the Board. At the discretion of the Chair of the Board, the hearing may be held before the entire Board or panel thereof. The Board or panel thereof shall enter written findings of fact and an appropriate order, a copy of which shall be transmitted by certified mail to the active LPO affected at the address of such member on file with the Office of the Administrator for the Courts. Any such order shall be final and, in case of an adverse determination, shall be transmitted to the Supreme Court.~~

~~5. An adverse decision of the Board may be appealed by the active LPO affected to the Supreme Court in accordance with the applicable provisions of APR 12. As to such appeals, the Board shall be represented by counsel as the Board may designate.~~

~~D. Such failure shall also subject the LPO who has failed to comply with this rule to a full audit of his or her books and records as provided in Rule 11.1 (C) upon request of the Board Chair. A copy of the request made under this section shall be served upon the LPO involved. The request shall be granted upon a showing that the LPO has failed to comply with Section A of this rule. If the LPO shall later comply, the Chair of the Board shall have discretion to determine whether an audit should be conducted, and if so the scope of the audit. An LPO audited pursuant to this section shall be liable for the actual costs of conducting such audit.~~

~~*RULE 11.5 REGULATIONS*~~

~~The Board may adopt regulations pursuant to its powers set forth in this rule subject to the approval of the Board of Governors of the Washington State Bar Association and the Supreme Court.~~

SUGGESTED AMENDMENT
RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 1.15A SAFEGUARDING PROPERTY

(a) This Rule applies to (1) property of clients or third persons in a lawyer's possession in connection with a representation and (2) escrow and other funds held by a lawyer incident to the closing of any real estate or personal property. For all transactions in which a lawyer has selected, prepared, or completed legal documents for use in the closing of any real estate or personal property transaction, the lawyer must insure that all funds received or held by the closing firm incidental to the closing of the transaction, including advances for costs and expenses, are held and maintained as set forth in this rule or LPO RPC 1.12A, and that the lawyer complies with the duties imposed on limited practice officers by that rule.

(b) [No change].
(c) [No change].
(d) [No change].
(e) [No change].
(f) [No change].
(g) [No change].
(h) [No change].
(i) [No change].
(j) [No change].

Washington Comments

[No change].

SUGGESTED AMENDMENT
RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)
RULE 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) **Overdraft Notification Agreement Required.** Every bank, credit union, savings bank, or savings and loan association referred to in RPC 1.15A(i) and LPO RPC 1.12A (i) will be approved as a depository for lawyer trust accounts and LPO trust accounts if it files with the Disciplinary Board an agreement, in a form provided by the Board, to report to the Board if any properly payable instrument is presented against a lawyer, LPO or closing firm trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institution and cannot be canceled except on 30 days' notice in writing to the Board. The Board annually publishes a list of approved financial institutions.

(b) **Overdraft Reports.**

(1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:

(A) the identity of the financial institution;

(B) the identity of (1) the lawyer or law firm, or (2) the limited practice officer or closing firm;

(C) the account number; and

(D) either:

(i) the amount of overdraft and date created; or

(ii) the amount of the returned instrument(s) and the date returned.

(2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

GR 9 COVER SHEET

Suggested Amendment

RULES OF PROFESSIONAL CONDUCT (RPC)
RPC 1.15A SAFEGUARDING PROPERTY

Submitted by the Board of Governors of the Washington State Bar Association

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Purpose: See the purpose statement to suggested amendment to RPC 1.5. This suggested rule amendment to RPC 1.15A will serve (1) to state the general rule with respect to the trust account treatment of fees paid in advance of services and (2) to specify that the only exceptions to the general rule are set out in RPC 1.5(f).

Suggested Amendment

RULES OF PROFESSIONAL CONDUCT (RPC)
RPC 1.15A SAFEGUARDING PROPERTY

(a) - (b) [Unchanged.]

(c) A lawyer must hold property of clients and third persons separate from the lawyer's own property.

(1) A lawyer must deposit and hold in a trust account funds subject to this Rule pursuant to paragraph (h) of this Rule.

(2) Except as provided in Rule 1.5(f), and subject to the requirements of paragraph (h) of this Rule, a lawyer shall deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(3) A lawyer must identify, label and appropriately safeguard any property of clients or third persons other than funds. The lawyer must keep records of such property that identify the property, the client or third person, the date of receipt and the location of safekeeping. The lawyer must preserve the records for seven years after return of the property.

(d) - (j) [Unchanged.]

Washington Comments

[1] [Unchanged.]

[2] Client funds include, but are not limited to, the following: legal fees and costs that have been paid in advance (other than retainers and flat fees complying with the requirements of Rule 1.5(f)), funds received on behalf of a client, funds to be paid by a client to a third party through the lawyer, other funds subject to attorney and other liens, and payments received in excess of amounts billed for fees.

[3] - [7] [Unchanged.]

[8] If a lawyer accepts payment of an advanced fee deposit by credit card, the payment must be deposited directly into the trust account. It cannot be deposited into a general account and then transferred to the trust account. Similarly, credit card payments of earned fees, of retainers meeting the requirements of Rule 1.5 (f)(1), and of flat fees meeting the requirements of Rule 1.5 (f)(2) cannot be deposited into the trust account and then transferred to another account.

[9] - [15] [Unchanged.]

GR 9 COVER SHEET

Suggested Amendment

RULES OF PROFESSIONAL CONDUCT (RPC)
RPC 1.5 FEES

Submitted by the Board of Governors of the Washington State Bar Association

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Purpose: In 1990 the Board of Governors of the Washington State Bar Association approved Formal Ethics Opinion No. 186, entitled "The Proper Handling of Advance Fee Deposits and Retainers." it was withdrawn following the Supreme Court's decision in In re Discipline of DeRuiz, 152 Wn.2d 558, 99 P.3d 881 (2004). The withdrawal of Formal Opinion 186 created a void in guidance for lawyers with respect to advanced fee payments which these suggested amendments to RPC 1.5 seeks to address.

The suggested amendments create two exceptions to the general rule that fees paid in advance of services remain the property of the client and must be kept in trust. The exceptions are: (1) availability retainers, and (2) flat fees for specified services. The rule, for both types of fee agreements, requires a writing signed by the client. Flat fees require an additional disclosure substantially similar to the form set out in the rule, the purpose of which is to advise the client that the fee will immediately be placed into the lawyer's operating account and that payment of a flat fee in advance does not impair the client's right to terminate the client-lawyer relationship nor does it extinguish the possibility that the client may, or may not, have the right to a refund. The rule also contains a dispute resolution mechanism, and prohibits the use of the terms "nonrefundable," "earned upon receipt," and "minimum.

SUGGESTED AMENDMENT

RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 1.5 FEES

(a)-(e) [Unchanged.]

(f) Fees and expenses paid in advance of performance of services shall comply with Rule 1.15A, subject to the following exceptions:

(1) A lawyer may charge a retainer, which is a fee that a client pays to a lawyer to be available to the client during a specified period or on a specified matter, in addition to and apart from any compensation for legal services performed. A

retainer must be agreed to in a writing signed by the client. Unless otherwise agreed, a retainer is the lawyer's property on receipt and shall not be placed in the lawyer's trust account.

(2) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and is paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a writing signed by the client, a flat fee is the lawyer's property on receipt, in which case the fee shall not be deposited into a trust account under Rule 1.15A. The written fee agreement shall, in a manner that can easily be understood by the client, include the following: (i) the scope of the services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the fee is the lawyer's property immediately on receipt and will not be placed into a trust account; (iv) that the fee agreement does not alter the client's right to terminate the client-lawyer relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed. A statement in substantially the following form satisfies this requirement:

[Lawyer/law firm] agrees to provide, for a flat fee of $, the following services: . The flat fee shall be paid as follows: . Upon [lawyer's/law firm's] receipt of all or any portion of the flat fee, the funds are the property of [lawyer/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-lawyer relationship. In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee.

(3) In the event of a dispute relating to a fee under paragraph (f)(1) or (f)(2) of this Rule, the lawyer shall immediately refund to the client that portion of the fee, if any, that the lawyer reasonably believes is unearned. If the lawyer and the client disagree about the client's entitlement to a refund or the amount of a refund, the lawyer shall, within 30 days of the accrual of the dispute, deposit into a trust account governed by RPC 1.15A the amount that a reasonably prudent lawyer would believe to be reasonably in dispute. The lawyer shall maintain the funds in trust until the dispute is resolved. The lawyer shall take reasonable and prompt action to resolve the dispute in compliance with Rule 1.15A(g).

(g) A lawyer shall not characterize any fee as "nonrefundable," "minimum," or "earned upon receipt."

Comment

[1] - [9] [Unchanged.]

Additional Washington Comments (10-1~~1~~8)

Reasonableness of Fee and Expenses

[10] Every fee agreed to, charged, or collected, including a fee ~~denominated as "nonrefundable" or "earned upon receipt"~~ that is a lawyer's property on receipt under paragraph (f)(1) or (f)(2), is subject to Rule 1.5(a) and may not be unreasonable.

[11] Under paragraph (a)(9), one factor in determining whether a fee is reasonable is whether the fee agreement or confirming writing demonstrates that the client received a reasonable and fair disclosure of material elements of the fee agreement. Lawyers are encouraged to use written fee agreements that fully and fairly disclose all material terms in a manner easily understood by the client.

Payment of Fees in Advance of Services

[12] In the absence of a written agreement between the lawyer and the client to the contrary that complies with paragraph (f)(1) or (f)(2), all advance payments are presumed to be deposits against future services or costs and must, until the fee is earned or the cost incurred, be held in a trust account pursuant to Rule 1.15A. See Rule 1.15A (c)(2). This fee structure is known as an "advance fee deposit." Such a fee may only be withdrawn when earned. See Rule 1.15A (h)(3). For example, when an advance fee deposit is placed in trust, a lawyer may withdraw amounts based on the actual hours worked. In the case of a flat fee that constitutes an advance fee deposit because it does not meet the requirements of paragraph (f)(2), the lawyer and client may mutually agree, preferably in writing, on a reasonable basis for determining when portions of the fee have been earned, such as specific "milestones" reached during the representation or specified time intervals that reasonably reflect the actual performance of the legal services.

[13] Paragraphs (f)(1) and (f)(2) provide exceptions to the general rule that fees received in advance must be placed in trust. Paragraph (f)(1) describes a fee structure sometimes known as an "availability retainer," "engagement retainer," "true retainer," "general retainer," or "classic retainer." Under these rules, this arrangement is called a "retainer." A retainer secures availability alone, i.e., it presumes that the lawyer is to be additionally compensated for any actual work performed. Therefore, a payment purportedly made to secure a lawyer's availability, but that will be applied to the client's account as the lawyer renders services, is not a retainer under paragraph (f)(1). A written retainer agreement should clearly specify the time period or purpose of the lawyer's availability, that the client will be separately charged for any services provided, and that the lawyer will treat the payment as the lawyer's property immediately on receipt and will not deposit the fee into a trust account.

[14] Paragraph (f)(2) describes a "flat fee," sometimes also known as a "fixed fee." A flat fee constitutes complete payment for specified legal services, and does not vary with the amount of time or effort expended by the lawyer to perform or complete the specified services. If the requirements of paragraph (f)(2) are not met, a flat fee received in advance must be deposited initially in the lawyer's trust account. See Washington Comment [12].

[15] If a lawyer and a client agree to a retainer under paragraph (f)(1) or a flat fee under paragraph (f)(2) and the lawyer complies with the applicable requirements, including obtaining agreement in a writing signed by the client, the fee is considered the lawyer's property on receipt and must not be deposited into a trust account containing client or third-party funds. See Rule 1.15A(c) (lawyer must hold property of clients separate from lawyer's own property). For definitions of the terms "writing" and "signed," see Rule 1.0(n).

[16] In fee arrangements involving more than one type of fee, the requirements of paragraphs (f)(1) and (f)(2) apply only to the parts of the arrangement that are retainers or flat fees. For example, a client might agree to make an advance payment to a lawyer, a portion of which is a flat fee for spec-

ified legal services with the remainder to be applied on an hourly basis as services are rendered. The latter portion is an advance fee deposit that must be placed in trust under Rule 1.15A (c)(2). If the requirements of paragraph (f)(2) are met regarding the flat fee portion, those funds are the lawyer's property on receipt and must not be kept in a trust account. If the payment is in one check or negotiable instrument, it must be deposited intact in the trust account, and the flat fee portion belonging to the lawyer must be withdrawn at the earliest reasonable time. See Rule 1.15A (h)(1)(ii) & (h)(4). See also Comment [10] to Rule **1**.15A (explaining prohibition on split deposits). Although a signed writing is required under paragraphs (f)(1) and (f)(2) only for the retainer or flat fee portion of the fee (and only if the lawyer and client agree that the fee will be the lawyer's property on receipt), the lawyer should consider putting the entire arrangement in writing to facilitate communication with the client and prevent future misunderstanding. See Washington Comment [11].

[17] When a lawyer-client relationship terminates, a lawyer must refund the unearned portion of a fee. See Rule 1.16(d); In re DeRuiz, 152 Wn.2d 558, 574-75, 99 P.3d 881 (2004). Under paragraph (f)(3) of the Rule, if there is a dispute over the amount of a retainer under paragraph (f)(1) or a flat fee under paragraph (f)(2), the lawyer is obligated to refund to the client that portion of the fee that the lawyer reasonably believes is unearned, even though the fee was the lawyer's property on receipt and was not being held in a trust account. In the event of a dispute about the refund amount or the obligation to make such a refund, the lawyer is obligated to place the amount that a reasonably prudent lawyer would believe to be reasonably in dispute into a trust account, at which point the lawyer has an affirmative obligation to attempt to resolve the dispute in accordance with the provisions of Rule 1.15A(g). For the definitions of "reasonably" and "reasonably believes," see Rule 1.0 (h) and (i). In determining the efforts that a lawyer should undertake to resolve a dispute under paragraph (f)(3), see Comment [9] to this Rule and Washington Comment [9] to Rule 1.15A.

Prohibition on "Nonrefundable," "Minimum," and "Earned-Upon-Receipt" Terminology

[18] Paragraph (g) prohibits a lawyer from characterizing any fee as "nonrefundable" or "earned upon receipt." The term "nonrefundable" is misleading because every fee, however characterized and regardless of the terms of the agreement, must be reasonable under Rule 1.5(a) and is subject to the refund requirement of Rule 1.16(d) upon termination of representation. See Washington Comment [17]. The term "earned upon receipt" is misleading because fees are not actually earned until the lawyer performs the service or otherwise confers a benefit on the client. Paragraph (g) also prohibits a lawyer from characterizing a fee as "minimum." This term is sometimes used by lawyers to describe, for example, a fee that will be no lower than a specified amount, to be credited to the client at an hourly rate as work is performed (often until an initial deposit is "exhausted"), with any additional work to be billed on an hourly basis. Under paragraph (g), the lawyer may not use the term "minimum" to describe this (or any) fee arrangement because the word "minimum" implies that such a fee is nonrefundable. In addition, this fee arrangement is not a "retainer" under paragraph (f)(1) because it does not secure availability alone, nor is it a "flat fee" under paragraph (f)(2) because it does not constitute complete payment for specified legal services. An advance of such a fee from a client, therefore, must be deposited in a trust account under Rule 1.15 (c)(2), to be withdrawn by the lawyer as it is earned.

GR 9 COVER SHEET

SUGGESTED AMENDMENT

**RULES OF PROFESIONAL CONDUCT (RPC)
RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: When Rule 5.5 of the Rules of Professional Conduct was adopted, part (d) of the rule authorized lawyers not admitted to practice in Washington to practice law for a single employer as house counsel. Admission to Practice Rule 8(f), which formerly provided such authority for house counsel, was amended to apply only to house counsel admitted to practice law in a jurisdiction other than a United States jurisdiction.

Former APR 8(f) also authorized house counsel admitted in another United States jurisdiction to provide pro bono legal services through a qualified legal services provider as that term is defined in APR 8 (e)(2). After the amendments to the RPCs and APR 8(f), that authority no longer existed.

The suggested amendment to RPC 5.5(e) restores the authority to provide pro bono legal services through a qualified legal services provider that was authorized by the previous rule. It also provides that if the legal services being provided require appearance before a court or tribunal, the fees required by the pro hac vice admission rule, APR 8(b), will be waived.

SUGGESTED AMENDMENT

**RULES OF PROFESSIONAL CONDUCT (RPC)
RPC 5.5 UNAUTHORIZED PRACTICE OF LAW;
MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) [No change].
(b) [No change].
(c) [No change].
(d) [No change].
(e) A lawyer authorized to provide legal services under paragraph (d)(1) of this Rule may provide legal services in this jurisdiction for no fee through a qualified legal services provider, as that term is defined in APR 8 (e)(2). If such services involve representation before a court or tribunal, the lawyer shall seek admission under APR 8(b) and any fees for such admission shall be waived. The prohibition against compensation in this paragraph shall not prevent a qualified legal services provider from reimbursing a lawyer authorized to practice under paragraph (d)(1) for actual expenses incurred while rendering legal services under this pro bono exception. In addition, a qualified legal services provider

shall be entitled to receive all court awarded attorney's fees for pro bono representation rendered by the lawyer.

Comment

[1] - [21] [No change].

Additional Washington Comment (22)

[22] Mode Rule 5.5 does not contain a provision equivalent to paragraph (e) of Washington's Rule. Paragraph (e) provides that in-house lawyers, government lawyers, and others authorized to practice under paragraph (d) of this Rule may provide legal services for no fee through a qualified legal services provider, but it does not authorize any other form of law practice, whether for a fee or not, other than that authorized by Paragraph (d). For purposes of paragraph (e) of this Rule, the term "qualified legal services provider" is defined in Admission to Practice Rule 8(e)(2) as "a not for profit legal services organization whose primary purpose is to provide legal services to low income clients."

GR 9 COVER SHEET

Suggested Amendment
LAWYERS' FUND FOR CLIENT PROTECTION
(APR 15)
PROCEDURAL RULES
Rule 5. ELIGIBLE CLAIMS

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: A frequent fact pattern that the Lawyers' Fund for Client Protection Committee sees in applications is the situation where a lawyer told a client that fees were being withheld from settlement funds to pay a medical provider or other third-party, but the lawyer doesn't pay and converts the money instead. Often, these applications come from the third party. The problem arises that, if the client has not applied to the Fund, there is no way of knowing whether the money was paid to the client, whether the client was disputing the claim, or whether in light of the amount of the settlement, the lawyer told the client that he would negotiate a reduced payment.

In some instances, the Committee has felt satisfied that the funds were due to the third party, and has approved the application. In others, they have attempted to contact the client to either have the client file an application, or to confirm the facts as set out in the third-party's application. And in some instances, the Committee has denied the application and told the third-party applicant that the Committee would only consider the matter if the client filed an application.

This suggested amendment to the Fund Procedural Rules would provide that the Fund will not pay such third parties without either (a) an application from the client or beneficiary or (b) authorization from the client or beneficiary to make such a payment.

SUGGESTED AMENDMENT
LAWYERS' FUND FOR CLIENT PROTECTION
(APR 15)
PROCEDURAL RULES
Rule 5. ELIGIBLE CLAIMS

Rule 5. Eligible Claims.

A - C. [No change].

D. Excluded Losses. Except as provided by Section E of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred by partners and associates of the lawyer causing the loss;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the lawyer or any person or entity described in Rule 5 D (1), (2) or (3);

(5) Losses incurred by an assignee, lienholder, or creditor of the applicant or lawyer, unless application has been made by the client or beneficiary or the client or beneficiary has authorized such reimbursement;

(~~5~~6) Losses incurred by any governmental entity or agency; or (~~6~~7)

Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.

E - G. [No change].

GR 9 COVER SHEET

Suggested Amendment
LAWYERS' FUND FOR CLIENT PROTECTION
(APR 15)
PROCEDURAL RULES
Rule 6. PROCEDURES

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: On occasion, Applicants to the Lawyers' Fund for Client Protection notify the Fund that they are withdrawing their application, or the Applicant has received restitution of the full amount stated in the Fund application. Currently, those are reported to the Fund Committee and the Committee "denies" the application because of the withdrawal or restitution.

This suggested amendment to the Fund Procedural Rules would provide that those files may be administratively closed once the application is withdrawn or restitution is made.

SUGGESTED AMENDMENT
LAWYERS' FUND FOR CLIENT PROTECTION
(APR 15)
PROCEDURAL RULES
Rule 6. PROCEDURES

A - C. [No change].

D. Withdrawal of Application/Restitution. If, during the investigation of an application, the Applicant withdraws the Application or the Applicant receives full restitution of the amount stated in the Application, the Applicant and the lawyer shall be advised that the file will be closed without further action.

~~D~~**E. Testimony.** The Committee may request that testimony be presented to complete the record. Upon request, the lawyer or applicant, or their representatives, may be given an opportunity to be heard at the discretion of the Committee.

~~E~~**F. Finding of Dishonest Conduct.** The Committee may make a finding of dishonest conduct for purposes of considering an application. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

~~F~~**G. Evidence and Burden of Proof.** Consideration of an application need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs. The applicant shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.

~~G~~**H. Pending Disciplinary Proceedings.** Unless the Committee or Trustees otherwise direct, no application shall be acted upon during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim.

~~H~~**I. Public Participation.** Public participation at Committee meetings shall be permitted only by prior permission granted by the Committee chairperson.

~~I~~**J. Committee Action.**

(1) Actions of the Committee Which Are Final Decisions: A decision by the Committee on an application for payment of $25,000 or less - whether such decision be to make payment, to deny payment, to defer consideration, or for any action other than payment of more than $25,000 - shall be final and without right of appeal to the Trustees.

(2) Actions of the Committee Which Are Recommendations to the Trustees: A decision by the Committee (a) on an application for more than $25,000, or (b) involving a payment of more than $25,000 (regardless of the amount stated in the application), is not final and is a recommendation to the Trustees which shall have sole authority for final decisions in such cases.

Rules 7 - 14. [No change].

GR 9 COVER SHEET

Suggested Amendment to
RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)
ELC 13.9 COSTS AND EXPENSES
Submitted by the Board of Governors of the Washington State Bar Association

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Purpose: Rule 13.9 of the Rules for Enforcement of Lawyer Conduct (ELC) provides for the assessment of the costs and expenses of the Washington State Bar Association (Association) against any lawyer who is sanctioned or admonished. ELC 13.9 defines "expenses" as a reasonable charge for attorney fees and administrative costs equal to the actual expenses incurred by the Association, but in any case not less than a minimum amount based on the level at which discipline is imposed. These minimum amounts were last adjusted in 2002 with the adoption of the ELC. This proposal is intended as a periodic update of those minimum figures. This proposal raises the minimum expense figures as follows:

- For an admonition, from $750 to $1,000;
- For a matter that becomes final without review by the Disciplinary Board, from $1,500 to $2,000;
- For a matter that becomes final following review by the Disciplinary Board, from a total of $2,000 to a total of $3,000;
- For a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, from a total of $2,500 to a total of $4,000;
- For a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, from a total of $3,000 to a total of $5,000.

RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)
ELC 13.9. COSTS AND EXPENSES

(a) - (b) [Unchanged.]

(c) Expenses Defined. "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

(1) for an admonition that is accepted under rule 13.5(a), ~~$750~~ $1,000;

(2) for a matter that becomes final without review by the Board, ~~$1,500~~ $2,000;

(3) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of ~~$2,000~~ $3,000;

(4) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of ~~$2,500~~ $4,000; and

(5) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of ~~$3,000~~ $5,000.

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

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.

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

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-24-002
NOTICE OF PUBLIC MEETINGS
PUGET SOUND CLEAN AIR AGENCY
[Filed November 26, 2007, 8:44 a.m.]

This is to notify you of a change to the board of directors monthly meeting dates that are published in the Washington state register.

- A special board meeting will be held November 28, 2007.

If you have any questions, please call Judith White-Crow at (206) 689-4079.

BOARD OF DIRECTORS
MEETING DATES FOR YEAR 2007

Regular Monthly Meetings

January 25, 2007
February 22, 2007
March 22, 2007
April 26, 2007
May 24, 2007
June 28, 2007
July 26, 2007
August (No Meeting)
September 27, 2007
October 18, 2007
November 15, 2007
November 28, 2007 (special meeting)
December 20, 2007

WSR 07-24-003
NOTICE OF PUBLIC MEETINGS
PUGET SOUND PARTNERSHIP
[Filed November 26, 2007, 8:45 a.m.]

The Puget Sound partnership (PSP) leadership council will meet on Monday, December 17, in Maple Hall, 180 Commercial, LaConner, WA.

In addition to the regular management reports, updates, and public testimony, the council will receive a briefing on NOAA's risk analysis process, continue its development of the action agenda and adopt the 2008 leadership council meeting schedule. The final proposed agenda will be posted on the partnership's web page, along with meeting materials, as soon as it is finalized. Please see http://www.psp.wa.gov/get_involved/calendar/meetngs.htm#leadership for meeting information.

If you plan to participate or have materials for council review, please submit information to the PSP no later than December 10, 2007. This will allow for distribution to council members in a timely fashion.

PSP leadership council public meetings are held in locations accessible to people with disabilities. Arrangements for individuals with hearing or visual impairments can be provided by contacting PSP by December 7, 2007, at (360) 725-5463 or TDD 1-800-833-6388.

WSR 07-24-005
NOTICE OF PUBLIC MEETINGS
PUGET SOUND PARTNERSHIP
[Filed November 26, 2007, 2:14 p.m.]

The Puget Sound partnership (PSP) ecosystem coordination board will meet on Friday, December 14, at the Federal Way Community Center, 876 South 333rd Street, Federal Way, WA.

This is the first meeting of the PSP ecosystem coordination board. At the meeting the board will discuss its role in relationship to the PSP leadership council, action agenda, and in communication and outreach activities. In addition the board will receive a briefing on its statutory requirements, other board basics, and adopt the 2008 ecosystem coordination board meeting schedule. The final proposed agenda will be posted on the partnership's web page, along with meeting materials, as soon as it is finalized. Please see http://www.psp.wa.gov/get_involved/calendar/meetngs.htm#ecosystem for additional meeting information.

If you plan to participate or have materials for board review, please submit information to the PSP no later than December 7, 2007. This will allow for distribution to board members in a timely fashion.

WSR 07-24-006
NOTICE OF PUBLIC MEETINGS
EDMONDS COMMUNITY COLLEGE
[Filed November 26, 2007, 3:55 p.m.]

In compliance with RCW 42.30.075, the following board of trustees 2008 meeting schedule has been approved for Edmonds Community College. The regularly scheduled meetings will take place on the second Thursday of the month beginning at 4:30 p.m. in Snohomish Hall, Room 304A, at Edmonds Community College, 20226 68th Avenue West, Lynnwood, WA 98036.

January	No meeting
February 14	
March 13	

April 10	
May 8	
June 20	Friday - special meeting
July	No meeting
August 21 and 22	Study session - special meeting
September 11	
October 9	
November 13	
December	No meeting

WSR 07-24-007
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF LABOR AND INDUSTRIES
(Industrial Insurance Chiropractic Advisory Committee)

[Filed November 26, 2007, 5:29 p.m.]

As per chapter 42.30 RCW, the Open Public Meetings Act, the industrial insurance chiropractic advisory committee meeting scheduled for January 2008 will be at the date, time, and location as follows:

COMMITTEE	DATE	TIME	LOCATION
IICAC Meetings	January 28, 2008	1:00 p.m. to 4:00 p.m.	Washington Mutual Leadership Center at Cedarbrook 18525 36th Avenue South SeaTac

Please call Sandy Rains at (360) 902-5024 if you have any questions about these meetings.

WSR 07-24-008
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Escrow Commission)

[Filed November 27, 2007, 9:41 a.m.]

Escrow commission meetings:

Normally the second Tuesday of the first month of each quarter:

Tuesday, January 8, 2008	9 a.m. - 12 noon	Highline Community College Des Moines
Tuesday, April 8, 2008	9 a.m. - 12 noon	Highline Community College Des Moines
Tuesday, July 8, 2008	9 a.m. - 12 noon	Highline Community College Des Moines
Tuesday, October 7, 2008	9 a.m. - 12 noon	Highline Community College Des Moines

WSR 07-24-009
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Mortgage Broker Commission)

[Filed November 27, 2007, 9:41 a.m.]

Mortgage broker commission meetings:

Normally the second Tuesday of the second month of each quarter:

Tuesday, February 12, 2008	9 a.m. - 11 a.m.	Renton City Hall
Tuesday, May 13, 2008	9 a.m. - 11 a.m.	Renton City Hall
Tuesday, August 12, 2008	9 a.m. - 11 a.m.	Spokane Community College
Tuesday, November 11, 2008	9 a.m. - 11 a.m.	Renton City Hall

WSR 07-24-010
NOTICE OF PUBLIC MEETINGS
COMMUNITY COLLEGES OF SPOKANE

[Filed November 27, 2007, 9:41 a.m.]

Pursuant to RCW 42.30.075, following is the schedule of meetings for the board of trustees of Washington State Community College District 17 for calendar year 2008.

Should you have questions regarding the schedule, please contact Christine Pearl, executive assistant to the chancellor and liaison to the board of trustees, at (509) 434-5006.

BOARD OF TRUSTEES
WASHINGTON COMMUNITY COLLEGE DISTRICT 17
SCHEDULE OF MEETINGS

Notice is hereby given, pursuant to RCW 42.30.075, that the regular meetings of the board of trustees of Washington State Community College District 17 (Community Colleges of Spokane) during calendar year 2008 shall be held at 8:30 a.m. on the following dates (*generally held on third Tuesdays*) and in the following locations:

Date	Location	Address
January 15, 2008 (3rd Tuesday)	Max Snyder Building	East and West Board Rooms 2000 North Greene Street Spokane, WA
February 19, 2008 (3rd Tuesday)	Spokane Falls Community College	The Falls Conference Room Administration Building 3410 West Fort George Wright Drive Spokane, WA
March 18, 2008 (3rd Tuesday)	Max Snyder Building	East and West Board Rooms 2000 North Greene Street Spokane, WA
April 15, 2008 (3rd Tuesday)	Max Snyder Building	East and West Board Rooms 2000 North Greene Street Spokane, WA
May 20, 2008 (3rd Tuesday)	Spokane Falls Community College	The Falls Conference Room Administration Building 3410 West Fort George Wright Drive Spokane, WA

Date	Location	Address
June 17, 2008 (3rd Tuesday)	Institute for Extended Learning	Newport Center 1204 West Fifth Street Newport, WA
July 15, 2008 (3rd Tuesday)	Max Snyder Building	East and West Board Rooms 2000 North Greene Street Spokane, WA
August 19, 2008 (3rd Tuesday)	Max Snyder Building	East and West Board Rooms 2000 North Greene Street Spokane, WA
September 16, 2008 (3rd Tuesday)	Spokane Falls Community College	The Falls Conference Room Administration Building 3410 West Fort George Wright Drive Spokane, WA
October 21, 2008 (3rd Tuesday)	Institute for Extended Learning	Magnuson Building 2917 West Fort George Wright Drive Spokane, WA
November 18, 2008 (3rd Tuesday)	Max Snyder Building	East and West Board Rooms 2000 North Greene Street Spokane, WA
December 16, 2008 (3rd Tuesday)	Spokane Falls Community College	The Falls Conference Room Administration Building 3410 West Fort George Wright Drive Spokane, WA

WSR 07-24-011
NOTICE OF PUBLIC MEETINGS
FORENSIC INVESTIGATIONS COUNCIL
[Filed November 27, 2007, 9:42 a.m.]

Pursuant to RCW 42.30.075, the forensic investigations council meeting scheduled for December 28, 2007, is being changed to December 16, 2007. The location will remain the same which is: Conference Room, WA Counties Building, 206 Tenth Avenue S.E., Olympia, WA.

If you have questions or need further information, David McEachran, Chair, can be reached at (360) 676-6784.

WSR 07-24-022
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed November 28, 2007, 9:38 a.m.]

Minimum Wage Rate

As per RCW 49.46.020, the department of labor and industries has calculated the adjusted minimum wage rate to be $8.07, effective January 1, 2008.

Please call (360) 902-6411 if you have any questions.

WSR 07-24-024
NOTICE OF PUBLIC MEETINGS
JAIL INDUSTRIES BOARD
[Filed November 28, 2007, 9:55 a.m.]

2008 BOARD MEETING SCHEDULE

Wednesday January 16, 2008	Criminal Justice Training Commission Burien
Friday April 25, 2008	Criminal Justice Training Commission Burien
Wednesday July 23, 2008	Criminal Justice Training Commission Burien
Friday October 17, 2008	Criminal Justice Training Commission Burien

All regular meetings run from 10:00 a.m. through 2:00 p.m. For further information, please contact Dean Mason, Executive Director, Jail Industries Board, 3060 Willamette Drive N.E., Suite 100, Lacey, WA 98516, phone (360) 486-2432, fax (360) 486-2381, e-mail dmason@cjctc.state.wa.us, web www.jib.wa.gov.

WSR 07-24-032
NOTICE OF PUBLIC MEETINGS
STRAWBERRY COMMISSION
[Filed November 29, 2007, 9:51 a.m.]

The Washington strawberry commission is filing the following dates, times and location of the 2008 scheduled meetings:

Annual Meeting	January 10, 2008 7:00 a.m.	Holliday Inn, Downtown 3105 Pine Street Everett, WA 98201 (In conjunction with the WA State Horticultural Association Convention and Trade Show)
Research Meeting	December 4, 2008 9:00 a.m.	Washington State University Research and Extension Center 7612 Pioneer Way East Puyallup, WA 98371

If you have any questions, please call Walter Swenson, (360) 352-1236.

WSR 07-24-035
NOTICE OF PUBLIC MEETINGS
TRANSPORTATION COMMISSION
[Filed November 30, 2007, 9:05 a.m.]

The regular meetings will be held in Room 1D2 of the Transportation Building, 310 Maple Park Drive S.E., Olympia, WA. Local jurisdiction meeting cities shown below with location to be determined.

If you have any questions give us a call at (360) 705-7070.

2008 WSTC Meeting and Outreach Calendar

Meeting Dates	Type of Meeting	Location
January 22, 23 - a.m. only	Regular Commission Meeting	Olympia
January 23 - p.m.	Columbia River Crossing Meeting	Vancouver
January 24 - evening	SR 167 Public Input Meeting	Renton
February 19-20	Regular Commission Meeting	Olympia
March 18-19	Regular Commission Meeting	Olympia
April 15	Local Area Meeting	Pullman
May 20	Joint Mtg. w/MPO-RTPO Commt.	SeaTac
May 21-22	Regular Commission Meeting	Olympia
June 17	Local Area Meeting	Moses Lake
July 15-16	Regular Commission Meeting	Olympia
September 16	Local Area Meeting	Bremerton
September 18	Local Area Meeting	Friday Harbor
October 21-22	Regular Commission Meeting	Olympia
November 18-19	Regular Commission Meeting	Olympia
December 16-17	Regular Commission Meeting	Olympia
TBD	Possible Aug. Conf. Call Mtg.	TBD
TBD	Joint Mtg. w/JTC	TBD
TBD	Joint Mtg. w/Oregon Trans Comm.	TBD
TBD	Joint Mtg. w/FMSIB	TBD

WSR 07-24-036
NOTICE OF PUBLIC MEETINGS
COUNTY ROAD ADMINISTRATION BOARD
[Filed November 30, 2007, 9:06 a.m.]

MEETING NOTICE: January 17, 2008
County Road Administration Board
2404 Chandler Court S.W.
Suite 240
Olympia, WA 98504
1:00 p.m. to 5:00 p.m.

PUBLIC HEARING: January 17, 2008
County Road Administration Board
2404 Chandler Court S.W.
Suite 240
Olympia, WA 98504
2:00 p.m.

MEETING NOTICE: January 18, 2008
County Road Administration Board
2404 Chandler Court S.W.
Suite 240
Olympia, WA 98504
8:30 a.m. - noon

Individuals requiring reasonable accommodation may request written materials in alternative formats, sign language interpreters, physical accessibility accommodations, or other reasonable accommodation, by contacting Karen Pendleton at (360) 753-5989, hearing and speech impaired persons can call 1-800-833-6384.

If you have questions, please contact Karen Pendleton at (360) 753-5989.

WSR 07-24-039
INTERPRETIVE STATEMENT
DEPARTMENT OF REVENUE
[Filed November 30, 2007, 9:35 a.m.]

CANCELLATION OF INTERPRETIVE STATEMENTS

The department of revenue has cancelled the following excise tax advisory (ETA).

ETA 333.16.179 Exemption Requirements for Certain Grain Hauls by Truck. This document provides that income from certain intermediate hauls of grain to interim storage facilities may be deducted when determining the measure of income subject to public utility tax. This ETA is no longer needed. Chapter 330, Laws of 2007 (HB 1443) provides specific statutory deduction for these hauls. This legislation is not limited to hauling of grain, but applies to the hauling of agricultural commodities.

A copy of the cancelled document is available via the internet at http://dor.wa.gov/content/FindALawOrRule/ETA/default.aspx or a request for copies may be director to Roseanna Hodson, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6119, fax (360) 586-0127.

Alan R. Lynn
Rules Coordinator

WSR 07-24-040
INTERPRETIVE AND POLICY STATEMENT
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed November 30, 2007, 9:42 a.m.]

In accordance with RCW 34.05.230(12), following are the policy and interpretive statements issued by the department regarding the insurance services division policies.

If you have any questions or need additional information, please call Josh Swanson at (360) 902-6805.

Insurance Services: Office of the Medical Director, State Fund Claims Administration, Self Insurance, and Crime Victims
Repeal Policy: PB 02-12 Rating Permanent Impairment.

This provider bulletin has been deleted. Current information can be found at http://www.lni.wa.gov/IPUB/252-001-000.pdf.

Contact Cecilia Maskell, P.O. Box 44322, Olympia, WA 98504, phone (360) 902-5161.

Policy 5.74 Department of Social and Health Services and Office of Financial Recovery Liens.

This is a new policy. This policy combines information from and replaces policies 5.73 and 5.75.

Contact Suzy Campbell, P.O. Box 44208, Olympia, WA 98504, phone (360) 902-4583.

Insurance Services Employer Services, State Fund Claims Administration

Amends Policy A.02 Documents Stored in Employer Services Employer File.

Policy points #1a and #2 were updated to reflect the change to using the ORION computer application.

Contact Jo Anne Smith, P.O. Box 44140, Olympia, WA 98504, phone (360) 902-4777.

Repeal Policy 5.73 Division of Child Support Liens.

This policy has been replaced by Policy 5.74.

Contact Suzy Campbell, P.O. Box 44208, Olympia, WA 98504, phone (360) 902-4583.

Repeal Policy 5.75 Office of Financial Recovery Liens.

This policy has been replaced by Policy 5.74.

Contact Suzy Campbell, P.O. Box 44208, Olympia, WA 98504, phone (360) 902-4583.

Repeal Policy 7.06 Authorizing Worker Participation in Pain Programs.

This policy has been deleted. The information can be found in other reference materials.

Contact Suzy Campbell, P.O. Box 44208, Olympia, WA 98504, phone (360) 902-4583.

Repeal Policy 7.13 Authorizing Obesity Treatment.

This policy has been deleted. The information can be found in other reference materials.

Contact Suzy Campbell, P.O. Box 44208, Olympia, WA 98504, phone (360) 902-4583.

Repeal Policy 7.22 Authorizing Post-Acute Brain Injury Rehabilitation Programs.

This policy has been deleted. The information can be found in other reference materials.

Contact Suzy Campbell, P.O. Box 44208, Olympia, WA 98504, phone (360) 902-4583.

Amend Policy 13.05 Scheduling Independent Medical Examinations.

This policy has been updated for clarity and to remove information that is available in other reference materials.

Contact Suzy Campbell, P.O. Box 44208, Olympia, WA 98504, phone (360) 902-4583.

Amend Policy 13.06 Reimbursing Workers for Wages Lost to Attend an Independent Medical Examination or Closing Examination.

Policy point #2 was updated to add the word "miscellaneous" to clarify which fund benefits will be paid from.

Contact Suzy Campbell, P.O. Box 44208, Olympia, WA 98504, phone (360) 902-4583.

Amend Policy 13.07 Failure to Appear for Independent Medical Examination.

This policy has been updated for clarity.

Contact Suzy Campbell, P.O. Box 44208, Olympia, WA 98504, phone (360) 902-4583.

Amend Policy 60.02 Authorizing Employer Representative Access to Department Information.

Policy point #3 was updated to reflect the change to using the ORION computer application.

Contact Jo Anne Smith, P.O. Box 44140, Olympia, WA 98504, phone (360) 902-4777.

Amend Policy 60.03 Release of Employer Information.

The policy was updated to remove the Note to see the Field Audit Task under #1 bullet point 3.

Contact Jo Anne Smith, P.O. Box 44140, Olympia, WA 98504, phone (360) 902-4777.

Amend Policy 61.04 Processing Applications for Elective Coverage.

Policy point #5a was updated to reflect the change to using the ORION computer application.

Contact Jo Anne Smith, P.O. Box 44140, Olympia, WA 98504, phone (360) 902-4777.

Amend Policy 63.60 Determining Policy Effective/Business Active Dates.

One of the notes was removed under policy point #1 to reflect the change to using the ORION computer application.

Contact Jo Anne Smith, P.O. Box 44140, Olympia, WA 98504, phone (360) 902-4777.

Amend Policy A.01 Using RMES/CMES.

Policy point #2 was removed.

Contact Jo Anne Smith, P.O. Box 44140, Olympia, WA 98504, phone (360) 902-4777.

Specialty Compliance Services, Employment Standards

Amend Policy ES C.2 Hours Worked.

As a result of the Washington supreme court decision regarding travel time in company vehicles in *Brink's Home Security v. Agnich and Goakey*, Docket #79815-0 issued October 18, 2007, former paragraphs 2, 3, 4, and 5 of Section 2 of this policy were rescinded effective November 28, 2007. L&I is working to update the policy to reflect the Brink's decision, but until the policy is updated, this portion of the travel time policy is pending. Please refer to the Brink's decision regarding travel time when employees are driving company vehicles to and from home and work.

Contact Janice Kerns, P.O. Box 44510, Olympia, WA 98504, phone (360) 902-5316.

Josh Swanson

WSR 07-24-042
NOTICE OF PUBLIC MEETINGS
INDETERMINATE SENTENCE REVIEW BOARD

[Filed November 30, 2007, 1:54 p.m.]

The indeterminate sentence review board (ISRB) will meet twice each month in 2008. Our board meetings are open public meetings and are held at 4317 6th Avenue S.E., Lacey, WA. This building complies with the Americans with Disabilities Act. The board's upcoming meetings are scheduled as follows:

January 14 January 23	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
February 11 February 27	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
March 10 March 26	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
April 14 April 23	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
May 12 May 28	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
June 9 June 25	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
July 14 July 23	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
August 11 August 27	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
September 8 September 24	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
October 13 October 22	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
November 10 November 26	9:30 - 12:00; 1:30 - 4:00 1:30 - 4:00
December 8	9:30 - 12:00; 1:30 - 4:00

Persons interested in attending the ISRB meeting can call our office at (360) 493-9266 for directions and meeting agendas.

WSR 07-24-043
DEPARTMENT OF ECOLOGY

[Filed November 30, 2007, 4:08 p.m.]

Commercial Low-Level Radioactive Waste Site Use Permit Fees

In accordance with chapter 173-326 WAC, Commercial low-level radioactive waste disposal—Site use permits, the department of ecology is providing notice of the site use permit fees for the period of March 1, 2008, through February 28, 2009. The annual base fee, 1x, has been set at $424. Site use permit fees for each category are as follows:

CATEGORY	FACTOR	FEE
< 50 cubic feet	1x	$424
≥50 < 500 cubic feet	2x	$848
≥500 < 1,000 cubic feet	5x	$2,120
≥1,000 < 2,500 cubic feet	10x	$4,240
≥2,500 cubic feet	35x	$14,840
Nuclear Utilities	100x	$42,400

For further information please contact Mike Garner at (360) 407-7102.

WSR 07-24-047
NOTICE OF PUBLIC MEETINGS
WALLA WALLA COMMUNITY COLLEGE

[Filed December 3, 2007, 9:11 a.m.]

The following schedule of regular meetings of the board of trustees of Walla Walla Community College for 2008 was adopted by the board at its meeting held November 21, 2007.

2008 Board of Trustees Meeting Schedule

January 16	9:30 a.m.	WWCC Board Room
February 20	8:45 a.m.	WWCC Board Room
March 19	8:45 a.m.	WWCC Board Room
April 16	10:00 a.m.	Clarkston Center
May 21	9:30 a.m.	WWCC Board Room
June 25	9:30 a.m.	WWCC Board Room
July 16*	9:30 a.m.	WWCC Board Room
August 20*	9:30 a.m.	WWCC Board Room
September 17	9:30 a.m.	WWCC Board Room
October 15	9:30 a.m.	WWCC Board Room
November 19	9:30 a.m.	WWCC Board Room
December 17	9:30 a.m.	WWCC Board Room

*Optional

WSR 07-24-048
NOTICE OF PUBLIC MEETINGS
EASTERN WASHINGTON UNIVERSITY

[Filed December 3, 2007, 9:12 a.m.]

The board of trustees of Eastern Washington University will hold a special meeting on Thursday, November 29, 2007, at 9:30 a.m. in Room 261, Pence Union Building, EWU Cheney campus. Several board of trustees' members will be present via telephone conference call. The board will convene in open session to take action on the agenda item outlined on the agenda.

November 29, 2007

Open Session
9:30 a.m.

Eastern Washington University
Cheney Campus
Pence Union Building, Room 261

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling the associate to the board of trustees at (509) 359-4648.

WSR 07-24-050
NOTICE OF PUBLIC MEETINGS
FORENSIC INVESTIGATIONS COUNCIL
[Filed December 3, 2007, 9:14 a.m.]

Pursuant to RCW 42.30.075, the forensic investigations council meeting scheduled for December 28, 2007, is being changed to December 21, 2007. The location will remain the same which is: Conference Room, WA Counties Building, 206 Tenth Avenue S.E., Olympia, WA.

Please disregard the letter dated November 20, 2007 (WSR 07-24-011), which indicated a date change to December 16, 2007, as that date was in error.

If you have questions or need further information, David McEachran, Chair, can be reached at (360) 676-6784.

WSR 07-24-051
NOTICE OF PUBLIC MEETINGS
LOWER COLUMBIA COLLEGE
[Filed December 3, 2007, 9:14 a.m.]

On November 27, 2008, the Lower Columbia College board of trustees adopted the following meeting schedule for 2008.

2008 Meeting Schedule

The trustees meet on the third Wednesday of the month at 5:00 in the Heritage Room of the Administration Building unless noted differently below.

January 16, 2008	5:00 p.m.	Regular Meeting
February 20, 2008	9:00 a.m.	Regular Meeting Workshop Location TBD
March 12, 2008	5:00 p.m.	Special Executive Session Administrative Conference Room
March 19, 2008	5:00 p.m.	Regular Meeting
April 16, 2008	5:00 p.m.	Regular Meeting
May 21, 2008	5:00 p.m.	Regular Meeting
June 18, 2008	5:00 p.m.	Regular Meeting
July 18, 2008	9:00 a.m.	Regular Meeting Workshop Location TBD
August 2008	NO MEETING	
September 17, 2008	5:00 p.m.	Regular Meeting
October 15, 2008	5:00 p.m.	Regular Meeting
November 19, 2008	5:00 p.m.	Regular Meeting
December 17, 2008	5:00 p.m.	Regular Meeting

WSR 07-24-052
NOTICE OF PUBLIC MEETINGS
COMMISSION ON ASIAN PACIFIC AMERICAN AFFAIRS
[Filed December 3, 2007, 9:15 a.m.]

Below are the proposed 2008 meeting dates, times and locations for the commission on Asian Pacific American affairs (CAPAA). We will update information accordingly.

January 5, 2008 10 a.m. to 12 p.m. - Board Meeting 1 p.m. to 3 p.m. - Public Forum	Everett Senior Services of Snohomish County 8225 44th Avenue West Suite O Mukilteo, WA 98275
March 8, 2008 10 a.m. to 12 p.m. - Board Meeting 1 p.m. to 3 p.m. - Public Forum	Vancouver Multicultural Community Services 3600 Main Street Vancouver, WA 98663
June 7, 2008 10 a.m. to 12 p.m. - Board Meeting 1 p.m. to 3 p.m. - Public Forum	Yakima Valley Filipino Community Center 211 West 2nd Street Wapato, WA 98951
September 20, 2008 10 a.m. to 12 p.m. - Board Meeting 1 p.m. to 3 p.m. - Public Forum	Spokane Spokane Regional Library 906 West Main Street Spokane, WA 99201
November 15, 2008 10 a.m. to 12 p.m. - Board Meeting 1 p.m. to 3 p.m. - Public Forum	Seattle Asian Counseling Referral Services (ACRS) 720 8th Avenue Suite 200 Seattle, WA 98104

Please contact executive assistant, Jared Jonson at (360) 725-5667 if you have further questions.

WSR 07-24-054
NOTICE OF PUBLIC MEETINGS
LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

[Filed December 3, 2007, 3:39 p.m.]

The law enforcement officers' and fire fighters' plan 2 retirement board has scheduled their meetings for 2008.

Please feel free to contact Jessica Burkhart at (360) 586-2322 or by e-mail at Jessica.burkhart@leoff.wa.gov should you have any questions.

2008 Regular Board Meeting Schedule

All meetings of the law enforcement officers' and fire fighters' plan 2 retirement board will be held in the boardroom of the Washington State Investment Board, 2100 Evergreen Park Drive S.W., Olympia, WA, from 9:30 a.m. - 3:00 p.m.

Wednesday, January 23, 2008
Wednesday, February 27, 2008
Wednesday, March 26, 2008
Wednesday, April 30, 2008
Wednesday, May 28, 2008
Wednesday, June 18, 2008
Wednesday, July 23, 2008
Wednesday, August 27, 2008
Wednesday, September 24, 2008
Wednesday, October 22, 2008
Wednesday, November 12, 2008
Wednesday, December 17, 2008

WSR 07-24-062
NOTICE OF PUBLIC MEETINGS
WESTERN WASHINGTON UNIVERSITY

[Filed December 4, 2007, 8:59 a.m.]

Pursuant to RCW 42.30.075, the following is the 2008 schedule of regular meetings of Western Washington University's board of trustees.

Western Washington University's board of trustees, at their October 12, 2007, board meeting, approved the following schedule of regular meetings for 2008:

February 7 and 8, 2008
April 3 and 4, 2008
June 12 and 13, 2008
August 7 and 8, 2008
October 2 and 3, 2008
December 11 and 12, 2008

All meetings will be held at Western Washington University, 516 High Street, Board Room, Old Main 340, Bellingham, WA, and will begin at 3 p.m. on Thursday and resume at 8 a.m. on Friday, unless otherwise publicly noted. Any questions regarding the meeting schedule can be directed to Elizabeth Sipes, secretary to the board of trustees, at (360) 650-3998.

WSR 07-24-063
NOTICE OF PUBLIC MEETINGS
EASTERN WASHINGTON UNIVERSITY

[Filed December 4, 2007, 9:47 a.m.]

BOARD OF TRUSTEES
Friday
December 7, 2007

Committee of the Whole	12:30 p.m.	Cheney TAW 215 B&C
Open Public Session	2:00 p.m.	Cheney TAW 215 B&C
Executive Session	11:30 a.m.	

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling the president's office, (509) 359-4648.

WSR 07-24-071
DEPARTMENT OF ECOLOGY

[Filed December 4, 2007, 3:55 p.m.]

PUBLIC NOTICE
Announcement of Issuance of the Modified Boatyard General Permit

Introduction: The department of ecology (ecology) reissued the boatyard general permit in November 2005. The Northwest Marine Trade Association (NMTA) and the Puget Soundkeeper Alliance (PSA) appealed the permit. While under appeal, ecology modified the permit (May 2006) to correct a mistake in the lake discharge benchmark. The pollution control hearings board (PCHB) heard the appeal in July 2006 and issued a decision on January 26, 2007. You can view the PCHB decision online at http://www.eho.wa.gov/searchdocuments/2007%20Archive/pchb%2005-150,151,06-034,040%20final.pdf.

The NMTA and the PSA appealed the decision of the PCHB to superior court in February 2007. The NMTA, the PSA, and ecology reached a settlement in the appeal in July 2007. The settlement funds a pilot study to determine the efficiency of treatment for boatyard stormwater runoff. The settlement also requires a modification of the permit to incorporate some of the orders from the PCHB decision. The settlement agreement has been posted on the ecology boatyard general permit web site http://www.ecy.wa.gov/programs/wq/permits/boatyard/index.html.

Summary of the Public Involvement Process: On September 19, 2007, ecology published a public announcement of the draft permit in the Washington state register. Ecology sent letters to the permittees, government agencies, interested parties, and Washington state tribes and posted an

announcement on ecology's web site. Ecology conducted a public workshop and hearing on the draft permit in Olympia on October 22, 2007. The public comment period closed October 26, 2007.

Ecology has prepared a response to comments, which is included in the fact sheet for the modified boatyard general permit (Appendix H). It includes ecology's response to all the comments submitted during the public comment period and notes those changes made to the draft modification. It is available from ecology's boatyard web site, or by request to the address following: Internet http://www.ecy.wa.gov/programs/wq/permits/boatyard/index.html, contact Gary Bailey, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6433, fax (360) 407-6426, e-mail gbai461@ecy.wa.gov.

Summary of Significant Changes to the Draft Permit as a Result of Public Comment:

1. Boatyards on Lake Union and the Ship Canal will have a limit of 55.6 ug/l for lead in stormwater runoff.

2. All boatyards must monitor for zinc and lead in their stormwater runoff.

3. Boatyards may seek alternatives to the requirement for the use of vacuum grinders.

4. Boatyards must cooperate with ecology in its conduct of a receiving water study.

Permit Coverage: Those facilities that have coverage under the current permit will continue to have coverage under the modified permit unless otherwise notified by ecology. New or unpermitted facilities seeking permit coverage should request an application for coverage from the ecology regional office serving their site location. Boatyards conducting the activities as described in the permit will be approved for coverage under this permit upon application unless reasons are provided to ecology to deny coverage.

Anyone with knowledge of why a specific facility should or should not receive coverage under this general permit may contact the ecology regional office appropriate for the location of the facility.

Appeal Procedures: Pursuant to chapter 43.21B RCW, the new or changed terms and conditions of the modified permit may be appealed within thirty days of receipt. An appeal must be filed with the Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. In addition, a copy of this appeal must be served on the Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600. The procedures and requirements for the appeal process are contained in RCW 43.21B.310.

To Obtain Additional Information: Gary Bailey, Water Quality Program, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6433, fax (360) 407-6426, e-mail gbai461@ecy.wa.gov.

To Apply for Permit Coverage or Obtain Additional Information: Southwest Regional Office, Water Quality Program, P.O. Box 47775, Olympia, WA 98504-7775, phone (360) 407-6280; or **Northwest Regional Office**, Water Quality Program, 3190 160th Avenue S.E., Bellevue, WA 98008-5452, phone (425) 649-7201.

If you need this information in an alternate format, please contact ecology at (360) 407-6401. If you are a person with a speech or hearing impairment, call 711 or 1-800-833-6388 for TTY.

WSR 07-24-078
NOTICE OF PUBLIC MEETINGS
BOARD OF ACCOUNTANCY
[Filed December 4, 2007, 9:58 p.m.]

Please publish in the state register as required by RCW 42.30.075 the following schedule of regular meetings the board plans to hold during 2008:

Date	Day	Meeting	Location
January 25, 2008	Friday	Regular	SeaTac
April 25, 2008	Friday	Regular	SeaTac
July 18, 2008	Friday	Regular	Vancouver, Washington
October 17, 2008	Friday	Annual	Spokane

The exact location of each meeting has not been determined. For persons who wish to attend, please visit the board's web site at www.cpaboard.wa.gov or contact Cheryl Sexton at the board office (360) 664-9194 or fax (360) 664-9190 for the meeting location. Meetings usually begin at 9:00 a.m. The board of accountancy schedules all public meetings at barrier free sites. Persons who need special assistance, such as enlarged type materials, please contact Cheryl Sexton at the board office, TDD (800) 833-6384, voice (360) 664-9194, or fax (360) 664-9190.

WSR 07-24-083
NOTICE OF PUBLIC MEETINGS
STATE INVESTMENT BOARD
[Filed December 5, 2007, 9:28 a.m.]

Pursuant to WAC 287-01-030, this is to notify you that the Washington state investment board's regular board meetings for 2008 will be held on the third Thursday of each month, beginning at 9:30 a.m. at the board's office, located at 2100 Evergreen Park Drive S.W., Olympia, WA.

Additionally, please note that Liz Mendizabal serves as the Washington state investment board's public records officer. Public records requests should be sent to 2100 Evergreen Park Drive S.W., P.O. Box 40916, Olympia, WA 98504-0916. Ms. Mendizabal can be reached by phone at (360) 956-4616.

If you have any questions, please contact Kristi Haines at khaines@sib.wa.gov or (360) 956-4612.

WSR 07-24-084
NOTICE OF PUBLIC MEETINGS
LOWER COLUMBIA COLLEGE
[Filed December 5, 2007, 9:28 a.m.]

Following is a correction to the 2008 Lower Columbia College board of trustees meeting schedule. Please note that the only change is in July. The previous schedule showed an all day workshop on July 18, but it should have read July 16, 2008. Shown below is an updated schedule for the entire year.

2008 Meeting Schedule

The trustees meet on the 3rd Wednesday of the month at 5:00 in the Heritage Room of the Administration Building unless noted differently below.

January 16, 2008	5:00 p.m.	Regular Meeting
February 20, 2008	9:00 a.m.	Regular Meeting/Workshop Location TBD
March 12, 2008	5:00 p.m.	Special Executive Session Administrative Conference Room
March 19, 2008	5:00 p.m.	Regular Meeting
April 16, 2008	5:00 p.m.	Regular Meeting
May 21, 2008	5:00 p.m.	Regular Meeting
June 18, 2008	5:00 p.m.	Regular Meeting
July 16, 2008	9:00 a.m.	Regular Meeting/Workshop Location TBD
August 2008	NO MEETING	
September 17, 2008	5:00 p.m.	Regular Meeting
October 15, 2008	5:00 p.m.	Regular Meeting
November 19, 2008	5:00 p.m.	Regular Meeting
December 17, 2008	5:00 p.m.	Regular Meeting

WSR 07-24-085
NOTICE OF PUBLIC MEETINGS
RECREATION AND CONSERVATION OFFICE
(Salmon Recovery Funding Board)
[Filed December 5, 2007, 9:28 a.m.]

The next public meeting of the salmon recovery funding board has been changed to a one day meeting. The meeting will be held **Thursday, December 13, 2007, from 9:00 a.m. to 7:45 p.m.,** at the Kitsap Conference Center, 100 Washington Avenue, Bremerton.

For further information, please contact Amie Fowler, recreation and conservation office (RCO), (360) 902-3086 or check the web page at http://www.rco.wa.gov/srfb/board/schedules.htm.

The RCO schedules all public meetings at barrier free sites. Persons who need special assistance, such as large type materials, may contact Amie Fowler at the number listed above or by e-mail at amief@rco.wa.gov.

SRFB MEETING
December 13, 2007
Kitsap Conference Center
Bremerton, Washington

If you need special accommodations to participate in this meeting, please notify us by December 6, 2007, at (360) 902-2636 or TDD (360) 902-1996.

Next regular SRFB meeting: February 14 and 15, 2007 [2008].

Below is the order of presentation for comments to the board. This comment period is optional and regional areas can decide whether or not they want to provide comment. The comment period will begin at approximately 11:30 a.m. on Thursday, December 13, 2007. Each region will have a set amount of minutes to comment on its project list and/or the process. Regions are encouraged to be brief and to the point.

1. Coastal Region - 15 minutes
2. Middle Columbia - 20 minutes
3. Northeast - 10 minutes
4. Lower Columbia - 15 minutes
5. Snake - 20 minutes
6. Upper Columbia - 15 minutes
7. Hood Canal - 20 minutes
8. Puget Sound - 40 minutes
9. Open Public Comment Period (up to 3 minutes per person testifying).

WSR 07-24-086
NOTICE OF PUBLIC MEETINGS
BELLINGHAM TECHNICAL COLLEGE
[Filed December 5, 2007, 9:29 a.m.]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, December 20, 2007, 9:00 - 11:00 a.m., in the College Services Board Room on the Bellingham Technical College campus. Call 752-8334 for information.

WSR 07-24-087
RULES COORDINATOR
GROWTH MANAGEMENT HEARINGS BOARDS
[Filed December 5, 2007, 9:29 a.m.]

Pursuant to RCW 34.05.312, the growth management hearings boards designates Julie K. Ainsworth-Taylor as the rules coordinator.

Contact information for the rules coordinator is Growth Management Hearings Boards, 800 Fifth Avenue, Suite

2356, Seattle, WA 98104, juliet@cps.gmhb.wa.gov, phone (206) 389-2625, fax (206) 389-2588.

James J. McNamara
Chair, Rules Committee

WSR 07-24-099
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF PERSONNEL

[Filed December 5, 2007, 11:50 a.m.]

The following schedule is for the 2008 department of personnel director's meetings. The director's meetings will be held at 8:30 a.m. in the Hearings Room, 2828 Capitol Boulevard, Tumwater, WA:

Thursday, January 10, 2008
Thursday, March 13, 2008
Thursday, May 8, 2008
Thursday, July 10, 2008
Thursday, September 11, 2008
Thursday, November 13, 2008

Should you have any questions, please contact Kristie Wilson at (360) 664-6408.