WSR 08-13-017
RULES OF COURT
STATE SUPREME COURT
[June 6, 2008]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENTS TO APR 11.1-11.7 - CONTINUING LEGAL EDUCATION AND APPENDIX A REGULATIONS 101 THROUGH 112	)))))	ORDER NO. 25700-A-893

The Washington State Bar Association having recommended the adoption of the proposed amendments to APR 11.1-11.7—Continuing Legal Education and Appendix A Regulations 101 through 112, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That the amendments will be published in the Washington Reports and will become effective January 1, 2009.

DATED at Olympia, Washington this 6th day of June, 2008.

Alexander, C. J.

C. Johnson, J. Owens, J.

Fairhurst, J.

J.M. Johnson, J.

Chambers, J. Stephens, J.

RULE 11. CONTINUING LEGAL EDUCATION

RULE 11.1
PURPOSE

It is of primary importance to the members of the Washington State Bar Association (referred to in these rules as the Bar Association) and to the public that ~~attorneys~~ lawyers continue their legal education throughout the period of their active practice of law. These rules ~~will establish~~ state the minimum requirements for continuing legal education.

[Adopted effective January 1, 1977; amended effective May 2, 2000.]

RULE 11.2
EDUCATIONAL REQUIREMENT

(a) Minimum Requirement. Each active member of the Bar Association, and other lawyers who are required by the APRs to complete continuing legal education credits, ~~shall~~ must complete a minimum of 45 credit hours of ~~approved or~~ accredited legal education (as provided in APR 11.4) ~~every 3 years, as provided in the regulations to this rule~~ by December 31 of the last year of the lawyer's three-year reporting period as assigned by the Bar Association. Specific requirements are the following, and are described in Appendix APR 11 - Regulations of the Washington State Board of Mandatory Continuing Legal Education: ~~If a member completes more than 45 credits in a 3-year reporting period, up to 15 of the excess credits may be carried forward and applied to that members education requirement for the next reporting period.~~

(1) A lawyer may earn all of the required credit hours, and must earn at least half of the required credits, as live credits, as described in Regulation 103(b) of Appendix APR 11.

(2) A lawyer must earn a minimum of six of the required 45 credit hours of accredited legal education in the area of ethics, as that is defined in Regulation 101(g) of Appendix APR 11.

(3) A lawyer may earn a maximum of one-half of the required credit hours for any reporting period through self-study, as defined in Regulation 103(h) of Appendix APR 11.

(4) A lawyer may earn a maximum of six credit hours annually through pro bono training and service carried out strictly in compliance with Regulation 103(f) of Appendix APR 11.

(5) A lawyer may earn a maximum of six of the required credit hours for any reporting period for participation in law school competitions, moot court, or mock trials programs, as described in Regulation 103(g) of Appendix APR 11.

(6) A lawyer may earn a maximum of one-half of the required credit hours for any reporting period through courses sponsored by private law firms, corporate law departments and government agencies.

(b) **New Admission.** Newly admitted members ~~shall~~ must complete 45 continuing legal education credits ~~anytime after the member's date of admission or the next 4 full~~ during the four full calendar years after the member's date of admission. ~~If the newly admitted member earns more than 45 credits during that new admission period, up to 15 of the excess credits may be carried forward to the next reporting period.~~ Following the new admission period, the member shall complete 45 credits every ~~3~~ three years as required by APR 11.2(a).

(c) ~~Ethics/Professionalism Component. The 45 continuing legal education credit hours required in section (a) shall include a minimum of 6 credit hours devoted to the areas of legal ethics, professionalism, or professional responsibility. The 15 credit hours that may be carried forward pursuant to section (b) may include 2 credit hours toward the legal ethics, professionalism, or the professional responsibility requirement of this section.~~

Carryover of excess earned credits. If a member completes more than the required credits for any one reporting period, up to 15 of the excess credits may be carried forward and applied to that member's education requirement for the next reporting period. Of the 15 credit hours that may be carried forward to the next reporting period, pursuant to sections (a) and (b) of this rule:

(1) A maximum of two credit hours may be applied toward the ethics requirement; and

(2) A maximum of five credit hours may be applied to self-study credits.

[Amended effective September 1, 1992; September 1, 1995; May 2, 2000.]

RULE 11.3
BOARD OF MANDATORY
CONTINUING LEGAL EDUCATION

There is hereby established a Board of Mandatory Continuing Legal Education (~~referred to herein as~~ the ~~CLE~~ MCLE Board) consisting of seven members. Six of the members of the ~~CLE~~ MCLE Board must be active members of the Bar Association. The seventh member shall not be a member of the Bar Association. The Supreme Court shall designate a chairperson of the ~~CLE~~ MCLE Board, who shall serve at the pleasure of the Court ~~court~~. The members of the ~~CLE~~ MCLE Board shall be nominated by the Board of Governors of the Bar Association and appointed by the Supreme Court. Appointments shall be staggered for a 3-year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year.

[Adopted effective January 1, 1977; amended effective May 2, 2000.]

RULE 11.4
POWERS OF THE MCLE BOARD
~~OF CONTINUING LEGAL EDUCATION~~

The ~~CLE~~ MCLE Board shall: ~~approve individual courses and may accredit all or portions of the entire legal educational program of a given organization which, in the CLE Board's judgment, will satisfy the education requirements of these rules. It shall determine the number of credit hours to be allowed for each such course. The CLE Board may adopt regulations pertinent to these powers subject to the approval of the Board of Governors and the Supreme Court. Individual compliance with the educational or time requirements of these rules may be waived or modified by the CLE Board upon a showing of undue hardship, age, or infirmity. The CLE Board may set fees and fines for failure to comply with these rules, and may from time to time adjust such fees and fines, with the approval of the Board of Governors. The CLE Board has authority to waive or reduce the fee or fine on a proper showing by the petitioner.~~

(a) Accredit and determine the number of credit hours to be allowed for all or portions of individual courses that satisfy the education requirements of these rules and Appendix APR 11 Regulations;

(b) Accredit all or portions of the entire legal educational program of a given organization that satisfy the education requirements of these rules and Appendix APR 11 Regulations;

(c) Adopt regulations pertinent to these powers subject to the approval of the Board of Governors and the Supreme Court;

(d) Waive or modify individual compliance with the educational or time requirements of these rules upon a showing of undue hardship, age, or infirmity;

(e) Set and adjust fees and fines for failure to comply with these rules and to defray the reasonably necessary costs of administering these rules with the approval of the Board of Governors; and

(f) Waive or reduce fees or fines on a proper showing by the petitioner.

[Adopted effective January 1, 1977; amended effective May 2, 2000.]

RULE 11.5
EXPENSES OF THE ~~CLE~~ MCLE BOARD

Members of the ~~CLE~~ MCLE Board shall not be compensated for their services, ~~.~~ but ~~For their~~ actual and necessary expenses incurred in the performance of their duties~~, they~~ shall be reimbursed by the Bar Association in a manner consistent with the Bar Association's reimbursement of its committee members. The Bar Association shall furnish the ~~CLE~~ MCLE Board with the necessary staff ~~and clerical help~~ to carry out its duties. ~~and shall pay all expenses reasonably and necessarily incurred by the CLE Board, pursuant to a budget for the CLE Board which the~~ The ~~CLE~~ MCLE Board, directly or through the staff provided, annually shall submit a budget ~~annually~~ to the Bar Association, which shall be subject to approval by the Board of Governors. ~~The CLE Board and Board of Governors shall clarify in writing their relationship regarding the CLE Board's budget and personnel issues.~~

[Amended effective May 2, 2000.]

RULE 11.6
REPORTS AND ENFORCEMENT

(a) ~~Reports~~ Reporting and Other Activities.

(1) Sponsor ~~Report~~ Reports. The sponsor of each approved program (or each program for which approval is sought) ~~will~~ must make available attendance reports to be completed by those ~~attorneys~~ lawyers in attendance to show the actual time spent by each lawyer in attendance. The form of the reports will be determined by the ~~CLE~~ MCLE Board. ~~Attorneys who wish credit for attending the program will complete the report and return it to the sponsor at the conclusion of the program (or earlier if the attorney does not attend the entire program). Attorneys who fail to return their forms to the sponsor may send them directly to the Bar Association. All forms must be sent~~ The sponsor must send a report, consisting of a compilation of the information contained in these forms, to the Bar Association not later than 30 days after conclusion of the program.

(2) Other Activities. Consistent with the provisions of Appendix APR 11 Regulations, in ~~In~~ the case of some programs for which approval has not been sought or obtained by the sponsor, or for other activities which may qualify for CLE credit under these rules, individual ~~attorneys~~ lawyers may apply for credit by direct application to the ~~CLE~~ MCLE Board, using the form or forms specified by the ~~CLE~~ MCLE Board for that purpose.

(3) ~~Confidential~~ Member Credit Status Reports.

(A) Not later than July 1~~,~~ of each year, the Bar Association shall advise each active member and other lawyers required to report in the current reporting cycle of the number of earned credit hours ~~and courses posted to their credit~~ reflected in that lawyer's records with the Bar Association.

(i) If the lawyers do not request changes to their records within forty-five days of the mailing of the report, the reported credits will be deemed correct.

(ii) After 45 days, the records may be changed upon a showing of good cause.

(B) By not later than December 15 of each year, a ~~A~~ similar report shall be provided to all active members and other lawyers required to report continuing education credits. ~~of the Bar not later then Decemver 15 of each year. Attorneys may request changes to the reported credits for a period of forty-five days from the receipt of the report, after which the reported credits will be considered to be correct. They may be changed by a showing of good cause~~ *[Moved to APR 11.6. (a)(3)(A)(i) and (ii).]*

(b) Compliance ~~Report~~ **Certification.** Each active member or other lawyer required to complete and report continuing legal education requirements must ~~shall~~ submit an ~~CLE~~ MCLE compliance ~~report~~ certification form by February 1 following the end of the lawyer's three-year reporting period ~~as specified in the regulations,~~ or as approved by the ~~CLE~~ MCLE Board pursuant to rule 11.4. If a ~~member~~ lawyer has not completed the minimum education requirement for that ~~members~~ lawyer's reporting period, ~~compliance may still be accomplished, as specified in the regulations~~, the lawyer may complete and return to the MCLE Board a petition, which shall be accompanied by a declaration(s) or affidavit(s) in support of the request, for an extension of time to complete the requirements. If the petition is approved, the lawyer ~~by making~~ shall make up the deficiency, ~~within the first 4 months of the next succeeding calendar year, filing~~ file a supplemental report with the Bar Association ~~by May 1 of that year,~~ and ~~by paying~~ pay a ~~special filing~~ late ~~compliance~~ filing fee by the date set forth in the agreement or order extending the time for compliance.

(c) Delinquency. Any ~~member~~ lawyer required to do so who has not complied by ~~May 1 of each year, or such other~~ the certification deadline, or by the date ~~as is~~ set forth in an agreement or order extending the time for compliance, may be ordered suspended from the practice of law by the Supreme Court.

(1) Pendency Notice. ~~To effect such suspension removal the CLE~~ The MCLE Board ~~may~~ shall ~~by~~ send a written notice ~~to the non-complying member advise~~ of the pendency of suspension ~~removal~~ proceedings by certified mail to any lawyer who has not complied with either the educational or certification requirements of APR 11 and the Appendix APR 11 Regulations by the certification deadline for that lawyer's reporting period or extended deadline granted by the MCLE Board. It will be sent to the lawyer's address of record with the Bar Association. The notice shall advise the member of the pendency of suspension proceedings and state that the MCLE Board will recommend suspension of the lawyer's license to practice law unless the lawyer becomes compliant or completes and returns to the MCLE Board a petition for extension of time, exemption from compliance, or ruling of complete compliance as set forth below. The MCLE Board shall include with the pendency notice a copy of the form of petition to be used.

(2) Petition for extension, waiver, modification or finding of compliance.

(A) Timing. Within ~~unless within~~ 10 days of receipt of ~~such~~ the pendency notice, ~~such member shall~~ a lawyer may complete and return to the ~~CLE~~ MCLE Board ~~an accompanying form of~~ a petition ~~which may be accompanied by affidavit(s) in support of request for~~ requesting an extension of time, a waiver of compliance, modifications to the requirements, or a ~~for or exemption from compliance with Section (a) above or for a~~ ruling by the ~~CLE~~ MCLE Board of ~~complete~~ compliance ~~therewith~~ with the standard requirements.

(B) Supporting documents. The petition may be accompanied by supporting affidavit(s) or declaration(s).

~~(1)~~ **(3) No timely petition filed; suspension recommendation.** Unless such petition ~~be so~~ is filed, the noncompliance is deemed agreed. The ~~CLE~~ MCLE Board shall report ~~such fact~~ the lawyer's noncompliance to the Supreme Court with its recommendations for appropriate action. The Supreme Court shall enter such order~~,~~ as it deems appropriate. The provisions of RAP 17.4 and RAP 17.5 shall apply to any motion for reconsideration of such order.

~~(2)~~ **(4) Petition Filed.** If such petition ~~be so~~ is filed, in its consideration of the petition, the ~~CLE~~ MCLE Board shall consider factors of undue hardship, age, or disability. One of the following shall result from consideration of a petition:

(A) Approval without hearing. The MCLE Board may, in its discretion, approve the ~~same~~ petition without hearing, or

(B) Agreement with lawyer. The MCLE Board may enter into agreement on terms with such ~~member~~ lawyer as to time and requirements for achieving compliance with the provisions of APR 11.2(a) and APR 11.6(b) ~~Section (a).~~; or

(C) ~~(3)~~ **Hearing on petition.** If the ~~CLE~~ MCLE Board does not ~~so~~ approve such petition or enter into ~~such~~ an agreement with terms, the ~~CLE~~ MCLE Board (or a subcommittee of one or more ~~CLE~~ MCLE Board members) shall hold a hearing upon the petition.

(i) The Board ~~and~~ shall give the ~~member~~ lawyer at least 10 days notice of the time and place thereof.

(ii) Testimony taken at the hearing shall be under oath, and ~~audio recorded~~ an audio or stenographic record will be made at the request and expense of the lawyer. The oath shall be administered by the chairperson of the ~~CLE~~ MCLE Board or the chairperson of the ~~subcomittee~~ subcommittee.

(iii) For good cause shown the ~~CLE~~ MCLE Board may rule that the ~~member~~ lawyer has substantially complied with these rules for the ~~year~~ reporting period in question or, if he or she has not done so, it may grant the ~~member~~ lawyer an extension of time within which to comply, ~~and may do so~~ upon terms ~~as~~ it ~~may deem~~ deems appropriate.

(iv) For each hearing, ~~As to each such application~~ the ~~CLE~~ MCLE Board shall enter written findings of fact and an appropriate order~~,~~. The MCLE Board shall mail a copy of the findings and order ~~which shall be mailed~~ forthwith to the ~~member~~ lawyer at the address on file with the Bar Association.

(v) The MCLE Board's ~~Any such~~ order ~~shall be~~ is final unless within 10 days from the date thereof the ~~member~~ lawyer ~~shall file~~ files a written notice of appeal with the Supreme Court and ~~serve~~ serves a copy ~~of~~ on the Washington State Bar Association. The ~~member~~ lawyer shall pay to the ~~clerk~~ Clerk of the Supreme Court~~,~~ a docket fee of $250.00.

~~(4) In its consideration of petitions for relief hereunder, the CLE Board shall consider factors of hardship such as age or disability, or of restricted practice.~~ *[Moved to Rule 11.4(d).]*

(d) Review ~~to~~ by the Supreme Court. ~~To perfect such review the member shall at the members expense, within~~ Within 15 days of ~~the~~ filing ~~of the~~ a notice with the Supreme Court for review of the MCLE Board's findings and order, after a non-compliance petition hearing, the lawyer shall cause the record or a narrative report ~~of such reviews, cause to be transcribed and filed with the Bar Association a narrative report of proceedings~~ in compliance with RAP 9.3 to be transcribed and filed with the Bar Association.

(1) The ~~CLE~~ MCLE Board chairperson or chairperson of the subcommittee shall certify that any such record or narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause.

(2) The ~~CLE~~ MCLE Board shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding, before the ~~CLE~~ MCLE Board~~,~~, which ~~transcript shall~~ must be certified by the ~~CLE~~ MCLE Board chairperson or chairperson of the subcommittee.

(3) The ~~CLE~~ MCLE Board shall then file promptly with the Clerk of the Supreme Court the record or narrative report of proceedings and the transcripts pertinent to the proceedings before the ~~CLE~~ MCLE Board.

(4) The matter shall be heard in the Supreme Court pursuant to procedures established by order of the Court.

(e) Time. The times set forth in this rule for filing notices of appeal are jurisdictional. The Supreme Court, as to appeals pending before it, may, for good cause shown:

(1) Extend ~~extend~~ the time for the filing or certification of said ~~statement of facts~~ record or narrative report of proceedings and transcripts~~,~~; or

(2) Dismiss ~~dismiss~~ the appeal for failure to prosecute the same diligently.

(f) Costs. If the ~~member~~ lawyer prevails in his or her appeal before the Supreme Court, the ~~member~~ lawyer shall be awarded costs against the Bar Association in an amount equal to his or her reasonable expenditures for the preparation of the ~~statement or statements of facts~~ record or narrative report of proceedings.

(g) Change of Status. Once ~~an attorney~~ a lawyer has been ordered suspended from practice for noncompliance with these rules, the ~~attorney~~ lawyer affected must comply with the then applicable regulations of the ~~CLE~~ MCLE Board and the WSBA Bylaws ~~for transfer from suspended inactive~~ in order to return to active status.

[Amended effective May 14, 1982; September 1, 1992; January 1, 2001.]

RULE 11.7
CONFIDENTIALITY

The files and records of the Bar Association, as they may relate to or arise out of any failure of a member of the Association, or other lawyers, to satisfy these continuing legal education requirements, shall be deemed confidential and shall not be disclosed except in furtherance of its duties, or upon request of the ~~attorney~~ lawyer affected, or pursuant to a proper subpoena duces tecum, or as directed by this Court ~~court~~. The records and information contained therein should not be available to any ~~sponsosring~~ sponsoring organization, including the Continuing Legal Education Department of the Bar Association. In any matter referred to the Supreme Court under these rules, the file, record, briefs, and arguments shall not be subject to this confidentiality rule.

[Adopted effective January 1, 1977; amended effective May 14, 1982; May 2, 2000.]

REGULATIONS OF THE WASHINGTON STATE ~~BOARD OF~~ MANDATORY CONTINUING LEGAL EDUCATION BOARD
Approved as Amended by the Board of Governors and Supreme Court

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Regulation 101. Definitions

~~As used in these Regulations, the following definitions shall apply:~~

~~(a) "Legal education" shall mean training obtained by lawyers already admitted to practice that maintains or enhances their competence as lawyers. It is recognized that education is important to lawyers. However, not all education is *legal* education within the meaning of these rules.~~

(a)~~(b)~~ "~~Approved" or a~~ Accredited ~~legal education~~ activity" ~~shall~~ means any method by which a lawyer may earn MCLE credits, and includes ~~individual seminar,~~ courses, self-study, teaching, pro bono legal services, law school competitions, nexus, and writing and editing, as described in these regulations ~~or other continuing legal education activity approved by the Washington State Board of Continuing Legal Education (Continuing Legal Education Board)~~.

~~(c) "Active member" shall mean any person licensed to practice law in the state of Washington as an active member of the Washington State Bar Association.~~

(b) ~~(d)~~ "Accredited sponsor" ~~shall~~ means an organization that meets the requirements of Regulation 105 for accreditation of its ~~whose~~ entire ~~continuing~~ legal education program subject to review by the MCLE Board ~~has been accredited by the Washington State Board of Continuing Legal Education, pursuant to Regulation 106 herein. A specific, individual continuing legal education activity presented by such a sponsor constitutes an "approved" legal education activity~~.

(c) "APR 11" means Admission to Practice Rule 11, including subsequent amendments.

(d) "Attending" means:

(1) Presenting for or being present in an audience, either in person or through an electronic medium, at an accredited live continuing legal education course at the time the course is actually being presented; or

(2) Engaging in self-study using pre-recorded audiovisual or audio-only courses that have been accredited by the MCLE Board.

(e) "Chairperson" means the chairperson of the MCLE Board, except where otherwise indicated. ~~"CLE Board" shall mean the Washington State Board of Continuing Legal Education.~~

(f) "Course" means an organized program of learning dealing with matter directly relating to the practice of law or legal ethics, including anti-bias and diversity training, and substance abuse prevention training. ~~"Quorum" of the CLE Board shall consist of four (4) or more members of the Board.~~

(g) "Ethics" includes discussion, analysis, interpretation, or application of the Rules of Professional Conduct, Rules for Enforcement of Lawyer Conduct, Code of Judicial Conduct, judicial decisions interpreting these rules, and ethics opinions published by bar associations relating to these rules. It also includes the general subject of professional conduct standards for lawyers representing clients and the public interest. Ethics credits may also be awarded for accreditable activities in the areas of diversity and anti-bias with respect to the practice of law, or the risks to ethical practice associated with diagnosable conditions of stress, anxiety, depression, and addictive behavior. ~~"Chairperson" shall mean the chairperson of the CLE Board, *except where other usage of that term is indicated*.~~

(h) "Executive Secretary" ~~shall~~ means the executive secretary of the MCLE Board.

(i) "Form 1" means the CLE course accreditation application form. ~~"APR 11" shall mean Admission to Practice Rule 11, together with any subsequent amendments thereto, as adopted by the Supreme Court of the State of Washington.~~

(j) "Governmental agency" means federal, state, local, and military agencies and organizations, and organizations primarily funded by one or more of the preceding, but excludes colleges, universities, law schools, and graduate schools. ~~"Teaching" in an approved continuing legal education activity shall mean and encompass the delivery of a prepared talk, lecture or address at such activity.~~

(k) "Groups 1, 2, and 3" means three groups of lawyers for purposes of the reporting periods to which they are assigned: Group 1 consists of lawyers admitted through 1975 and in 1991, 1994, 1997, 2000, etc.; Group 2 consists of lawyers admitted 1976 through 1983, and in 1992, 1995, 1998, etc.; and Group 3 consists of lawyers admitted 1984 through 1990 and in 1993, 1996, 1999, etc. New admittees shall be assigned to these Groups in the same manner upon admission. ~~"Participating" in an approved continuing legal education activity shall mean and encompass taking part in such activity as a member of a panel discussion, without the preparation of written materials or the delivery of a prepared talk, lecture or address.~~

(l) "Legal education" means activities that meet the requirements of these regulations and that maintain or enhance the competence of lawyers with respect to the practice of law. ~~"Attending" an approved continuing legal education activity shall include and encompass:~~

~~(1) Presence in an audience of two or more persons being addressed by participants in an approved continuing legal education activity, and~~

~~(2) Viewing or listening individually to video or audio tapes, CD-ROM, motion pictures, simultaneous broadcast or other such systems or devices approved by the CLE Board.~~

(m) "MCLE Board" means the Washington State Board of Mandatory Continuing Legal Education. ~~"Groups 1, 2, and 3": the active members of the bar shall be divided into three groups. Group 1 shall be those admitted through 1975 and in 1991, 1994, 1997, 2000. Group 2 shall be those admitted 1976 through 1983, and in 1992, 1995, 1998. Group 3 shall be those admitted 1984 through 1990 and in 1993, 1996, 1999. Members shall continue to be assigned to Groups upon admission in the same consecutive manner.~~

(n) "Participating" means taking part in an accredited continuing legal education course as a contributing member of a panel. ~~"Professionalism" is no more, and no less, than conducting one's self at all times in such a manner as to demonstrate complete candor, honesty, courtesy and avoidance of unnecessary conflict in all relationships with clients, associates, courts and the general public. It is the personification of the accepted standard of conduct that a lawyer's word is his or her bond. It includes respectful behavior towards others, including sensitivity to substance abuse prevention, anti-bias or diversity concerns. It encompasses the fundamental belief that a lawyer's primary obligation is to serve his or her clients' interests faithfully and completely, with compensation only a secondary concern, acknowledging the need for a balance between the role of advocate and the role of an officer of the court, and with ultimate justice at a reasonable cost as the final goal. The area of professionalism shall include the issues of and training in diversity, anti-bias, and substance abuse training in order to improve public confidence in the legal profession and to make lawyers more aware of their ethical and professional responsibilities.~~

(o) "Qualified legal services provider" means a not-for-profit legal services organization whose primary purpose is to provide legal services to low income clients, as defined in APR 8 (e)(2). ~~"Ethics" shall include discussion, analysis, interpretation, or application of the Rules of Professional Conduct, Rules for Enforcement of Lawyer Conduct, Code of Judicial Conduct, judicial decisions interpreting these rules, and ethics opinions published by bar associations relating to these rules, as well as the general subject of standards of professional conduct expected of lawyers acting in the representation of clients and in the public interest.~~

(p) "Quorum of the MCLE Board" means four or more members of the Board. ~~"Practicing law," for the purpose of this rule, is defined as the representation of one or more clients under the authority of a license to practice law in the state of Washington.~~

(q) "Teaching" means the delivery of a prepared talk, lecture or address at an accredited continuing legal education course.

[Regulation 101 amended effective May 2, 2000; October 1, 2002.]

~~**Regulation 102. Continuing Legal Education Requirement**~~

~~(a) As provided for in APR 11.2, each active member shall complete a minimum of 45 credit hours of approved legal education every three years. At least six of the 45 continuing legal education credit hours required during the reporting period shall be devoted exclusively to the areas of legal ethics, professionalism, or professional responsibility. If an active member completes more than 45 credits during a three-year reporting period, 15 of the excess credits may be carried forward and applied to that member's education requirement for the next reporting period. The fifteen credit hours that may be carried forward may include two credit hours toward the legal ethics, professionalism, or professional responsibility requirement.~~

~~(b) **Ethics/Professionalism Requirement.** As provided for in APR 11.2(c)~~

~~(c) All active members shall complete and report a minimum of six credit hours of approved or accredited legal ethics, professionalism, or professional responsibility continuing education for the reporting period terminating on December 31, 1998 and for each reporting period thereafter.~~

~~[Regulation 102 adopted effective July 26, 1995; amended effective May 2, 2000.]~~

Regulation 102. Standards for Approval and Accreditation. To be approved for credit, all courses must meet all of the following criteria, except where otherwise stated.

(a) A course must have significant intellectual or practical content relating to the practice of law or legal ethics. In determining whether courses have such content, the following factors should be considered:

(1) The topic, depth, and skill level of the material;

(2) The level of practical or academic experience or expertise of the presenters or faculty;

(3) The intended audience, which may include others besides lawyers;

(4) The written materials, which must be of high quality, in a hardcopy or electronic format, and distributed to all attendees at or before the course is presented. In some unusual cases, written materials may not be necessary, but that is the exception and not the rule; and,

(5) The physical setting, which must be suitable to the educational activity and free from unscheduled interruption.

(b) Any written, electronic, or presentation materials must be available for submission and review upon request by the MCLE Board. However, in the case of government-sponsored, closed seminars, where materials are subject by law to confidentiality rules or regulations, those portions of the materials subject to confidentiality may be redacted from the overall submission, provided that a list of the redacted materials, a general summary of the redacted materials, and the basis for confidentiality, is supplied.

(c) The course must be open to audit by the MCLE Board or its designees at no charge. However, this requirement may be waived in cases of government-sponsored, closed seminars if the reason stated on the Form 1, as required by Reg 104 (a)(3), is approved by the MCLE Board.

(d) The sponsor must keep accurate attendance records and retain them for six years. The sponsor must provide copies to the MCLE Board upon request. In addition, the sponsor must report attendance within 30 days of the end of the program as required by APR 11.6 (a)(1).

(e) The attendees must be provided with a critique form or evaluation sheet to complete. The completed forms, or a compilation of all numerical ratings and comments, must be retained by the sponsor for two years and copies must be provided to the MCLE Board upon request.

(f) There must be no marketing of any law firm or any company that provides goods or services to lawyers or law firms during the presentation of the program in the room where the program is being held.

(g) Aside from indicating that an activity has been accredited for the number and type of credits approved by the MCLE Board, people and organizations must not state or imply that the WSBA or the MCLE Board approves or endorses any person, law firm, or company providing goods or services to lawyers or law firms.

(h) Private Law Firm, Legal Department, and Government Agency Education. In addition to compliance with the requirements above, courses presented by private law firms, in-house legal departments, and government agencies may be approved for credit under the provisions of APR 11 on the following bases:

(1) Approval of private law firm and legal department courses may be granted only on a case by case basis. Accredited Sponsor status will not be available for private law firm or legal department sponsors.

(2) If a private law firm or in-house legal department contracts with an outside CLE provider to present a CLE, then the private law firm or in-house legal department sponsor must register as the sponsor of the CLE program. The outside CLE provider is not the sponsor in this situation. Nothing herein, however, shall be construed to prohibit or discourage private law firms or in-house legal departments from contracting with CLE providers to provide training, nor shall a CLE sponsor lose its accredited status because it provides courses or training to private law firms or in-house legal departments.

(3) Courses sponsored by private law firm or in-house legal department sponsors may be open or closed to nonmembers of the private law firm or in-house legal department sponsor provided that notice of such courses shall be published on the WSBA's MCLE web page.

(4) A course must not focus directly on a pending case, action or matter currently being handled by the sponsor if the sponsor is a private law firm, corporate legal department, or a government agency.

(5) If the course is sponsored by a private law firm, no client, former client, or prospective client of the private law firm may directly or indirectly pay for or underwrite the course, in whole or in part.

Regulation 103. Earning and Calculating Credits: ~~Computation~~ WSBA MCLE staff, the Executive Secretary, or the MCLE Board will apply APR 11 and these regulations to determine approval or denial of accreditation, and to determine the number of credits a lawyer can earn for each activity.

(a) Accreditable activities. A lawyer may earn c~~C~~ontinuing legal education credit ~~may be obtained~~ by attending, ~~or~~ teaching, or participating in~~,~~ accredited continuing legal education activities, subject to all restrictions, limitations, and conditions set forth in APR 11 and these regulations. ~~which have been (1) approved by the CLE Board, (2) afforded retroactive approval by the CLE Board pursuant to APR 11 and these Regulations, or (3) conducted by an accredited sponsor, as set forth herein.~~

(1) A lawyer may earn credits through an accreditable activity even if neither the lawyer nor the activity is in Washington State (see Regulation 103 (e)(1), 103(k), and 107(e)); and

(2) To be accreditable, an activity must have no attendance restrictions based on race, color, national origin, reli-

gion, creed, gender, age, disability, sexual orientation, or marital status.

(3) A lawyer may earn teaching and preparation credits through teaching a pre-admission course required by APR 5(b) and APR 18 (c)(1)(i).

(b) Live credits. A lawyer may earn "live credits" by attending in person or via an electronic medium, or teaching or participating in an accredited course at the time the course is actually being presented.

(1) Teleconferences, videoconferences, and webcasts are considered "live" if there are presenters or expert moderators available to all course attendees at the time the course is actually being presented and all attendees can hear or see other attendees' questions and the resultant responses at the time they happen.

(2) Viewings of pre-recorded courses, presented by one or more expert moderators qualified and available at the time of the viewing to answer questions and expand on topics may also be considered "live".

(3) Writing credits, as defined in Regulation 103(j), are considered to be live credits. ~~Credit shall be awarded on the basis of one (1) hour for each sixty (60) minutes actually spent by a member in attendance at an approved activity. Otherwise stated, a "credit hour" equals one (1) clock hour of actual attendance.~~

(c) Credit for attending accredited courses. A lawyer may earn one credit for each 60 minutes spent attending actual instruction at an accredited course. A lawyer may earn no more than eight credits per day spent attending courses. A lawyer may earn credit only once for attending the same approved course. ~~Meals and Banquets. Credit may not be denied merely because continuing legal education activities are presented at a meal or banquet.~~

(d) Credit for ~~T~~teaching or participating in accredited courses. A lawyer may earn ~~C~~credit ~~toward the continuing legal education requirement set forth in APR 11.2(a) and Regulation 102 may be earned through~~ by teaching or participating in an ~~approved~~ accredited continuing legal education course. ~~activity on the following basis:~~

~~(1) An active member~~ Additionally, a lawyer who is teaching or participating in an ~~approved~~ accredited ~~activity~~ course ~~shall~~ may ~~receive~~ earn ~~credit on the basis of~~ one credit for each ~~sixty (~~60~~)~~ minutes actually spent by ~~such member~~ the lawyer ~~in attendance at and teaching in~~ preparing for the presentation of the course, ~~such activity. Additionally, an active member teaching in such an activity shall also be awarded further credit on the basis of one credit hour for each sixty (60) minutes actually spent in preparation time, *provided* that in no event shall more than~~ up to a maximum of ~~ten (~~10~~) hours of~~ credits per course. ~~be awarded for the preparation of one hour or less of actual presentation.~~ A lawyer may earn credit only once for teaching or participating in the same accredited course, regardless of the number of times the course is presented.

EXAMPLE~~S~~: ~~Attorney~~ Lawyer X~~, an active member,~~ gives a one hour ~~lecture~~ presentation and attends the other five hours at a six ~~(6)~~ credit hour ~~seminar~~ course presented in ~~each of~~ three cities, and attends the rest of the course on each of those days. ~~Attorney~~ If Lawyer X ~~is entitled to one credit hour for each sixty (60) minutes of actual attendance and teaching at presentation of the seminar. In addition, attorney X may be awarded up to ten (~~ spent 10~~) additional credits for time spent in preparation. Accordingly, Attorney X, if he attends and teaches in an entire presentation of the seminar, may claim a total of sixteen (~~ hours preparing for the presentation, Lawyer X may earn a total of 16~~)~~ credits. ~~maximum for his involvement in the three-city series of seminars.~~

EXAMPLE: ~~Attorney Y,~~ Lawyer X ~~an active member,~~ gives a two ~~(2)~~ hour presentation and attends the other four hours at a six credit hour course presented in three cities, and attends the rest of the course on each of those days. If Lawyer X spent 15 hours preparing for the presentation, Lawyer X may earn a total of 16 credits. ~~lecture at the same seminar. Attorney Y is entitled to one credit hour for each sixty (60) minutes of actual attendance and teaching at presentation of the seminar. In addition, Attorney Y may be awarded up to twenty (20) additional credits for time spent in preparation. Accordingly, Attorney Y, if he attends and teaches in an entire presentation of the seminar, may claim a total of twenty-six (26) credits maximum for his involvement in the three-city series of seminars.~~

~~(2) An active member participating in an approved activity shall receive credit on the basis of one credit hour for each sixty (60) minutes actually spent by such member in attendance at presentation of such activity. Additionally, an active member participating in such an activity shall also be awarded further credit on the basis of one hour for each sixty (60) minutes 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 legal education activity.~~

~~EXAMPLE: Attorney Z, an active member, participates in a one hour panel discussion at a six (6) credit hour seminar presented in each of three cities. Attorney Z is entitled to one credit hour for each sixty (60) minutes of actual attendance at presentation of the seminar. In addition, Attorney Z may be awarded additional credits for preparation time for the panel discussion. Accordingly, Attorney Z, if he actually attends an entire presentation of the seminar, may claim a total of eleven (11) credits maximum for his involvement in the three-city series of seminars.~~

(e) Credit for attending or teaching ~~L~~law ~~S~~school ~~C~~courses.

(1) Attending. A lawyer may earn ~~Credit under the provisions of APR 11 shall be computed on the basis of~~ one ~~(1)~~ credit for each ~~clock hour~~ 60 minutes of instructed ~~law school~~ class time ~~actually~~ the lawyer attend~~ed~~ in law school courses at the J.D. or advanced education level. The course may be taken within or outside the United States, and the lawyer is not required to take or be successful on any examination given in connection with the course in order to earn CLE credits for attending the course. To earn credit, the lawyer must: ~~up to a maximum of 15.00 hours per course. For example, under this formula an active member who actually attends 30 hours of instruction in a law school course may claim a maximum of 15.00 hours of credit under APR 11, with the remaining 15.00 hours being inapplicable toward the requirement and not capable of being carried over to the next reporting period. However, an active member attending two separate courses may earn a maximum of 15.00 hours of~~

~~credit per course and in such instance may carry the excess 15.00 hours of credit over to the next reporting period.~~

(A) ~~An active member taking such a course shall a~~Arrange ~~with~~ for the instructor or law school registrar to ~~for~~ verify~~ication of~~ the ~~active member's~~ lawyer's actual attendance at the various sessions of the course and ~~for the~~ to report~~ing of~~ such attendance to the MCLE Board~~.~~; and

(B) Comply with the applicable regulations of the law school or university involved.

~~Success on any examination given in connection with such a course is not a prerequisite to obtaining CLE credit for attendance at the a course under the provisions of APR 11.~~

(2) Teaching. Full time teachers and lawyers whose primary employment is teaching law school courses may not earn credit for teaching or preparation of law school courses, but a lawyer who is acting as a part-time adjunct professor or lecturer may earn credit in connection with that lawyer's first presentation of a specific law school course, as follows:

(A) Presentation time- one credit for each 60 minutes of presentation time for that lawyer's first presentation of a specific law school course, up to a maximum 15 credits for actual presentation time; and

(B) Preparation time- one credit for each 60 minutes the lawyer spends preparing for each 60 minutes of presentation time, up to a maximum of 10 credits of actual preparation time for each 60 minutes of presentation time.

~~(f) An active member shall receive a maximum of one-third of the continuing legal education required under APR 11.2(a) through self-study credits or audio/videotaped instruction (defined in Regulations Section 104 (b)(1)).~~

(f) ~~(g)~~ **Credit for ~~P~~pro ~~B~~bono ~~L~~legal ~~S~~services:** A ~~member~~ lawyer may earn ~~up to~~ six ~~(6) hours of~~ credits annually if: ~~by certifying that the member has fulfilled the following requirements under the auspices of a qualified legal services provider:~~

(1) ~~Each attorney seeking CLE credit will have~~ The lawyer receives~~d~~ at least two ~~(2)~~ hours of education in a given calendar year, under the auspices of a qualified legal services provider, which may consist of:

(A) ~~(i)~~ N~~n~~ot less than two ~~(2)~~ hours of training in MCLE Board-approved ~~with~~ live presentation(s); or

(B) ~~(ii)~~ N~~n~~ot less than two ~~(2)~~ hours individually viewing or listening ~~individually~~ to ~~video or audio tapes~~ pre-recorded training courses approved by the MCLE Board; or

(C) ~~(iii)~~ Not less than two hours of any combination of the foregoing training; or

(D) ~~(iv)~~ Not less than two hours serving as a mentor to a participating ~~attorney~~ lawyer who has completed the foregoing training; and

(2) ~~Each attorney seeking CLE credit also will have subsequently~~ The lawyer completes~~d~~ not less than four ~~(4)~~ hours of pro bono work in that same calendar year by:

(A) ~~p~~Providing legal advice, representation, or other legal assistance to low-income client(s) through a qualified legal services provider; or

(B) ~~in s~~Serving as a mentor to other participating ~~attorney(s)~~ lawyer(s) who are providing ~~such~~ legal advice, representation, or assistance to low-income client(s) through a qualified legal services provider.

[Regulation 103 amended effective May 2, 2000; August 3, 2004.]

(g) ~~(h)~~ **Credit for ~~L~~law school ~~C~~competitions.** A lawyer ~~Credit~~ may ~~be~~ earn~~ed~~ one general - not ethics - credit for each 60 minutes spent judging or ~~for~~ preparing ~~L~~law ~~S~~school students for ~~and judging~~ law competitions, mock trials, ~~and~~ or moot court arguments at an ABA accredited law school. Up to a maximum of six credits per reporting period may be earned provided the following conditions are met~~:~~ ~~Ethics and professionalism credit hours are not available for participation in this type of CLE activity. CLE credit hours are not available for grading written briefs or other written papers in connection with this type of CLE activity. No additional credit may be earned for preparation time. The sponsor of the CLE activity is responsible for issuing appropriate certification documenting the name of the attorney, name, date and location of thw course or program and the number of CLE credit hours earned.~~

(1) Prior to the event, the sponsor provides the lawyer "judge" training in the feedback process to be used by ~~Law School Competitions: One (1) credit hour may be earned for each sixty (60) minutes of participation in an ABA accredited law school competition provided that the law school training activity is structured to require that~~ the "judge" ~~provide specific~~ to give performance ~~review~~ feedback to each student ~~participant~~ during the event. Such training must incorporate the requirements of Regulation 102(a), and it can be conveyed ~~The performance review must conform to a redetermined "feedback process" to be established and agreed upon by the Law School and the participating attorney through a prior-to-the-activity communication (e.g. watching a~~ by live or video-taped training, ~~reviewing~~ a written outline of ~~for~~ points to be covered by the "judge", or other acceptable method. ~~etc.). The educational elements must be structured into the competition and must be consistent with Regualtion 104.~~

(2) The lawyer "judge" provides specific performance feedback to each student participant during the event. ~~Maximum of six (6) CLE credit hours may be earned for participation in this type of CLE activity during any one reporting cycle.~~

(3) The sponsor issues appropriate certification documenting the name of the lawyer, the activity name, date, and location, and the number of CLE credits earned.

(4) The lawyer does not earn credits for preparation time or for grading written briefs or other written papers in connection with this type of activity.

~~**Regulation 104. Standards for Approval**~~

~~(a) **Basis for approval of courses.** Courses will be approved based upon their content. An approved course shall have significant intellectual or practical content relating to the practice of law. In evaluating content, course presenters and audience may be considered but those will not be the principal criteria for approval. Courses involving federal or state taxation issues, arbitration or alternative dispute resolution, as examples, may appeal to persons from disciplines other than law, but may still be approved courses.~~

~~(1) Definition. The course shall constitute an organized program of learning dealing with matter directly relating to the practice of law, legal ethics, or professionalism, including anti-bias and diversity training, and substance abuse prevention training.~~

~~(2) Factors in evaluating. Factors which should be considered in evaluating a course include:~~

~~(i) The topic, depth, and skill level of the material.~~

~~(ii) The level of practical or academic experience or expertise of the presenters or faculty.~~

~~(iii) The intended audience.~~

~~(iv) The quality of the written, electronic, or presentation materials, which should be high quality, readable, carefully prepared and distributed to all attendees at or before the course is presented. In some cases, written material may not be necessary, but that is the exception and not the rule.~~

~~(v) The physical setting is suitable to the educational activity, free from unscheduled interruption, and should include a writing surface where feasible.~~

~~(b) **Basis for approval of activities.** Credit will also be given for certain activities which are not approved courses. The following activities will qualify for continuing legal education credit, subject to the restrictions set forth below.~~

(h) ~~(1)~~ **Credit for ~~S~~self-~~S~~study** ~~Credits~~. A lawyer ~~Attorneys~~ may ~~receive~~ earn credit for self study by completing MCLE Board-approved pre-recorded audiovisual or audio-only courses, under the following conditions: ~~watching or listening to video or audio tapes, CD-ROM, motion pictures, simultaneous broadcast, electronic or other such systems or devices approved by the CLE Board or by engaging on computer-assisted legal study programs, which meet the content requirements of (a), above.~~

(1) Requirements for lawyers.

(A) ~~(i)~~ For all ~~To claim CLE credits earned through~~ self-study courses, the lawyer must ~~attorneys are required to~~ report on ~~their CLE Certification~~ a Form 1 for each activity:

(i) The sponsor and title of the course;

(ii) The original date the activity was recorded;

(iii) The date the lawyer completed the course; and

(iv) T~~t~~he number of credits for which the course ~~tape, CD-ROM, motion pictures, electronic or other such systems or devices, or computer assisted self-study program~~ was approved~~,~~ ~~, the sponsor, the title of the seminar or program, and the date the seminar or program was originally recorded or, in the case of computer assisted self-study programs, its most recent edition year.~~

(B) The lawyer must declare on the reporting period ~~By signing the~~ CLE Certification form~~, attorneys will declare~~ that the~~y~~ lawyer did not knowingly ~~have not~~ violate~~d~~ any copyright laws in earning the credits ~~reported in the Certification~~.

(2) ~~(ii)~~ **Requirements for sponsors regarding accreditation of self-study courses.**

For all pre-recorded courses approved for credit by the MCLE Board:

(A) The ~~S~~sponsor~~s are required to~~ must affix on the outside of the recording: ~~each audio or video tape, CD-ROM, motion pictures, electronic or other such systems or devices approved for credit by the Board,~~

(i) T~~t~~he name of the sponsor;~~,~~

(ii) T~~t~~he name of the ~~program~~ course;~~,~~

(iii) T~~t~~he date originally recorded;~~,~~

(iv) T~~t~~he total running time ~~length of the tape~~ in hours and minutes; and

(v) T~~t~~he number of credits for which it has been approved. ~~Computer assisted self-study programs are not subject to this provision.~~

(B) ~~(iii)~~ Sponsors are not required to submit a copy~~ies~~ of the self-study course ~~audio or video tape, CD-ROM, motion pictures, electronic or other such systems or devices~~ with ~~applications for approval~~ the Form 1, but must provide copies to~~.~~ ~~T~~the MCLE Board on request~~, however, reserves the right to obtain on demand a copy of any tape, CD-ROM, motion pictures, electronic or other such systems or devices, submitted for approval~~.

(C) ~~(iv)~~ If a live ~~seminar~~ course was ~~is~~ approved by the Board, the ~~video or audio tape pr electronic~~ recorded version of that ~~seminar~~ course is ~~deemed~~ automatically approved if the sponsor creates a "duplicate" Form 1 at the MCLE web site or submits a paper Form 1 for the recorded version of the course ~~without the sponsor submitting a second application for approval~~.

(D) Written materials distributed at the live course ~~seminar~~ must also be distributed with the pre-recorded course ~~taped or electronic seminar~~.

~~(v) Regulation 104(a) regarding the distribution of written materials applies to taped or electronic seminars as well as live seminars. It does not necessarily apply to computer assisted self-study programs.~~

(E) ~~(vi) As a general rule, t~~The accreditation of ~~all tapes,~~ the pre-recorded course expires five years after the date the course was originally recorded, except those determined by the MCLE Board to be purely skills training ~~tapes~~ courses.~~, expires five years after the date the tape was originally recorded.~~

~~(2) Attendance at courses that have not applied for or received approval as courses. Applicants may receive individual approval for attendance at a course which would have been approved if the sponsor had applied for credit by submitting Form 1.~~

(i) ~~(3)~~ **Credit for ~~N~~nexus courses** ~~credit~~. A lawyer may earn credits for actually ~~A~~attending, ~~or~~ teaching, or participating at a course that does not qualify for approval under these regulations and does not directly deal with the practice of law but that ~~where there~~ is ~~a~~ substantially relate~~d~~ionship to the lawyer's ~~field~~ area of practice. To earn such credits, ~~and~~ the lawyer must demonstrate~~s~~ that the topic, depth, and skill level will improve the lawyer's competence to practice law. ~~A course which does not directly deal with the practice of law, such as a medical course, a child abuse program or some similar offering, may not qualify for approval of a course under Regulation 104(a). Individual attorneys who practice in those areas will have a direct benefit from attending such a course, however. Upon a showing of nexus between an individual's law practice and such a course, CLE credit may be given to that individual attorney even though the course itself does not qualify for credit~~.

(j) ~~(4)~~ **Credit for ~~W~~writing and ~~E~~editing ~~A~~activities.** Credit for writing ~~and~~ or editing activities ~~may be~~ is granted sparingly, and only on a case by case basis. A lawyer may

earn one live credit for every 60 minutes spent in writing and editing activities, up to a maximum of 10 live credits per writing activity, under the following conditions:

(1) ~~that prior approval is secured and t~~The writing or editing in question meets the standards of ~~Regulation 104(a)~~ these regulations;~~,~~

(2) ~~and that it~~ The writing is ~~actually~~ published for the education of the Bar by a~~n entity~~ recognized ~~in the legal community as a~~ publisher of legal works; and

(3) The ~~W~~writing or editing is not performed for or on behalf of a client or prospective client, for marketing purposes, or in the course of the regular practice of law~~, is not eligible for credit. See Regulation 104 (d)(3). Credit for writing or editing activities shall be granted sparingly, and only on a case by case basis. In appropriate circumstances, the CLE Board may waive the prior approval requirement and grant credit retroactively if the quality standards are met. The CLE Board may also waive the prior approval requirement where the publisher has demonstrated uniform adherence to the Standards of 104(a). Writers or editors, whose work has been approved, may claim up to a maximum of 10.00 CLE credit hours. The number of actual hours claimed should be based on the number of hours spent in preparing the material, but in no case may more than 10.00 credit hours be claimed~~.

(k) Credit for courses for lawyers in foreign countries and/or remote locations in the United States.

(1) A lawyer may earn credit for programs outside the United States, including courses concerning laws of jurisdictions outside the United States, if those courses are approved for credit by the MCLE Board.

(2) A lawyer residing in a foreign country where standard live CLE courses are unavailable may earn credit for courses that do not fully meet the standards of these regulations and which would not be approved if offered within the United States. In determining whether to grant credit for such courses, the MCLE Board shall consider, among other things, the availability of courses in the area involved and the good faith attempts of the lawyer to comply with the requirements of APR 11 and these regulations.

(3) With approval from the MCLE Board, a lawyer in a foreign country with no reasonable opportunities for attendance at live CLE programs may earn a maximum of 45 credits per reporting period through approved self-study courses or by attending informal CLE programs developed and presented by lawyers in the foreign jurisdiction.

(4) With approval from the MCLE Board, a lawyer in a location within the United States that is very remote and removed from reasonable opportunities for attendance at live CLE programs may earn a maximum of 45 credits per reporting period through approved self-study courses. Such approval will be granted sparingly.

(l) ~~(c)~~ **Examples of ~~courses or~~ activities that may qualify for credit.** The following types of activities may be approved for credit, subject to the other provisions of these regulations:

(1) Courses about ~~Attending or participating in programs that deal with the problems of~~ running a law office ~~may be approved.~~ ~~- i~~In particular, docket control, malpractice avoidance, ~~and~~ education on substance abuse by lawyers and other legal professionals, ~~or assistants will qualify for approval~~, time management, increasing office efficiency, business planning, office financial management, billing and collections procedures, office technology, and customer service, as each relates to the practice of law.

(2) ~~Programs~~ Courses ~~that are~~ designed to improve a~~n attorney's~~ lawyer's ~~communication~~ skills for communicating with ~~his or her~~ clients ~~and~~ or to improve the ~~attorney~~ lawyer-client relationship ~~will be approved~~.

(3) ~~(2)~~ Courses ~~or self study programs~~ on how to conduct electronic legal research ~~may be approved subject to the other provisions of these regulations~~.

(4) ~~(3)~~ Alternate dispute resolution courses ~~may be approved subject to the other provisions of these regulations~~.

~~(4) CLE credit will be given for attending law school courses, including courses offered at the J.D. or advanced education levels based upon the actual hours of attendance. Applicants need not take exams to qualify for credit, but must otherwise comply with the applicable regulations of the law school or university involved. Credit for teaching law school courses by full-time teachers will not qualify for credit. However, for the first preparation leading to the teaching of a specific law school course by an adjunct (not a full-time) professor, credit will be given on the basis of ten hours of preparation credit for each hour of presentation time, and one credit will be given for each hour of class presentation time to a maximum of 15 credit hours of presentation time each year.~~

(5) ~~Credit will not be given for~~ A lawyer's attendance~~ing~~ at B~~b~~ar review/refresher courses ~~offered in preparation for the Washington State Bar examination, but credit may be given~~ for ~~attending bar review/refresher course offered in~~ jurisdictions other than Washington, on the basis of ~~1.00~~ one credit for each classroom hour of actual instruction or audio/videotaped instruction.

(6) Courses sponsored by or involving participation by a company that provides services or products to the legal community, but only if the written material does not include prepared promotional literature, and:

(A) There is no marketing of that company during the program; or

(B) There is equal treatment in any discussion and written materials of alternate vendors of the particular product or service.

~~Programs outside the United States may be given credit, subject to the following provisions.~~

~~(i) Seminars concerning laws of jurisdictions outside the United States can qualify for CLE credit. It is not necessary to return to the United States or to Washington State in order to obtain CLE credits.~~

~~(ii) In recognition of the potential unavailability, in certain geographical areas, or courses and programs meeting the criteria of Regulation 104, the CLE Board, or its Executive Secretary, may grant approval of courses, offered in such areas, which do not fully meet the standards of Regulation 104 and which, accordingly, would not be approved if offered within the United States. Decisions relative to the approval of such courses are within the discretion of the CLE Board, which shall, among other things, consider the availability of programs in the area involved and the good faith~~

~~attempts of the member affected to comply with the requirements of APR 11.~~

~~(iii) If the foreign location is very remote and removed from reasonable opportunities for attendance at live CLE programs, it is possible to fully comply with CLE requirements by viewing videotapes, listening to audiotapes or by attending informal CLE programs developed and presented by lawyers in the foreign jurisdiction, with approval of the CLE Board. Under any of these circumstances, CLE credits may be awarded on the basis of 1.00 credit per hour. Applications should be made in advance of the activity in question, in order to confirm that CLE credit is available, prior to the commitment of time and resources to the activity.~~

~~(iv) CLE credit may be given for attending law school courses, including courses offered at the J.D. or advanced education levels based upon actual hours of attendance. Applicants need not take exams to qualify for credit, but must otherwise comply with the applicable regulations of the law school or university involved.~~

(m) ~~(d)~~ **Examples of** ~~**The following**~~ **activities** ~~**will**~~ **that do not qualify for credit:**

The following types of activities will not be approved for credit:

(1) Teaching a legal subject to non-lawyers in an activity or course that would not ~~qualify those attending~~ be approved for ~~CLE~~ credit if taught to lawyers.

(2) Programs ~~that are~~ primarily designed to teach ~~attorneys~~ lawyers how to improve market share, attract clients or increase profits ~~will not be approved,~~ unless the program primarily focuses on topic areas that include, but are not limited to, marketing ethics, case law updates, conflicts of interest, or conflicts of law.

(3) ~~nor will p~~Programs primarily designed to be a sales vehicle for a service or product. ~~While a company which provides services or products to the legal community may wish to participate in or sponsor law office management seminars, those courses will be approved for credit only if there is no discussion or literature promoting that company, other than the biographical material about the speakers, or there is equal treatment in discussion and written materials of alternate vendors of the particular product or service, and the written material does not include prepared promotional literature.~~

(4) ~~(3)~~ Writing for or on behalf of a client, or for the regular practice of law.

(5) ~~(4) As a reward for m~~Meritorious legal work, such as pro bono work, except as provided in Reg. 103(f)~~(g)~~.

(6) Bar review/refresher courses offered in preparation for the Washington State Bar examination.

(7) ~~(5)~~ Jury duty.

(8) ~~(6)~~ Programs primarily designed to enhance a person's ability to present or prepare a continuing education program ~~will not be approved~~.

(9) Private law firm, corporate legal department, or government agency sponsored courses that are focused directly on a pending case, action or matter being handled by the private law firm, corporate legal department or government agency sponsor.

~~(e) **Private Law Firm, Legal Department, and Government Agency Education.** In addition to compliance with the requirements of Regulation 104(a) and the limitations described below, courses presented by Private Law Firms ("Law Firms"), in-house Legal Departments ("Legal Departments"), and federal, state, local, and military agencies and organizations ("Government Agencies") may be approved for credit under the provisions of APR 11 on the following bases:~~

~~(6) Approval of such courses may be granted only on a case by case basis. Accredited Sponsor status (as set forth in Regulation 106) will not be available for Law Firm, Legal Department, or Government Agency sponsors. The CLE Board may, however, consider the sponsoring organization's experience in presenting similar programs.~~

~~(i) If a Private Legal Sponsor contracts with an outside CLE provider to present a CLE, then the Private Legal Sponsor must register as the sponsor of the CLE program. The outside CLE provider is not the sponsor in this situation.~~

~~(ii) Nothing herein, however, shall be construed to prohibit or discourage Private Legal Sponsors from contracting with CLE providers to provide training, nor shall a CLE sponsor lose its accredited status because it provides courses or training to Private Legal Sponsors.~~

~~(2) All information called for by Form 1, including a complete course schedule with time allocations, must be submitted at least thirty (30) days prior to the date scheduled for the class. High quality written materials are required and should be distributed to all attendees at or before the time the course is presented. A critique form or evaluation sheet and an attendance sheet, which attendees will complete, must be submitted to the CLE Board within 30 days after the program.~~

~~(3) The course must be attended by five (5) or more lawyers admitted to any Bar Association, excluding the instructors.~~

~~(4) Courses sponsored by Private Legal Sponsors may be open or closed to non-members of the Private Legal Sponsor provided that notice of such courses shall be published on the WSBA's MCLE web page.~~

~~(5) Marketing of the Private Legal Sponsor in any manner is not permitted including but not limited to the display of brochures, pamphlets or other Private Legal Sponsor advertising. Persons or organizations may not state or imply that the WSBA or the CLE Board approves or endorses any person or organization.~~

~~(6) No course provided by a Private Legal Sponsor shall focus directly or indirectly on a pending case, action or matter being handled by the Private Legal Sponsor.~~

~~(7) Additional regulations pertaining to Law Firms:~~

~~(i) No course provided by a Law Firm shall be paid for or in any way underwritten in whole or part, directly or indirectly by a client or prospective or former client of the Law Firm.~~

~~(ii) Members shall be entitled to a maximum of fifteen (15) credit hours in any reporting period for courses provided by a Law Firm.~~

~~(8) Additional regulation pertaining to Legal Departments - Members shall be entitled to a maximum of fifteen (15) credit hours in any reporting period for courses provided by a legal Department.~~

~~(9) Additional regulation pertaining to Government Agencies - If a course is closed, any written materials need to be made available to any inquirer.~~

~~[Regulation 104 adopted effective July 26, 1995; amended effective May 2, 2000; July 11, 2000; March 30, 2004; amended effective November 8, 2005.]~~

Regulation 10~~4~~5. ~~Procedure~~ Applying for ~~Approval~~ Accreditation of ~~Continuing Legal Education~~ an Activity~~ies~~. Subject to the requirements and restrictions of APR 11 and these regulations, sponsoring organizations or individual lawyers may apply for accreditation of an activity. The MCLE Board, with the approval of the WSBA Board of Governors, may adopt and assess a fee on sponsoring organizations or individuals for the purpose of defraying the costs of processing applications for accreditation of courses or activities.

(a) Application by sponsor.

(1) Submitting Form 1. A~~n active member or~~ sponsoring organization ~~desiring approval~~ may apply for accreditation of a continuing legal education course or activity ~~shall~~ by submitting a completed Form 1 to the WSBA MCLE ~~Board~~ staff, together with payment of the required fee, if any ~~all information called for by Form No. 1~~.

(2) Private law firm and corporate legal department sponsors. Private law firms and corporate legal departments must:

(A) Register as the sponsor of a course if they either present the course or contract with an outside CLE provider to present the course.

(B) Submit completed Form 1s by no later than 14 days before the first presentation day of the activity. Failure to submit the Form 1 at least 14 days in advance of the activity may result in imposition of a late fee and/or denial of accreditation for the activity.

(3) Government sponsors. Government sponsors must:

(A) Register as the sponsor of a course if they either present the course or contract with an outside CLE provider to present the course;

(B) Submit completed Form 1s by no later than 14 days before the first presentation day of the activity. Failure to submit the Form 1 at least 14 days in advance of an activity may result in imposition of a late fee and/or denial of the accreditation of the activity; and

(C) If a closed course cannot be audited by the MCLE Board or its designees due to confidentiality rules or regulations, this must be stated on the Form 1.

(4) Accreditation of same course. A sponsor may apply for accreditation of a course that is the same as an accredited course presented by that sponsor within 12 months from the original date of accreditation, by creating a duplicate Form 1 on the MCLE website or submitting a paper Form 1 for each subsequent presentation. Such duplicate or paper Form 1s must be submitted by no later than one day before the subsequent presentation of the previously approved activity.

~~(b) Approval shall be granted or denied in accordance with the provisions of Regulation 108 herein.~~

(5) ~~(c)~~ **Accreditation statement in brochures.** If ~~As to~~ a course ~~that~~ has been approved and accredited ~~within the last twelve months~~, the sponsoring organization may announce~~,~~ in informational brochures and/or registration materials: "This course has been approved for ____ hours of Washington MCLE credit, including _____ hours of ethics~~/professionalism~~ credit."

(6) Reporting attendance. After the conclusion of the presentation of a course, the sponsor must submit an attendance report showing the actual attendance time of each lawyer, either through the MCLE website or by submitting it to the Executive Secretary, within 30 days after the program.

(b) Application by individual lawyer.

(1) Submitting Form 1. A lawyer may apply to receive credit for a continuing legal education course or activity by submitting a completed Form 1 to the WSBA MCLE staff for that activity, along with any other materials or information required by these regulations or requested by the WSBA MCLE staff, the Executive Secretary, or the MCLE Board.

(2) No individual application for private law firm or corporate legal department sponsored course. A lawyer who is associated with or employed by a private law firm or corporate legal department that maintains an office within Washington State may not apply to receive credit for a continuing legal education course sponsored by that private law firm or corporate legal department for which the sponsor did not submit a completed Form 1.

(3) Individual lawyer as sponsor. A lawyer who is the sponsor of a CLE program must submit a Form 1 as a sponsor, not as an individual lawyer, and follow all rules and regulations applicable to sponsors.

~~(d) The CLE Board may establish and assess sponsoring organizations or individuals a fee for the purpose of defraying the costs of processing applications for accreditation of courses submitted for CLE credit, such fee to be established from time to time by the CLE Board and approved by the Board of Governors.~~

[Regulation 105 amended effective May 2, 2000.]

Regulation 10~~5~~6. Accredit~~ed~~~~ation of~~ Sponsor~~s~~~~ing Organizations~~

(a) General provisions. The Executive Secretary ~~CLE Board~~ may ~~extend~~ approve~~al to a~~ sponsoring organization~~s~~ as ~~for all of the continuing legal education activities sponsored by such organization which conform to Regulation 104. A sponsoring agency to which such general approval has been extended shall be known as an~~ "accredited sponsor~~s~~". The following apply to all accredited sponsors:

(1) Accredited sponsors are not required to seek approval for individual courses that they sponsor.

(2) All courses sponsored by an accredited sponsor and in compliance with APR 11 and these regulations are considered approved by the MCLE Board, subject to review by the MCLE Board.

(3) For any course it is sponsoring, an accredited sponsor may state the following (or something substantially similar) in the promotional or registration materials: This activity has been approved for Washington State MCLE credit in the amount of ____ hours (of which ____ hours will apply to ethics credit requirements).

(4) Approval of a course and/or the award of credits made by an accredited sponsor may be reviewed at any time, and accepted or rejected by the MCLE Board, Executive Secretary, and/or WSBA MCLE staff, based on the course's conformance to Regulation 102.

(5) The MCLE Board may set and assess fees and fines, or revoke an organization's accredited sponsor status, for repeated failure to correctly award credit for courses, failure to pay the annual accredited sponsor fee, or for failure to comply with accredited sponsor reporting or other requirements.

(6) Except as specified in this regulation, an accredited sponsor shall continue to be subject to and governed by all provisions of APR 11 and these regulations.

(b) Duties of accredited sponsors. Any ~~sponsoring~~ organization ~~desiring to apply for status~~ that is approved as an accredited sponsor must: ~~shall submit to the CLE Board all information called for in the form required by the Board. Accreditation shall be granted or denied in accordance with the provisions of Regulation 108. A primary consideration in the evaluation of such a request for status as an accredited sponsor shall be the previous experience of the organization in sponsoring and presenting continuing legal education activities. A reasonable fee may be assessed by the CLE Board, with approval of the Board of Governors, with regard to the application. A private law firm shall not qualify for accredited sponsor status.~~

~~(c) Once a sponsoring organization has been granted the status of an accredited sponsor, it is not required to seek approval for individual educational activities sponsored while an accredited sponsor. Accredited sponsors~~

(1)~~(i)~~ Accurately ~~Shall be responsible for~~ calculat~~e~~ing the number of credits ~~hours~~ to be awarded for each course, by applying the provisions of Regulations 102 and 103.

(2) Submit an accurately completed electronic Form 1 for a course at least one day prior to presentation of the live course or one day prior to making a pre-recorded course available to lawyers.

(3) Keep accurate attendance records for each live course and retain them for six years. An attendance report showing the actual attendance of each lawyer must be submitted through the MCLE website within 30 days of completion of the course.

(4) Provide a critique form or evaluation sheet to all live course attendees. The accredited sponsor must retain the completed forms, or a compilation of all numerical ratings and comments, for two years and provide copies to the MCLE Board upon request.

(5) Demonstrate a continuing ability to provide high-quality continuing legal education activities and to correctly determine credit awards for those activities.

(6) ~~(ii) Shall be responsible for reporting those determinations to the CLE Board prior to the event in such manner as the CLE Board determines.~~

~~(iii) Are entitled to include in any materials which promote such activity, language that indicates the activity has been approved for Washington State MCLE credit in the amount of ____ hours (of which ____ hours will apply to ethics credit requirements).~~

~~(d) The CLE Board may set fees and fines for faiure to comply with accredited sponsor reporting requirements, including revocation of the accredited sponsor status.~~

~~(e) A sponsoring organization which has been granted the status of an accredited sponsor shall, except as otherwise provided in this Regulation 106, continue to be subject to and governed by all provisions of APR 11 and these Regulations.~~

~~(f) A sponsoring organization which has been granted the status of accredited sponsor shall provide the CLE Board a~~At least ~~yearly~~ annually, provide to the MCLE Board ~~with~~ a list of all its course offerings, identifying the number of lawyers ~~attorneys~~ and non-lawyers ~~attorneys~~ attending each program, and providing any ~~such~~ additional information required by ~~as~~ the MCLE Board ~~may require. The sponsoring organization shall also solicit critiques or evaluations from participants at each program, retain copies, and provide them to the CLE Board upon request. The CLE Board may, upon review of such information, advise the organization that its manner of compliance is improper, and may terminate the organization's status as an accredited sponsor for future offerings.~~

(7) Pay any required annual accredited sponsor fee.

(8) Permit course audits by the MCLE Board or its designees at no charge.

(9) For any pre-recorded programs not originally offered as a live program by the sponsor, the sponsor must:

(A) Review the content and materials of each such course; and

(B) Ensure that the course is in compliance with all provisions of APR 11 and these regulations.

(c) Applying to become an accredited sponsor.

(1) To apply to become an accredited sponsor, an organization must:

(A) Submit a completed application form and all required documentation, in the required format, to the Executive Secretary, along with payment of any required fee; and

(B) Provide proof to the Executive Secretary that the sponsoring organization has at least three years of previous experience in sponsoring and presenting at least 30 unique continuing legal education activities a year, and that the organization can correctly apply APR 11 and these regulations to determine and award credit for such activities; and

(C) Provide on request information about 10 courses from the previous three years, selected by the Executive Secretary, for evaluation of course content and attendee evaluations.

(2) No private law firm or corporate legal department may be an accredited sponsor.

(3) A request for accredited sponsor status shall be granted or denied by the Executive Secretary after consideration of the application and other materials submitted.

(4) An adverse determination by the Executive Secretary regarding an application for accredited sponsor status may be appealed to the MCLE Board for a final review and decision on the application in a manner consistent with the provisions of Regulation 106.(c).

[Regulation 106 amended effective May 2, 2000; amended effective November 8, 2005.]

Regulation 10~~6~~7. Delegation by MCLE Board and Executive Secretary

(a) To committees: The MCLE Board may delegate tasks and duties to committees for the purpose of administering and enforcing APR 11 and these regulations.

(b) To Executive Secretary.

(1) Subject to review by the MCLE Board, ~~To facilitate the orderly and prompt administration of APR 11 and these Regulations, and to expedite the processes of, inter alia, course approval, sponsor accreditation and the interpretation of these Regulations,~~ the Executive Secretary is authorized to ~~may~~ act on behalf of the MCLE Board, in reviewing, granting or denying applications for accreditation of continuing legal education activities or applications for accredited legal sponsor status, ensuring compliance with reporting and other requirements and regulations, granting or denying petitions for waivers or for extension of time deadlines, and in providing interpretations of APR 11 and these regulations. The Executive Secretary may delegate to WSBA MCLE staff such of these duties and responsibilities as may be appropriate for timely and orderly administration of the Board's work, subject to review by the Executive Secretary and MCLE Board. ~~pursuant to delegated authority from the Board, under APR 11 and these Regulations. Any adverse determinations and all questions of interpretation of these Regulations or APR 11 by the Executive Secretary shall be subject to review by the CLE Board upon written application by the person adversely affected.~~

~~(b) The CLE Board may organize itself into committees for the purpose of considering and deciding matters arising under APR 11 and these Regulations.~~

~~[Regulation 107 amended effective May 2, 2000.]~~

~~**Regulation 108. Executive Secretary's Determinations and Review**~~

(2) ~~(a)~~ Pursuant to guidelines established by the MCLE Board, the Executive Secretary shall provide a written description of any action taken~~,~~ in response to written requests for approval of courses or accreditation of sponsors, awarding of credit for attending, teaching or participating in approved courses, writing and editing, waivers, extensions of time deadlines and interpretations of APR 11 and these r~~R~~egulations~~., make a written response describing the action taken.~~ The Executive Secretary may seek a determination of the Board before making such response.

(3) Upon request by ~~At each meeting of~~ the MCLE Board, the Executive Secretary shall report on ~~all~~ determinations made since the last meeting of the MCLE Board.

(c) ~~(b)~~ **Review of Executive Secretary's actions.**

(1) Any person or organization affected by ~~The CLE Board shall review~~ any ~~appeals of~~ adverse determination~~s~~ or any question of interpretation of these regulations or APR 11 ~~made~~ by the Executive Secretary ~~or his or her delegate~~ may seek MCLE Board review by filing a written petition.

(2) The petitioning ~~active member~~ person or ~~the sponsoring~~ organization ~~affected~~ may present information to the MCLE Board in writing or in person or both.

(3) ~~If t~~The MCLE Board shall review petitions for review of adverse determinations made by the Executive Secretary.

(4) The MCLE Board ~~finds that the Executive Secretary has incorrectly interpreted the facts, the provisions of APR 11, or the provisions of these Regulations, it~~ may take ~~such~~ appropriate action ~~as may be appropriate~~ after review of a petition and any other relevant information presented to it, and the~~. The CLE~~ Board shall advise the ~~active~~ affected person ~~member~~ or sponsoring organization ~~affected~~ in writing of its findings and any action taken.

[Regulation 108 amended effective May 2, 2000.]

~~**Regulation 109. Submission of Information – Credit for Teaching or Participating**~~

~~An active member who seeks credit for teaching or participating in an approved continuing legal education activity shall report additional credits pursuant to Regulation 103(d) in the member's CLE certification every three years.~~

[Regulation 109 amended effective May 2, 2000.]

Regulation 10710. Exemptions, Waivers, Modifications

(a) Undue hardship, age, or disability. ~~As a general proposition, a~~All active members of the ~~Bar Association~~ WSBA and other lawyers as established from time to time by the APRs or these regulations, are required to comply with the provisions of APR 11 and these regulations. ~~The alternative to compliance is transfer to inactive status.~~ The MCLE Board may grant extensions, waivers or modifications of the time deadlines or education requirements because of undue hardship, age, or disability of a lawyer. ~~specified in APR 11 and these Regulations Applications for extensions, waivers or modifications shall be made in writing and supported by a sworn statement in the form of an affidavit or declaration.~~

~~(b)~~ **~~Undue Hardship, Age, or Disability.~~** Exemptions ~~from the continuing legal education requirement, or~~ waivers, or modifications ~~of such requirement,~~ based upon undue hardship, age or disability should be granted only sparingly. All applications for exemptions, waivers and modifications shall be retained by the MCLE Board.

(1) Applications for extensions, waivers or modifications must be made in writing and supported by a sworn statement in the form of an affidavit or declaration.

(2) ~~Consequently, before the CLE Board will consider granting an application for exemption, waiver or modification based upon these grounds, t~~The applicant must establish to the satisfaction of the MCLE Board that ~~(1)~~ such condition of undue hardship, age, or disability warrants granting an exemption, waiver, or modification~~.~~;

(3) ~~and (2) the applicant has not been in and will not be engaged in the unsupervised practice of law during the relevant period.~~

An application for exemption, waiver, or modification, including the sworn statement in support thereof, ~~shall~~ must be filed for each reporting period for which the exemption, waiver or modification is sought ~~and shall be retained in the files of the CLE Board~~.

(4) Neither a lawyer's status with the WSBA, nor the lawyer's other duties and obligations as established by the WSBA bylaws or by court rules and regulations, are affected by the ~~Individuals~~ grant~~inged~~ of an exemption, waiver, or modification ~~from~~ of the continuing legal education requirements under this regulation. ~~on the above-stated basis may continue to hold the status of active member of the Bar Association. The granting of such an exemption does not, in any~~

~~way, affect or diminish active member's duties and obligations as established by the bylaws, rules and regulations of the Bar Association or the Supreme Court.~~

(5) The MCLE Board may revoke an ~~E~~exemptions~~,~~ waivers~~,~~ or modification ~~from the continuing legal education requirements may be revoked by the CLE Board upon~~ if there is a change in the facts or circumstances upon which such exemption, waiver, or modification was granted.

(b) ~~(c)~~ **Judicial exemption ~~Status~~.**

(1) Full time. Full-time judges, magistrates, court commissioners, administrative law judges, and the Washington State Supreme Court clerk or assistant clerk ~~members of the judiciary~~, who are prohibited by statute, code, regulation, or court rule from practicing law, are exempt from the continuing legal education requirement established by APR 11. The exemption ends when the full-time judicial position ends, if the member is on active status with the WSBA.

(2) Part time. Part-time or pro- tem judges, magistrates, court commissioners, administrative law judges, and court clerks who are active members of the WSBA ~~Bar Association~~, are fully subject to the requirements of APR 11.

~~Judges who have been exempt, upon return to active membership status, are fully subject to the continuing legal education requirements during the year in which they return to practice.~~

(c) ~~(d)~~ **Legislative ~~Status~~ and gubernatorial exemption.**

(1) Active WSBA ~~M~~members otherwise subject to the continuing legal education requirements of APR 11, who are also members of the Washington State Congressional Delegation ~~and~~ or ~~M~~members of the Washington State Legislature, or who are currently serving as the Governor of Washington State ~~otherwise subject to the continuing legal education requirements of APR 11 as active members of the Bar Association,~~ are ~~specifically~~ exempted~~, during terms of office and while otherwise members in good standing of the Bar Association,~~ from the requirements of APR 11 for the reporting period(s) during which they are in office.

(2) This exemption ~~applies only to the members of the Washington State Congressional Delegation, and to members of the Washington State Legislature, under the terms and conditions stated above~~. ~~The~~ exemption does not apply ~~extend~~ to active lawyers ~~members~~ who are ~~of the Bar Association:~~

(A) ~~(1)~~ ~~s~~Serving in the legislature of any other state;

(B) ~~(2)~~ ~~s~~Serving in the administrative branch of any state government; or

(C) ~~(3)~~ ~~s~~Serving on the staff of any member of the Washington State Congressional Delegation or the Washington State Legislature, or the Washington State Governor.

(d) Active military duty. Active lawyers who are employed in the armed forces of the United States may be granted an exemption, waiver, or modification of the continuing legal education requirement established by APR 11, upon proof of undue hardship.

(e) No exemption for ~~A~~active lawyers ~~members~~ living outside the United States. Active lawyers ~~members of the Bar Association~~ who live or are employed outside the United States are required to comply with the continuing legal education requirements of APR 11, unless they otherwise qualify under these regulations for an exemption for a different reason. ~~as provided for in Reg. 104 (c)(6), or to transfer to inactive status until such time as compliance can be attained.~~

~~(f) **Active Military Duty.** Members employed by the military may be granted an exemption, waiver, or modification upon proof of undue hardship.~~

[Regulation 110 amended effective August 3, 2004]

Regulation 108. Reinstatement of Continuing Education Requirements.

(a) A lawyer who was not required to comply with the education or reporting requirements of APR 11 and these regulations for any reason, who returns to being subject to those requirements, retains the lawyer's original assigned reporting group (Group 1, 2, or 3), and is subject to the requirements immediately.

(b) Reinstatement is conditioned on compliance with the reinstatement requirements of the WSBA Bylaws.

~~**Regulation 111. Noncompliance: Board Procedures**~~

~~An active member who has not complied with the educational or reporting requirements of APR 11 and these Regulations by May 1 of each calendar year, may be ordered suspended from the practice of law by the Supreme Court pending compliance with APR 11.~~

~~To effect such removal, the CLE Board shall send to the non-complying active member, by certified mail directed to the member's last known address as maintained on the records of the Washington State Bar Association, a written notice of non-compliance advising such active member of the pendency of suspension proceedings unless within ten (10) days of receipt of such notice such active member completes and returns to the CLE Board an accompanying form of petition, which may itself be accompanied by supportive affidavit(s), in support of a request for extension of time for, or waiver of, compliance with the requirements of APR 11 and these Regulations or for a ruling by the CLE Board of substantial compliance with said requirements.~~

~~(a) If such petition is not so filed, such lack of action shall be deemed acquiescence by the active member in the finding of non-compliance. The CLE Board shall, pursuant to APR 11.6 (c)(1), report such fact to the Supreme Court with the CLE Board's recommendations for appropriate action. The Supreme Court shall enter such order as it deems appropriate.~~

~~(b) If such petition be so filed, the CLE Board may, in its discretion, approve the same without hearing, or may enter into an agreement on terms with such active member as to time and other requirements for achieving compliance with APR 11 and these Regulations.~~

~~(c) If the CLE Board does not so approve such petition or enter into such agreement, the CLE Board shall hold a hearing upon the petition and shall give the active member at least ten (10) days notice of the time and place thereof. Such hearing shall be conducted in accordance with APR 11.6 (c)(3). At the discretion of the chairperson, the hearing may be held before the entire Board or before a committee thereof. A full stenographic or tape record of the hearing may be taken at the request and expense of the active member affected. Testi-~~

~~mony taken at the hearing shall be under oath and the oath shall be administered by the chairperson. The CLE Board or committee thereof may admit any relevant evidence, including hearsay evidence. As to each such petition and hearing, the CLE Board or committee thereof shall enter written findings of fact and an appropriate order, a copy of which shall be transmitted by certified mail to the active member affected at the address of such member on file with the Washington State Bar Association. Any such order shall be final and, in case of an adverse determination, shall be transmitted to the Supreme Court unless within ten (10) days from the date thereof the active member shall file a written appeal of the CLE Board's decision to the Supreme Court.~~

~~[Regulation 111 amended effective May 2, 2000.]~~

~~**Regulation 112. Appeal**~~

~~(a) **Appeal to Supreme Court.** An adverse decision of the CLE Board may be appealed, by the active member affected, to the Supreme Court in accordance with the applicable provisions of APR 11.6. As to such appeals, the CLE Board shall be represented by its chairperson, such other member of the CLE Board as shall be designated by the chairperson, or by the Executive Secretary, or other counsel designated by the chairperson.~~

~~[Regulation 112 amended effective May 2, 2000.]~~

~~**Regulation 113. Reinstatement of Members Who Voluntarily Transferred to Inactive Status**~~

~~(a) A person who transferred to inactive status while in full compliance with APR 11 and who desires reinstatement to active status must comply with the applicable bylaws and procedures of the Washington State Bar Association pertaining to such change of membership status, including the filing of an application with the Board of Governors of the Bar Association in such form as is prescribed by the Board of Governors. The Board of Governors shall determine whether such application shall be granted and compliance with APR 11 and these Regulations is only one factor pertaining to such determination. Upon reinstatement to active status, if the person missed a reporting period during the time he or she was on inactive status, the person must report 15.00 credit hours per year since the person last reported credits.~~

~~(b) An active member who voluntarily transfers to inactive status when he or she has not complied with APR 11 and its Regulations, must make up any deficiency remaining at the time of the transfer to inactive status, complete an additional 15.00 credit hours for each year following the transfer to inactive status, and fully comply with the provisions of APR 11 and these Regulations before he or she can be reinstated as an active member.~~

~~(1) Upon compliance with the immediately preceding provision of this Regulation, the CLE Board shall notify the Board of Governors of the Bar Association that the inactive member has satisfied the minimum continuing legal education requirements of APR 11 and these Regulations. A copy of that notification shall be sent to the inactive member.~~

~~(2) Once notification of compliance has been received, the inactive member may seek reinstatement pursuant to Regulation 114(a).~~

~~(c) A person who has been transferred from inactive to active status by the Board of Governors shall, immediately upon transfer, be subject to the provisions of APR 11 and these Regulations as any other active member of the Bar Association.~~

~~(d) The reinstated member retains the original reporting period to which he or she was initially admitted to the Bar Association.~~

~~(e) An inactive member who is reinstated to active status in the second or third year of the member's assigned group reporting period will be required to report 15.00 credits per year of active status within the reporting period, i.e. second year reinstatement - 30.00 credits; third year reinstatement - 15.00 credits. These credits must be reported at the end of the reporting period.~~

~~[Regulation 113 amended effective May 2, 2000.]~~

Regulation 10~~9~~14. Reinstatement of Lawyers ~~Members~~ Suspended from Practice for Failure to Comply with APR 11

(a) To be reinstated to active status with the WSBA after being ~~An active member who, pursuant to APR 11.6(c) - (g), Regulation 112 or 113, is~~ suspended from practice for failure to comply with APR 11 and its ~~R~~regulations, a lawyer must:

(1) File a completed application to return to active status with the WSBA, together with any required application fee;

(2) ~~m~~Make up ~~the~~ any deficiency and fully comply with the provisions APR 11 and these ~~R~~regulations ~~before he or she can be reinstated as an active member.~~;

(3) Pay all required fees, late fees, and/or penalties; and

(4) Fully comply with any additional requirements imposed by the Admission to Practice Rules or the WSBA Bylaws.

(b) Once a suspended lawyer ~~member~~ has complied with the ~~immediately preceding~~ provisions of ~~this~~ Regulation 109(a), the MCLE Board shall recommend to ~~notify~~ the Supreme Court that the suspended ~~member~~ lawyer be reinstated to active status, and refer the matter to the Supreme Court for entry of an appropriate order. ~~has satisfied the requirements of APR 11 and these Regulations. A copy of that notification shall be sent to the suspended member.~~

~~(c) Once the Supreme Court has reinstated the suspended member, the reinstated member shall be subject to all provisions of APR 11 and its regulations and retains the original reporting period to which he or she was initially admitted to the Bar.~~

~~(d) A suspended member who is reinstated to active status in the second or third year of the member's assigned group reporting period will be required to report 15.00 credits per year of active status within the reporting period, i.e. second year reinstatement - 30.00 credits; third year reinstatement - 15.00 credits. These credits must be reported at the end of the reporting period.~~

[Regulation 114 amended effective May 2, 2000.]

Regulation 110~~15~~. Rulemaking Authority

(a) The MCLE Board, subject to the approval of the Board of Governors and the Supreme Court, has continuing authority to make ~~R~~regulations consistent with APR 11 in furtherance of the development and regulation of continuing legal education for Washington ~~attorneys and the regulation thereof~~ lawyers.

(b) The MCLE Board may adopt policies~~,~~ consistent with these regulations~~,~~ to provide guidance in the administration of these regulations and APR 11. The MCLE Board will notify the Board of Governors of any policies that ~~which~~ it adopts. ~~The Board of Governors will review any such policies at their next regularly scheduled meeting.~~ Unless the Board of Governors objects, such policies~~y~~ will become effective 60 days after promulgation by the MCLE Board

(c) Subject to approval by the WSBA Board of Governors, the MCLE Board may adopt and assess any fees that may be required to timely and appropriately administer APR 11 and these regulations, as well as to offset the reasonably necessary costs of all functions under APR 11 and these regulations that are performed by the MCLE Board and its designees.

[Regulation 115 amended effective May 2, 2000.]

Regulation 111~~6~~. Confidentiality

The files and records of the MCLE Board and/or the WSBA~~, as they may~~ relating~~e~~ to or arising~~e~~ out of a~~ny~~ lawyer's failure ~~of a member of the Washington State Bar Association~~ to ~~satisfy~~ comply with the ~~continuing legal education~~ requirements of APR 11 and these ~~R~~regulations~~, shall be deemed~~ are confidential. Such records ~~and~~ shall not be disclosed except in furtherance of the MCLE Board's or WSBA's duties, or upon the affected lawyer's request ~~of the member affected~~, the Supreme Court's direction, or pursuant to a proper subpoena duces tecum~~, or as directed by the Supreme Court~~.

[Regulation 116 amended effective May 2, 2000.]

Regulation 112~~7~~. Out-of-S~~s~~tate Compliance

(a) The MCLE Board has determined that the Mandatory Continuing Legal Education requirements in Oregon, Idaho, and Utah substantially meet Washington's continuing legal education requirements. These states are designated as comity states.

(b) A~~n active member~~ lawyer whose principal ~~office for the practice of law~~ place of business is not in ~~the State of~~ Washington may comply with these rules and regulations by filing a certificate of compliance ~~report~~ from a comity state MCLE office ~~as required by APR 11.6(b) in which the member~~ that certifies that the ~~member~~ lawyer is subject to the MCLE ~~R~~requirements of that other jurisdiction and that the member has complied with that other jurisdiction's ~~the~~ MCLE ~~R~~requirements ~~of that jurisdiction~~ during the ~~member's~~ lawyer's reporting period~~, provided that the CLE Board has determined that the requirements established by these rule are substantially met by the requirements of the other jurisdiction~~.

~~(b) The CLE Board has determined that the Continuing Legal Education requirements in Washington are substantially met by the Continuing Legal Education requirements of the following other jurisdictions: Oregon, Idaho, and Utah.~~

[Regulation 117 amended effective May 2, 2000.]

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 08-13-021
RULES OF COURT
STATE SUPREME COURT
[June 6, 2008]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENTS TO RPC 1.8—CONFLICTS OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES AND COMMENTS 21-29, RPC 5.5—UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW AND NEW APR 27—PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER, APR 15—LAWYER'S FUND FOR CLIENT PROTECTION PROCEDURAL RULES 5 AND 6, ER 408—COMPROMISE AND OFFERS OF COMPROMISE, ER 410—INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS, ER 1101—APPLICABILITY OF RULES, RAP 2.2—DECISIONS OF SUPERIOR COURT THAT MAY BE APPEALED, CrR 8.3(c)—DISMISSAL, RALJ 2.2—WHAT MAY BE APPEALED, CrRLJ 8.3(c)—DISMISSAL, NEW JuCR 7.15—WAIVER OF RIGHT OF COUNSEL	))	ORDER NO. 25700-A-897

The Washington State Bar Association having recommended the adoption of the proposed amendments to RPC 1.8—Conflicts of Interest: Current Clients: Specific Rules and Comments 21-29, RPC 5.5—Unauthorized Practice of Law; Multijurisdictional Practice of Law and NEW APR 27—Provision of Legal Services Following Determination of Major Disaster, APR 15—Lawyer's Fund for Client Protection Procedural Rules 5 and 6, ER 408—Compromise and Offers of Compromise, ER 410—Inadmissibility of Pleas, Offers of Pleas, and Related Statements, ER 1101—Applicability of Rules, RAP 2.2—Decisions of Superior Court That May Be Appealed, CrR 8.3(c)—Dismissal, RALJ 2.2—What May Be Appealed, CrRLJ 8.3(c)—Dismissal, NEW JuCR 7.15—Waiver of Right of Counsel, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That the amendments will be published in the Washington Reports and will become effective September 1, 2008.

DATED at Olympia, Washington this 6th day of June, 2008.

	Alexander, C. J.
C. Johnson, J.	Owens, J.
Madsen, J.	Fairhurst, J.
Sanders, J.	J.M. Johnson, J.
Chambers, J.	Stephens, J.

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 contacting 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 affected 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].

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].

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 thereafter 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
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].

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].

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.

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.

EVIDENCE RULE 1101
APPLICABILITY OF RULES

(a) Courts Generally. Except as otherwise provided in section (c), these rules apply to all actions and proceedings in the courts of the state of Washington. The terms "judge" and "court" in these rules refer to any judge of any court to which these rules apply or any other officer who is authorized by law to hold any hearing to which these rules apply.

(b) Law With Respect to Privilege. The law with respect to privileges applies at all stages of all actions, cases, and proceedings.

(c) When Rules Need Not Be Applied. The rules (other than with respect to privileges, the rape shield statute and ER 412)) need not be applied in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

(2) Grand Jury. Proceedings before grand juries and special inquiry judges.

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; detainer proceedings under RCW 9.100; preliminary determinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; contempt proceedings in which the court may act summarily; habeas corpus proceedings; small claims court; supplemental proceedings under RCW 6.32; coroners' inquests; preliminary determinations in juvenile court proceedings under RCW Title 13; juvenile court hearings on declining jurisdiction under RCW 13.40.110; disposition hearings in juvenile court; review hearings in juvenile court under RCW 13.32A.190 and RCW 13.34.130(4); dispositional determinations related to treatment for alcoholism, intoxication, or drug addiction under RCW 70.96A; and dispositional determinations under the Civil Commitment Act, RCW 71.05.

(4) Applications for Protection Orders. Protection order proceedings under RCW 7.90, 10.14, ~~and~~ 26.50 and 74.34. Provided when a judge proposes to consider information from a criminal or civil database, the judge shall disclose the information to each party present at the hearing; on timely request, provide each party with an opportunity to be heard; and, take appropriate measures to alleviate litigants' safety concerns. The judge has discretion not to disclose information that he or she does not propose to consider.

(d) Arbitration Hearings. In a mandatory arbitration hearing under RCW 7.06, the admissibility of evidence is governed by MAR 5.3.

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.]

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.

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.]

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.

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 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 juvenile shall file a written waiver of the right to counsel in substantially the following form:

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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 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 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 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

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 typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 08-13-023
RULES OF COURT
STATE SUPREME COURT
[June 6, 2008]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENTS TO APR 12—LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS; RESCISSION OF APR 12.1—PRESERVING IDENTITY OF FUNDS AND PROPERTY IN TRANSACTIONS CLOSED BY LIMITED PRACTICE OFFICERS AND APPENDIX A REGULATIONS OF THE APR 12 LIMITED PRACTICE BOARD; APR 12—DISCIPLINARY REGULATIONS 101 THROUGH 106 APPLICABLE TO ELPOC TITLE 15—RESCISSION OF DISCIPLINARY RULES FOR LIMITED PRACTICE OFFICERS (LPO); APR 12 CONTINUING EDUCATION REGULATIONS OF THE LIMITED PRACTICE BOARD REGULATIONS 101 THROUGH 116; APR 12—NEW LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL CONDUCT (LPORPC) AND APR 12—RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT (ELPOC), RPC 1.15A(a)—SAFEGUARDING PROPERTY AND ELC 15.4—TRUST ACCOUNT OVERDRAFT NOTIFICATION	)	ORDER NO. 25700-A-899

The Washington State Bar Association having recommended the adoption of the proposed amendments to APR 12—Limited Practice Rule for Limited Practice Officers; Rescission of APR 12.1—Preserving Identity of Funds and Property in Transactions Closed by Limited Practice Officers and Appendix A Regulations of the APR 12 Limited Practice Board; APR 12—Disciplinary Regulations 101 through 106 Applicable to ELPOC Title 15—Rescission of Disciplinary Rules for Limited Practice Officers (LPO); APR 12 Continuing Education Regulations of the Limited Practice Board Regulations 101 through 116; APR 12—New Limited Practice Officer Rules of Professional Conduct (LPORPC) and APR 12—Rules for Enforcement of Limited Practice Officer Conduct (ELPOC), RPC 1.15A(a)—Safeguarding Property and ELC 15.4—Trust Account Overdraft Notification, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That the amendments will be published in the Washington Reports and will become effective January 1, 2009.

DATED at Olympia, Washington this 6th day of June, 2008.

	Alexander, C. J.
C. Johnson, J.	Owens, J.
	Fairhurst, J.
Madsen, J.	J.M. Johnson, J.
Chambers, J.	Stephens, J.

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 officer~~ 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, 261, 830 P.2d 246 (1992). 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 submit to the Board 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) Submit an individual policy for Errors and Omissions insurance in the amount of at least $100,000;

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

(4) Submit 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~~state 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 request to 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 may deny requests for voluntary cancellation from any LPO who is the subject of a pending disciplinary investigation or proceeding. The Limited Practice Board will notify the LPO of the effective date of the cancellation if approved.

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 ~~Escrow 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

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 ~~Disci-~~

~~plinary 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.~~ LPORPC.

~~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 Closing 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 maintains identifiable bank account(s) within the state for the deposit of funds of clients and third persons and 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 1.12A and B, and whether all clients' funds to the extent required by ~~APR 12.1~~ LPORPC 1.12A 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 LPORPC 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.~~

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 conclusive 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 opposition 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 81/2 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 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 114~~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 115~~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 116~~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.

ADOPT NEW SET OF 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 LPO 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, an LPO 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 LPOs. These rules update standards for LPO conduct and they set forth the minimum standard of conduct required of LPOs. Not every ethical situation that an LPO may encounter can be foreseen; the fundamental ethical principles in the rules are intended to provide minimum standards to assist the LPO in determining the appropriate conduct. So long as LPOs 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 LPO can fall without being subject to disciplinary action. Other LPORPC may afford the LPO 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 an LPO'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 an LPO 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 an LPO 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 an LPO in a pending transaction. The Rules are designed to provide guidance to LPOs 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.

LPORPC 1.0 TERMINOLOGY

The following definitions apply to all rules and regulations governing LPOs 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 LPO 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 LPO 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, an LPO 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" or "LPO" 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 an LPO 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 LPO accepts instructions or to whom the LPO may make deliveries or disburse funds.

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

(j) "Reasonable belief" or "reasonably believes" when used in reference to an LPO denotes that the LPO 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 an LPO denotes that an LPO 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 LPO 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; lien-holders and non-borrowing owners, etc. are accommodated parties.

LPORPC 1.1 COMPETENCE

An LPO shall provide competent LPO services. Competence requires the knowledge, thoroughness and preparation reasonably necessary to provide the LPO services. Not every LPO 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, an LPO should keep abreast of changes in the law and its practice relevant to LPO duties, engage in continuing study and education and comply with all continuing education requirements to which the LPO is subject. The rule also reminds the LPO that the competence required for a particular transaction is neither universal nor automatic.

LPORPC 1.2 DILIGENCE

An LPO 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. An LPO'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 LPO'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, an LPO should carry through to conclusion all matters undertaken for a client. See also Rule 1.3, Communication with Clients, infra.

LPORPC 1.3 COMMUNICATION WITH CLIENTS

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

(b) An LPO 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) An LPO must inform a client to seek legal advice from a lawyer if the LPO 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 LPO 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 LPO 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 LPO to select, prepare and complete the documentation for the transaction.

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

LPORPC 1.4 CONFIDENTIALITY

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

LPORPC 1.5 CONFLICT OF INTEREST

(a) An LPO 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. For purposes of this rule, "immediate family" includes a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the LPO maintains a close, familial relationship.

(b) An LPO 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 an LPO'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.

LPORPC 1.6 DECLINING OR TERMINATING SERVICES

(a) An LPO 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 LPO;

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

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

4. The LPO is discharged; or

5. A client insists on confidentiality of information disclosed to the LPO to which the LPO cannot agree.

(b) An LPO 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 LPO's services that the LPO reasonably believes is criminal or fraudulent or illegal, or that might require the LPO to exceed his or her authority as an LPO;

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

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

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

(5) The LPO services will result in an unreasonable financial burden on the LPO 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 an LPO's services, the LPO 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 LPO 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 an LPO must decline followed by situations where an LPO may decline to provide LPO services. An LPO ordinarily must decline or terminate services if a client demands that the LPO engage in conduct that is illegal or violates the LPO Rules of Professional Conduct or other law, or in the other enumerated instances.

LPORPC 1.7 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of performing LPO services in a transaction, an LPO 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.

LPORPC 1.8 UNAUTHORIZED PRACTICE OF LAW

An LPO 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 LPO 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 LPO certification has been revoked or suspended, if the LPO knows, or reasonably should know, of such revocation or suspension; or

(d) work as an LPO while on inactive status, or while his or her LPO 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 LPO unauthorized practice of law have involved LPO use of unapproved forms and unapproved alterations of approved forms. See Bishop v. Jefferson Title Co., 107 Wn.App 833 (2001). Washington General Rule (GR) 24 sets forth the definition of the practice of law.

LPORPC 1.9 LPO DUTIES AND AUTHORITY ARE NOT DELEGABLE

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

LPORPC 1.10 MISCONDUCT

It is professional misconduct for an LPO to:

(a) violate or attempt to violate the Limited Practice Officer Rules of Professional Conduct, 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 LPO's honesty, trustworthiness or fitness as an LPO 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 an LPO;

(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 an LPO. "Unfitness to practice" includes but is not limited to the inability, unwillingness or repeated failure to perform adequately the material functions required of an LPO or to comply with the LPORPC 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 that reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as an LPO, 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 LPO should seek legal advice as to whether such orders are valid.

LPORPC 1.11 REPORTING PROFESSIONAL MISCONDUCT

An LPO who knows that another LPO has committed repeated and material violations of the LPORPC should inform the Limited Practice Board.

Comment:

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

LPORPC 1.12A SAFEGUARDING PROPERTY

(2) This Rule applies to (1) property of clients or third persons in the possession of an LPO or a Closing Firm in connection with a transaction, and (2) escrow and other funds held by an LPO or a Closing Firm incident to a transaction. For all transactions in which an LPO under the authorization set forth in APR 12(d) or a lawyer has selected, prepared, or completed documents, the LPO 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) An LPO or a Closing Firm must not use, convert, borrow or pledge client or third person property for the LPO's or Closing Firm's own use.

(c) An LPO or Closing Firm must hold property of clients and third persons separate from the LPO's and Closing Firm's own property.

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

(2) An LPO or Closing Firm must identify, label and appropriately safeguard any property of clients or third persons other than funds. The LPO 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 LPO or Closing Firm must preserve the records for seven years after return of the property.

(d) An LPO or Closing Firm must promptly notify a client or third person of receipt of the client or third person's property.

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

(f) Except as stated in this Rule, an LPO 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 an LPO or Closing Firm possesses property in which two or more persons (one of which may be the LPO or Closing Firm) claim interests, the LPO or Closing Firm must maintain the property in trust until the dispute is resolved. The LPO or Closing Firm must promptly distribute all undisputed portions of the property. The LPO or Closing Firm must take reasonable action to resolve the dispute, including, when appropriate, interpleading the disputed funds.

(h) An LPO or Closing Firm must comply with the following for all trust accounts:

(1) No funds belonging to the LPO 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 LPO or Closing Firm must be deposited and retained in a trust account, but any portion belonging to the LPO or Closing Firm must be withdrawn at the earliest reasonable time; or

(iii) funds necessary to restore appropriate balances.

(2) An LPO or Closing Firm must keep complete records as required by Rule 1.12B.

(3) An LPO or Closing Firm may withdraw funds when necessary to pay client costs. The LPO 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 LPO 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) An LPO or Closing Firm must not disburse funds from a trust account until deposits have cleared the banking process and been collected, unless the LPO or Closing Firm and the bank have a written agreement by which the LPO 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 LPO 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 LPO or Closing Firm. An LPO 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), an LPO 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 LPO 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 LPO 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 LPO 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 LPO or Closing Firm; and

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

(j) Notwithstanding any provision of any other rule, statute, or regulation, escrow and other funds held by an LPO, 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 LPO, Closing Firm, or party(ies) view the funds.

LPORPC 1.12B REQUIRED TRUST ACCOUNT RECORDS

(a) An LPO 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 LPO 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 an LPO, the LPO or Closing Firm must make appropriate arrangements for the maintenance of the records specified in this Rule.

Comment:

[1] LPOs 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 LPOs, 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 LPO 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 LPO'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 and includes the Directory of Regulatory Services and other Association counsel where appropriate;

(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, an LPO 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) "LPO" means limited practice officer;

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

(p) "Panel" means a hearing panel under rule 10.2 (a)(2);

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

(r) "Respondent" means an LPO against whom a grievance is filed or an LPO investigated by the Clerk or disciplinary counsel;

(s) "APR" means the Admission to Practice Rules;

(t) "CR" means the Superior Court Civil Rules;

(u) "RAP" means the Rules of Appellate Procedure;

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

(w) 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

An LPO 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 LPO discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of LPO 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 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 LPO or was a material witness in the matter in controversy, or a lawyer or LPO with whom the member works serves or has previously served as a lawyer or LPO concerning the matter, or such lawyer or LPO 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 LPO 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 committee 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

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

(1) testify voluntarily as a character witness in an LPO disciplinary proceeding;

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

(3) serve as respondent's counsel in LPO disciplinary proceedings.

ELPOC 2.7 DISCIPLINARY COUNSEL

Association disciplinary counsel appointed under ELC 2.8, or other designated Association staff who are WSBA members, acts as counsel on the Board's behalf on all matters under these rules, and performs other duties as required by these rules. Special disciplinary counsel may be appointed whenever necessary to conduct an individual investigation or proceeding.

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 COMMUNICATIONS TO THE BOARD PRIVILEGED

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. An LPO 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 LPO in any proceeding under these rules until three years after leaving office.

(c) Restriction on Charging Fee To Respond to Grievance. A respondent LPO 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 LPO 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 disci-

pline 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) an LPO'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 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 an LPO against whom the grievant has complained is subject to disability proceedings. The following information is public:

(1) that an LPO 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. Except as provided in rule 3.2(c), the grievant, respondent LPO, 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, Clerk, or other Association staff performing duties under these rules 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 an LPO, the Board may release the status of otherwise confidential disciplinary proceedings and provide copies of nonpublic information to any agency that an LPO authorizes to investigate the LPO'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 Counsel 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 Enforcement 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, and to the Washington State Department of Financial Institutions, and to the Washington Office of the Insurance Commissioner.

(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 Limited Practice Board and the Practice of Law Board must treat it as confidential unless this title or the Board 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 an LPO 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 LPO'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 LPO, 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 LPO 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 an LPO, 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 LPO 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 LPO 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 LPO 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 an 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 opportunity 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 an LPO'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 an LPO and any alleged or apparent incapacity of an LPO to practice as an 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 an 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 an 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, an 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, an 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.* An 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. An 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 an LPO. 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 of Discipline Committee. 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 of the discipline committee 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 an 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 an LPO is convicted of a crime that is not a felony but that reflects directly on the LPO's honesty, trustworthiness or fitness as an 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 an 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 an 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 LPO 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 LPO 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 an 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 an 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 suspen-

sion, 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 an 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 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 AN 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 an 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 an 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 an 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 an 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 an 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 an 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 an 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 an 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 an 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 an 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 an 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 or the Clerk. 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 or the clerk 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 an 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 or the Clerk a signed voluntary cancellation, sworn to or affirmed under oath and notarized, that:

(1) includes disciplinary counsel's or the Clerk'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 an LPO 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 or the Clerk 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 cancellation 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 an 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 the Clerk or 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 LPOs. Upon filing of the voluntary cancellation, respondent must comply with the same duties under Title 14 as an LPO whose license has been revoked and comply with all restrictions that apply to an 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 or the Clerk 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 or the Clerk'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 an 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
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 an LPO's capacity to practice as an 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 disci-

pline. 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 an LPO's conduct should have an impact on his or her license to practice as an 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 injus-

tice 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 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. 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 Review Granted. 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. After the time for filing a petition for review has expired or a petition has been denied, 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 revocation 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 revocation. 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 subject to appeal under ELPOC 12.3 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 public 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. Public file documents should be abbreviated PF, 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 an 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 an LPO;

(4) Requirement that the LPO attend continuing 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 revocation 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 year.

(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) certification by the Clerk or disciplinary counsel 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 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 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 13.6 DISCIPLINE FOR CUMULATIVE ADMONITIONS

(a) Grounds. An LPO may be subject to sanction or other remedy under rule 13.1 if the LPO receives three admonitions within a five year period.

(b) Procedure. Upon being presented with evidence that a respondent LPO has received three admonitions within a five year period, the discipline committee may authorize the filing of a formal complaint based solely on the provisions of this rule. A proceeding under this rule is conducted in the same manner as any disciplinary proceeding. The issues in the proceeding are whether the respondent has received three admonitions within a five year period and, if so, what sanction or other remedy should be recommended.

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 the Clerk or disciplinary counsel.

(2) The Clerk or 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) the Clerk or disciplinary counsel consults with the persons owed restitution.

(3) A respondent may ask the Chair to review an adverse determination by the Clerk or 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 the Clerk or 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, the Clerk, investigators, 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 or the Clerk 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. The Clerk or 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 in favor of the Association 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 or the Clerk 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 conditions 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. An LPO who has been suspended, revoked, or transferred to disability inactive status must provide each 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. An 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 an 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 An LPO whose license has been revoked, or suspended for more than 60 days as a disciplinary sanction, 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. An 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 AN LPO

A revoked or suspended LPO, or an LPO transferred to disability inactive status, must not practice as an 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 an LPO. This rule does not preclude a revoked or suspended LPO, or an 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 an 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 an 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 an 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 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's Disciplinary Board an agreement as provided for under ELC 15.4 (a) and (b). The Association's 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 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.

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. An 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.

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.

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.

WSR 08-15-004
NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE CENTER
[Filed July 3, 2008, 11:13 a.m.]

A regular meeting of the Washington state convention and trade center board of directors will be held on Tuesday, July 15, 2008, at 12:30 p.m. in Room 2B of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding this meeting, please call (206) 694-5000.

WSR 08-15-012
AGENDA
DEPARTMENT OF LICENSING
[Filed July 7, 2008, 8:58 a.m.]

Following is the rule-making agenda for the department of licensing. This agenda is sent as a requirement of RCW 34.05.314.

Feel free to contact Ramona Provost if you need any assistance concerning this matter at 359-4017.

RULE-MAKING AGENDA FOR RULES UNDER DEVELOPMENT
JULY 2008

CR-101	CR-102	PROGRAM	SUBJECT
97-11-002		Driver responsibility	Procedural rules regarding the revocation and restoration of driving privileges of those forced to be an [a] habitual traffic offender under chapter 46.65 RCW, including rules regarding the right to a hearing.
03-15-108		UCC	Possible adjustments to fees changed by the program WAC 308-30-100.
03-17-029		Camping resorts	Fee adjustment to chapter 308-420 WAC, regulating camping resorts.
05-07-044		Dealers	WAC 308-66-110, 308-66-155, 308-66-157, 308-66-190.
05-07-070		Dealers	WAC 308-90-120.
05-07-071		Dealers	WAC 308-66-180.
05-11-104		Title and registration	Chapters 308-56A, 308-96A WAC, implementing 2SSB 5916.
06-22-105		Motorcycle	Establish basic requirements governing the operation and scope of motorcycle education courses offered by commercial businesses.
07-03-147		Appraisers	Chapter 308-125 WAC.
07-10-016		Driver training schools	Driver training school program, professional development education, school and instructor approval.
07-10-053		Architects	Chapter 308-12 WAC.
07-10-054	08-11-109	Landscape architects	Chapter 308-13 WAC.
07-13-081		Title and registration	WAC 308-56A-140.
07-14-058		Real estate	WAC 308-124A-460.
07-15-011		Dealers	Chapter 308-63 WAC.
07-19-066	07-23-037	Title and registration	WAC 308-56A-150.
07-23-013		Court reporters	Chapter 308-14 WAC, Court reporters.
08-06-001		Funeral	WAC 308-48-010.
08-08-015		Bail bond	Implement ESSB 6437, chapter 308-19 WAC.
08-07-004		Engineers	Chapter 196-26A WAC, Engineer and land surveyor fees.

CR-101	CR-102	PROGRAM	SUBJECT
08-08-081		Title and registration	WAC 308-96A-560.
08-09-058		Employment agency	WAC 308-33-110, 308-33-120, 308-33-130.
08-08-082		Title and registration	Chapter 308-96A WAC, new rule to allow family members of armed forces members killed in action to receive license plates.
08-09-033		UCC	WAC 308-390-105 Fees.
08-08-122		Cosmetology	Chapter 308-20 WAC, Apprenticeship.
08-09-087		Title and registration	WAC 308-56A-530.
08-09-088		Title and registration	WAC 308-96A-175.
07-16-136	08-11-053	Commercial driver license	WAC 308-100-005, 308-100-031, 308-100-033, 308-100-035, 308-100-038.
08-11-054		Driver examining	Senior driver accident prevention program.
08-11-045		Appraiser	Chapter 308-125 WAC.
08-11-046		Appraiser	Chapter 308-125 WAC.
08-12-111		Cosmetology	Chapter 308-20 WAC.

Ramona Provost
Rules Coordinator

WSR 08-15-013
NOTICE OF PUBLIC MEETINGS
OFFICE OF THE STATE ACTUARY
(Select Committee on Pension Policy)
[Filed July 7, 2008, 9:15 a.m.]

The August 12, 2008, select committee on pension policy full and executive committee meeting has been cancelled. There will be no subgroup meeting August 11, 2008.

If you have any questions please give Kelly Burkhart a call at 786-6142.

WSR 08-15-022
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
[Filed July 8, 2008, 11:12 a.m.]

Change of Place of the October 2008
Board of Regents' Meeting

At the direction of the president of the board of regents, the place of the University of Washington board of regents meeting scheduled on Thursday, October 16, has been changed. The new schedule is noted below.

The Thursday, October 16, 2008, meeting of the board of regents scheduled for 3:00 p.m. in Seattle, Washington, on the University of Washington campus in the Peterson Room of the Allen Library will be held on Thursday, October 16, 2008, at 3:00 p.m. at the UW Tower, Room T-22.

Please publish this change in state register at your earliest convenience, but no later than twenty days prior to the October 16, 2008, meeting. If you have any questions regarding meetings of the board of regents, please contact the board of regents' office at (206) 543-1633.

submitted within fourteen days after appearance of this

WSR 08-15-024
NOTICE OF PUBLIC MEETINGS
WESTERN WASHINGTON UNIVERSITY
[Filed July 8, 2008, 12:03 p.m.]

Western Washington University's board of trustees has canceled their August 7, 2008, board meeting. The next regularly scheduled board meeting will convene August 8, 2008, 1 p.m., at Safeco Field, Ellis Pavillion [Pavilion] (off home plate street entrance). Any questions regarding the meeting schedule can be directed to Elizabeth Sipes, secretary to the board of trustees, at (360) 650-3998.

WSR 08-15-027
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed July 8, 2008, 1:22 p.m.]

NOTICE OF CHANGES TO STATE OF WASHINGTON
NURSING FACILITY MEDICAID PAYMENT
RATE METHODOLOGY

The 2008 state legislature has passed changes to the method for determining facility-specific, per resident day medicaid payment rates for nursing facility care in Washington. Unless otherwise indicated the changes are effective July 1, 2008. This notice includes a justification, description, and estimated rate impact of the changes.

Please address any comments or questions concerning the changes to Edward H. Southon, Department of Social and Health Services, Aging and Disability Services Administration, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2469, fax (360) 493-9484. Comments should be notice.

JUSTIFICATION

The changes are mandated by the 2008 Washington state legislature in chapter 255, Laws of 2008; chapter 263, Laws of 2008; and chapter 329, Laws of 2008, the state operating budget Supplemental Appropriations Act.

NEW RATES AND PROPOSED CHANGES TO RATE METHODOLOGY

In combination with a variety of other factors, including changes in the allowed costs of care, the methodological changes are estimated to result in a statewide average nursing facility medicaid payment rate of $159.34 per resident day, at a maximum, for state fiscal year 2008, running from July 1, 2007, to June 30, 2008, and $165.04 for state fiscal year 2009, running from July 1, 2008, to June 30, 2009.

Chapter 255, Laws of 2008, amends the law concerning certificates of capital authorization (CCAs). A CCA is required for all new or replacement building construction, or for major renovation projects, receiving a certificate of need (CoN) or CoN exemption from the state department of health, before the expense of such construction or renovation is reflected in the medicaid rate paid to the nursing facility's contractor. Projects that do not exceed the expenditure minimum set under RCW 70.38.025 - currently, two million dollars - do not require a CoN or CoN exemption, and consequently do not require a CCA. The amendment gives the following priority to CCA applications: First, renovation or replacement of existing facilities that incorporates innovative building designs that create more home-like settings; second, renovations of existing facilities; third, replacements of existing facilities; and fourth, new facilities. Within each of the first three categories, priority shall be given to facilities with the greatest length of time since the last major renovation or construction. Within the priorities listed above, applications that do not receive approval in one state fiscal year because that year's authorization limit has been reached shall have priority the following fiscal year if the applications are resubmitted. Chapter 255 was effective June 12, 2008.

Chapter 263, Laws of 2008, clarifies how the "budget dial" provided by RCW 74.46.421 shall be applied in an instance where a final order or judgment would result in an increase to a nursing facility's payment rate for a prior state fiscal year or years, and where that increase would result in the statewide weighted average payment rate set by the legislature for all facilities for such fiscal year or years being exceeded. In such case, the department shall increase the nursing facility's payment rate to meet the final order or judgment only to the extent that it does not result in the statewide weighted average payment rate for all facilities being exceeded.

Chapter 263 clarifies that, effective July 1, 2007, component rate allocations for direct care shall be based on actual patient days regardless of whether a facility has converted banked beds to active service.

Chapter 263 also clarifies that, in determining the median cost limits for the therapy care, support services, and operations component rates, the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted costs per adjusted resident day. The effective date of chapter 263 was June 12, 2008; however, the law contains a statement of legislative intent that it clarifies the enactment of chapter 8, Laws of 2001 1st sp. sess. and is curative, remedial, and retrospectively applicable to July 1, 1998.

Chapter 329, Laws of 2008, the state operating budget Supplemental Appropriations Act, amended the statewide average nursing facility medicaid payment rates for state fiscal years 2008 and 2009, as noted above. Additionally, it provided for a low-wage worker add-on to the medicaid nursing facility payment rate, beginning July 1, 2008. The low-wage worker add-on shall not exceed $1.57 per resident day per facility, for those facilities electing to receive the add-on.

WSR 08-15-028
AGENDA
UNIVERSITY OF WASHINGTON

[Filed July 8, 2008, 1:24 p.m.]

Semiannual Agenda for Rules Under Development
(Per RCW 34.05.314)
July 2008

1. Rule making concerning a new chapter for animal control, currently part of chapter 478–124 WAC, General conduct code for the University of Washington, will continue during the second half of 2008.

2. Housekeeping amendments for several Title 478 WAC rules are anticipated during the second half of 2008.

3. Rule making for chapter 478–276 WAC, Governing access to public records, is anticipated during the second half of 2008.

For more information concerning the above rules contact Rebecca Goodwin Deardorff, Director of Rules Coordination, University of Washington, Box 355509, Seattle, WA 98195, phone (206) 543–9219, fax (206) 221–6917, e-mail rules@u.washington.edu.

WSR 08-15-029
POLICY STATEMENT
UNIVERSITY OF WASHINGTON

[Filed July 8, 2008, 2:37 p.m.]

The University of Washington has recently created or revised the following policy statements:

- "Equipment Acquisition Guidelines," revised effective May 5, 2008 (Administrative Policy Statement 61.3).
- "Construction Capitalization Policy," revised effective May 5, 2008 (Administrative Policy Statement 61.8).
- "University of Washington Public Art Commission," Executive Order No. 37, revised effective May 21, 2008 (*University Handbook*, Vol. 4, Part VII, Chapter 8).
- "Campus Art Policies," revised effective May 21, 2008 (*University Handbook*, Vol. 4, Part VII, Chapter 9).

- "Registration," revised effective June 23, 2008 (*University Handbook*, Vol. 4, Part III, Chapter 2).
- "Non-Discrimination and Affirmative Action," Executive Order No. 31, revised effective June 25, 2008 (*University Handbook*, Vol. 4, Part I, Chapter 2).
- "Minimum Data Security Standards: Data Classification and Related Measures of Protection," effective June 27, 2008 (Administrative Policy Statement 2.10).

To view any current policy statement from the *Administrative Policy Statements*, see http://www.washington.edu/admin/rules/APS/APSIndex.html; to view material from the *University Handbook*, see http://www.washington.edu/faculty/facsenate/handbook/handbook.html. Or, to request a paper copy of any policy listed above, contact Rebecca Goodwin Deardorff, Director of Rules Coordination, University of Washington, Box 355509, Seattle, WA 98195, e-mail rules@u.washington.edu, or fax (206) 221–6917.

WSR 08-15-030
NOTICE OF PUBLIC MEETINGS
WHATCOM COMMUNITY COLLEGE
[Filed July 8, 2008, 3:17 p.m.]

The board of trustees of Whatcom Community College, District Number Twenty-One, has cancelled its Wednesday, July 9, 2008, regular board meeting and will hold its July board meeting on Tuesday, July 22, 2008, from 9 a.m. - 12 noon in the Foundation Building Conference Room 201, on the college campus, 237 West Kellogg Road, Bellingham, WA 98226. The board plans to retreat into executive session at 1 p.m. - 3:30 p.m. to discuss personnel issues as provided by RCW 42.30.110(1): "*g. ...to review the performance of a public employee.*" Board of trustees meetings are open to the public (executive sessions are exempt from this requisite).

WSR 08-15-033
ATTORNEY GENERAL'S OFFICE
[Filed July 9, 2008, 10:45 a.m.]

NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION WASHINGTON ATTORNEY GENERAL

The Washington attorney general issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the attorney general's office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the attorney general's office of your interest by August 13, 2008. This is not the due date by which comments must be received. However, if you do not notify the attorney general's office of your interest in commenting on an opinion request by this date, the opinion may be issued before your comments have been received. You may notify the attorney general's office of your intention to comment by calling (360) 664-3027, or by writing to the Office of the Attorney General, Solicitor General Division, Attention James Pharris, Deputy Solicitor General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you may be provided with a copy of the opinion request in which you are interested; information about the attorney general's opinion process; information on how to submit your comments; and a due date by which your comments must be received to ensure that they are fully considered.

If you are interested in receiving notice of new formal opinion requests via e-mail, you may visit the attorney general's web site at www.atg.wa.gov/AGOOpinions/default.aspx for more information on how to join our Opinions ListServ.

The attorney general's office seeks public input on the following opinion request(s):

Opinion Docket Nos. 08-06-08 and 08-07-01
Requests by Bob Morton, et al.,
State Senator 7th District/
Kevin Van De Wege, et al.,
State Representative, 24th District

Does a city in Washington have authority to enact a local law that prohibits possession of firearms on city property or in city-owned facilities?

WSR 08-15-037
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
[Filed July 9, 2008, 1:40 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the department of social and health services.

Economic Services Administration
Division of Child Support

Document Title: Administrative Policy 3.02: Authorization of Disbursements.

Subject: Authorization of disbursements.

Effective Date: July 7, 2008.

Document Description: This policy identifies approval authority for authorizing disbursements (payments), establishes responsibility at each level, and identifies the procedure for authorizing approval authority.

To receive a copy of the interpretive or policy statements, contact Jeff Kildahl, Division of Child Support, P.O. Box 11520, Tacoma, WA 98411-5520, phone (360) 664-5278, TDD/TTY (360) 753-9122, fax (360) 586-3274, e-mail JKildahl@dshs.wa.gov, web site http://www1.dshs.wa.gov/dcs/.

WSR 08-15-038
RULES COORDINATOR
RECREATION AND CONSERVATION OFFICE
[Filed July 9, 2008, 2:18 p.m.]

Megan Duffy has been delegated as the new rules coordinator for the recreation and conservation office. She is replacing Greg Lovelady, who will no longer be serving in the rules coordinator position.

Ms. Duffy's contact information is as follows: Megan Duffy, Policy and Planning Specialist, Recreation and Conservation Office, P.O. Box 40917, Olympia, WA 98504-0917, (360) 725-3936, Megan.Duffy@rco.wa.gov.

Kaleen Cottingham
Director

WSR 08-15-040
AGENDA
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
[Filed July 10, 2008, 12:22 p.m.]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-17 issue of the Register.

WSR 08-15-045
ATTORNEY GENERAL'S OFFICE
[Filed July 11, 2008, 12:20 p.m.]

NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION WASHINGTON ATTORNEY GENERAL

The Washington attorney general issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the attorney general's office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the attorney general's office of your interest by August 13, 2008. This is not the due date by which comments must be received. However, if you do not notify the attorney general's office of your interest in commenting on an opinion request by this date, the opinion may be issued before your comments have been received. You may notify the attorney general's office of your intention to comment by calling (360) 664-3027, or by writing to the Office of the Attorney General, Solicitor General Division, Attention James Pharris, Deputy Solicitor General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you may be provided with a copy of the opinion request in which you are interested; information about the attorney general's opinion process; information on how to submit your comments; and a due date by which your comments must be received to ensure that they are fully considered.

If you are interested in receiving notice of new formal opinion requests via e-mail, you may visit the attorney general's web site at www.atg.wa.gov/AGOOpinions/default.aspx for more information on how to join our Opinions List-Serv. The attorney general's office seeks public input on the following opinion request(s):

Opinion Docket No. 08-07-03,
Request by Michael Murphy, State Treasurer

1. Does the maximum occupancy-cost-per-square-foot provision of subsection (8) of the authorizing legislation apply to all or only to some of the proposed facilities?
2. In calculating the occupancy cost-per-square-foot, must the calculation be performed on both a square foot AND a per-employee basis?
3. In adjusting lease rates for "level of service" for comparison purposes, are capital facilities or quality of facilities appropriately treated as "services" under the authorizing legislation?
4. Is there any ultimate cap on either the occupancy cost or the total dollar cost of the facilities to be financed?
5. What are the legal consequences, if any, of an "inaccurate" certification by OFM?
6. May the State Treasurer reject the OFM certification?
7. What criteria should the State Finance Committee use to determine whether it is "reasonably certain" that the proposed financing lease is not state debt?
8. Is the proposed financing lease a "financial contract" under RCW 39.94, and could it create "state debt"?
9 Do some of the characteristics of the proposed transaction make it more akin to the unsuccessful attempt to avoid state debt in the 1955 State Building Financing Authority case?
10. Does article VIII, section 1(h) of the Washington Constitution affect the legality of the Department of Information Services' payment of rental amounts under the proposed financing lease?
11. Do public works bidding laws apply to the construction of the facilities to be leased to the state?

WSR 08-15-048
RULES OF COURT
STATE SUPREME COURT
[July, 2008]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENT TO CrR 4.2(g), STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO NON-SEX OFFENSE, CrR 4.2(g), STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO SEX OFFENSE; JUCR 7.7, STATEMENT OF PLEA OF GUILTY AND CrRLJ 4.2(g), STATEMENT OF DEFENDANT ON PLEA OF GUILTY	))))))))))	ORDER NO. 25700-A-900

The Washington State Pattern Forms Committee having recommended the adoption of the proposed amendments to CrR 4.2(g), Statement of Defendant on Plea of Guilty to Non-Sex Offense, CrR 4.2(g), Statement of Defendant on Plea of Guilty to Sex Offense; JUCR 7.7, Statement of Plea of Guilty, and, CrRLJ 4.2(g), Statement of Defendant on Plea of Guilty, and the Court having determined that the proposed amendments will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

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

DATED at Olympia, Washington this ____ day of July, 2008.

Alexander, C. J.

C. Johnson, J. Owens, J.

Madsen, J. Fairhurst, J.

Sanders, J. J. M. Johnson, J.

Chambers, J. Stephens, J.

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-17 issue of the Register.

WSR 08-15-049
AGENDA
DEPARTMENT OF NATURAL RESOURCES
[Filed July 11, 2008, 2:09 p.m.]

Following is the department of natural resources' semi-annual rules development agenda for publication in the Washington state register, pursuant to RCW 34.05.314. There may be additional rule-making activity not on the agenda as conditions warrant.

Please call Jamey Taylor at (360) 902-1561, or e-mail at jamey.taylor@dnr.wa.gov if you have questions.

RULES DEVELOPMENT AGENDA
July 2008 to December 2008

WAC Chapter or Section	Purpose of rule being developed or amended
332-08 and 344-08	Clarify administrative practice and procedure rules.
332-10	Update office addresses.
332-24-710	Update boundary of forest protection zone in Kitsap County.
332-24-720	Update boundary of forest protection zone in Pierce County.
332-24-730	Update boundary of forest protection zone in King County.
332-52	Revise and update rules to reflect current recreation and public access policy.
332-120 and 332-130	Update minimum standards for survey monuments and land boundary surveys.
344-12	Update oil and gas rules.

Bonnie Bunning
Executive Director
Policy and Administration

WSR 08-15-053
AGENDA
DEPARTMENT OF AGRICULTURE
[Filed July 11, 2008, 3:18 p.m.]

Following is the department of agriculture's semi-annual rules development agenda for the period of July 1 through December 31, 2008. This document is being filed in compliance with RCW 34.05.314.

The department may undertake additional rule-making activity as conditions warrant. If you have any questions, please call Teresa Norman at (360) 902-2043 or e-mail at tnorman@agr.wa.gov.

Semi-Annual Rules Agenda
July 1, 2008 - December 31, 2008
P.O. Box 42560
Olympia, WA 98504-2560

WAC Number	Rule Title	Agency Contact	CR-101	CR-102	CR-103	Subject of Rule Making
Administrative Services						
Chapter 16-06	Public records.	Dannie McQueen Administrative Regulations Program Manager (360) 902-1809	January 2007	TBD	TBD	Amending the department public disclosure rule to include the 2006 legislative exemptions regarding animal identification and animal diseases, and to update the chapter using plain talk standards.
Animal Services Division						
Chapter 16-71	Equine infectious anemia.	Lynn Briscoe Special Assistant to the State Veterinarian (360) 902-1987	March 2008	May 2008	July 2008	Equine diseases.
Chapter 16-80	Pseudorabies in swine.	Lynn Briscoe Special Assistant to the State Veterinarian (360) 902-1987	February 2007	April 2008	July 2008	Swine diseases.
Chapter 16-86	Duties of accredited veterinarians—Training.	Lynn Briscoe Special Assistant to the State Veterinarian (360) 902-1987	September 2008	TBD	TBD	Amending training requirements for veterinarians performing tuberculosis testing in cattle and bison.
Chapter 16-610	Livestock brand inspection.	Leslie Alexander Livestock Identification Program Supervisor (509) 543-7383	Expedited March 2008	N/A	May 2008	Adding an additional special sale day.
Commodity Inspection Division						
Chapter 16-439	Pears, summer and fall.	Jim Quigley Fruit and Vegetable Inspection Program Manager (360) 902-1883	TBD	TBD	TBD	Rewrite in a clear and readable format. No new requirements.
Chapter 16-442	Winter pears.	Jim Quigley Fruit and Vegetable Inspection Program Manager (360) 902-1883	TBD	TBD	TBD	Rewrite in a clear and readable format. No new requirements.
Food Safety and Consumer Services						
Chapter 16-108	Washington state eggs seals and assessments.	Claudia Coles Food Safety Program Manager (360) 902-1905	December 2007	July 2008	July 2008	Suspending egg assessments for three months.
NEW WAC	LNMP enforcement rules.	Nora Mena LNMP Program Manager (360) 902-2894	October 2008	February 2009	May 2009	Enforcement procedures, penalty matrix.
Pesticide Management Division						
Chapter 16-230	Use of chemicals and chemically treated materials in certain counties.	Cliff Weed Compliance Program Program Manager (360) 902-2036	July 2008	February 2009	March 2009	Modify the nozzle requirements for air and ground applications.
Chapter 16-231	Restricted use herbicides.	Cliff Weed Compliance Program Program Manager (360) 902-2036	July 2008	February 2009	March 2009	Modify the nozzle requirements for air and ground applications.
Chapter 16-232	Restricted use herbicides in certain counties.	Cliff Weed Compliance Program Program Manager (360) 902-2036	July 2008	February 2009	March 2009	Modify the nozzle requirements for air and ground applications.

WAC Number	Rule Title	Agency Contact	CR-101	CR-102	CR-103	Subject of Rule Making
Chapter 16-228	Wood destroying organisms.	Cliff Weed Compliance Program Program Manager (360) 902-2036	July 2008	February 2009	March 2009	Modify wood destroying reporting requirements.
Plant Protection Division						
Chapter 16-218	Hops—Certification analyses—Fees.	Royal Schoen Chemical and Hop Lab Program Manager (509) 225-2621	CR-105 6/4/08	N/A	8/6/08	The department is proposing to amend the current rule by eliminating specific chemical analyses the program is not able to continue to perform. No existing fees will be increased as a result of this change, and no new fees will be enacted.
WAC 16-390-230	Apple pest certification fee.	Brad White Pest Program Manager (360) 902-2071	6/3/08	7/23/08	9/10/08	The department is proposing to remove a sunset provision in the rule establishing the current apple pest certification fee, so that the fee would remain at its current level. During the 2008 legislative session, the Washington state legislature authorized the Washington state department of agriculture to increase the apple pest certification fee (see chapter 329, Laws of 2008).
Chapter 16-470	Onion white rot disease.	Tom Wessels Plant Services Program Manager (360) 902-1984	6/3/08	7/23/08	9/10/08	The department is proposing to revise the current onion white rot disease rule by adding Benton County to the existing pest-free area. In addition, the department may amend the existing language to increase its clarity and readability and update the language to conform to current industry and regulatory standards.
Chapter 16-662	Weights and measures—National handbooks.	Kirk Robinson Commission Merchants Program Manager (360) 902-1854	CR-105 10/22/08	N/A	12/30/08	The department is proposing to adopt the most recent version of the NIST handbooks.
Chapter 16-674	Weights and measures—Exemptions, weighmasters and device registration.	Kirk Robinson Commission Merchants Program Manager (360) 902-1854	CR-105 7/23/08	N/A	9/25/08	The department is proposing to delete obsolete fees currently listed in WAC. Beginning in 2006, these fees are inconsistent with statute. No existing fees will be increased as a result of this change, and no new fees will be enacted.
Chapter 16-752	Noxious weed control.	Tom Wessels Plant Services Program Manager (360) 902-1984	1/23/08	7/23/08	9/17/08	The department is considering adding additional species to the wetland and aquatic weed quarantine and the noxious weed seed and plant quarantine, revising the special permit language, and making the rule more clear and readable.

Teresa Norman
Rules Coordinator

WSR 08-15-061
NOTICE OF PUBLIC MEETINGS
BEEF COMMISSION

[Filed July 14, 2008, 10:41 a.m.]

The September 17, 2008, board meeting of the Washington state beef commission has been changed to October 1 in Ellensburg, Washington. Should you have questions, please contact Daniene Giessen at (206) 444-2902.

WSR 08-15-062
NOTICE OF PUBLIC MEETINGS
BARLEY COMMISSION
[Filed July 14, 2008, 10:41 a.m.]

The Washington barley commission hereby complies with regulations as stated in RCW 42.30.075 and provides pertinent scheduled meeting changes, per the board of directors, for publication in the state register. The start time and venue changes for the September meeting is submitted at least twenty days prior to the scheduled meeting dates.

SEPTEMBER MEETING WAS PREVIOUSLY LISTED AS:
Regular - September 17 (10:00 a.m.) and 18 (8:00 a.m.)
907 West Riverside Avenue
Spokane, WA

PLEASE CHANGE 1ST DAY'S START TIME AND VENUE TO:
September 17 (**9:30 a.m.**) and 18 (8:00 a.m.)
Mirabeau Park Hotel & Convention Center
1100 North Sullivan Road
Spokane Valley, WA

WSR 08-15-063
NOTICE OF PUBLIC MEETINGS
WHEAT COMMISSION
[Filed July 14, 2008, 10:42 a.m.]

The Washington wheat commission hereby complies with regulations as stated in RCW 42.30.075 and provides pertinent scheduled meeting changes, per the board of directors, for publication in the state register. The start time and venue change for the September meeting is submitted at least twenty days prior to the scheduled meeting dates.

SEPTEMBER MEETING WAS PREVIOUSLY LISTED AS:
Regular - September 17 (10:00 a.m.) and 18 (8:00 a.m.)
907 West Riverside Avenue
Spokane, WA

PLEASE CHANGE 1ST DAY'S START TIME AND VENUE TO:
September 17 (**9:30 a.m.**) and 18 (8:00 a.m.)
Mirabeau Park Hotel & Convention Center
1100 North Sullivan Road
Spokane Valley, WA

WSR 08-15-064
PUBLIC RECORDS OFFICER
OFFICE OF ADMINISTRATIVE HEARINGS
[Filed July 14, 2008, 10:42 a.m.]

Robert Krabill, senior administrative law judge, is designated as the public records officer for the office of administrative hearings. Robert's contact information is as follows: Robert Krabill, Senior Administrative Law Judge, Office of Administrative Hearings, 2420 Bristol Court S.W., P.O. Box 42488, Olympia, WA 98504-2488, phone (360) 664-0843, fax (360) 664-8721, e-mail robert.krabill@oah.wa.gov.

Selwyn Walters
Deputy Chief
Administrative Law Judge

WSR 08-15-074
NOTICE OF PUBLIC MEETINGS
CLEMENCY AND PARDONS BOARD
[Filed July 15, 2008, 9:55 a.m.]

The Washington state clemency and pardons board hereby gives notice that a special hearing is scheduled for August 22, 2008, at 11:00 a.m., in Hearing Room A, of the John L. O'Brien Building, Olympia, Washington. The following petition will be considered by the board:

Petitioner:	**Petition For:**
Darold Stenson	Commutation

WSR 08-15-075
NOTICE OF PUBLIC MEETINGS
PUGET SOUND PARTNERSHIP
[Filed July 15, 2008, 10:23 a.m.]

SCIENCE PANEL WORKSHOPS
Morning Session - Indicators and Benchmarks
Afternoon Session - Integrated Ecosystem Assessment (IEA)

Monday, July 21, 2008
Northwest Fisheries Science Center Auditorium
2725 Montlake Boulevard East
Seattle
10:00 a.m. - 4:00 p.m.

For additional information, contact the partnership office at (360) 725-5463.

Directions to The Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112, (just south of the Montlake Bridge and next to the Seattle Yacht Club).

Questions: Phone (206) 860-6795.

Auditorium is in Center Building, Ground Floor.

From I-5 southbound:

Take 520/Bellevue exit off I-5 (exit is on the **left** side of the freeway while crossing over ship canal bridge and before downtown).

Take the Montlake exit off 520 (first exit).

Turn left at the light onto Montlake Boulevard.

Turn left again at the next light onto Hamlin Street.

Go about 3/4 of a block and take another left at facility entrance (NOAA sign).

At the gate, check in with the gate guard who will give directions for parking.

From I-5 northbound:

Take 520/Bellevue exit off I-5, exit 168B.

Take the Montlake Boulevard exit off 520 (first exit).

Turn left at the light onto Montlake Boulevard.

Turn left again at the next light onto Hamlin Street.

Go about 3/4 of a block and take another left at facility entrance (NOAA sign).

At the gate, check in with the gate guard who will give directions for parking.

WSR 08-15-076
INTERPRETIVE STATEMENT
DEPARTMENT OF AGRICULTURE
[Filed July 15, 2008, 11:06 a.m.]

Interpretive Statement

Number: DO-02-2008.

Subject: Purported limitation of liability insurance by structural pest inspectors.

Description: In order to inform the structural pest inspection industry of the Washington state department of agriculture's interpretation of the minimum financial responsibility requirements for structural pest inspectors, the department issues this interpretive statement pursuant to RCW 34.05.010(8) and 34.05.230.

The Washington Pesticide Control Act in RCW 15.58.445 - [15.58.]470 governs structural pest inspectors and any business that employs them. RCW 15.58.460 and [15.58].465 require structural pest inspectors or their employing business to obtain and maintain evidence of financial responsibility in the form of errors and omissions insurance policies, surety bonds, a combination of both, or assigned accounts (also referred to as "financial coverage") in a total amount of not less than $25,000 in order to be licensed in this state. The purpose of this minimum financial coverage requirement is to protect the people of the state who do business with structural pest inspectors by ensuring a source for monetary recovery for clients who suffer damages as a result of an inspector's errors or omissions. Having financial coverage can also help protect the assets of an inspector or the business that employs the inspector in the event of a claim.

The minimum financial responsibility requirement is of such critical importance that the Washington legislature authorized the department in RCW 15.58.470 to **immediately suspend** the license of a structural pest inspector who fails to maintain financial coverage in at least the minimum amount required by RCW 15.58.460 and [15.58].465.

1. Pest Inspection Contracts:

The department has become aware that certain structural pest inspectors attempt to make the statutorily-required amount of financial coverage unavailable to their clients by including clauses in their inspection contracts that purport to limit the liability of the inspector to just the cost of the inspection.

The department interprets RCW 15.58.460 through 15.58.470 to mean that if an inspector (1) fails to maintain the required amount of financial coverage, or (2) executes a contract that has the potential effect of making the required amount of financial coverage unavailable to its inspection clients through a limitation of liability clause, the financial responsibility requirement of the inspector will be deemed to have fallen below the level required by RCW 15.58.460 and [15.58].465 to maintain licensure. In such case, the director, under RCW 15.58.470, may **immediately suspend** the inspector's license for failing to maintain the minimum financial coverage during the licensing period.

2. Pest Inspector Insurance Policies:

As stated above, RCW 15.58.460 and [15.58].465 require inspectors or their employing businesses to maintain $25,000 in financial coverage for errors and omissions. The department is aware of insurance policies that purport to exempt certain errors and omissions from coverage, or purport to reduce coverage below $25,000. The department believes such policies fail to meet an inspector's financial responsibility requirements under RCW 15.58.460 and [15.58].465. Accordingly, in such case, under RCW 15.58.-470 the director may **immediately suspend** the inspector's license.

To receive a copy of this interpretive statement contact http://agr.wa.gov/LawsRules/ISNameIndex.htm; or Cliff Weed, Compliance Services Program Manager, phone (360) 902-2036, or e-mail at cweed@agr.wa.gov; or Rules Coordinator, Administrative Regulations Office, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1809, fax (360) 902-2092, TDD (360) 902-1996.

Robert W. Gore

Acting Director

WSR 08-15-077
AGENDA
RECREATION AND CONSERVATION OFFICE
(Recreation and Conservation Funding Board)

(Salmon Recovery Funding Board)

[Filed July 15, 2008, 11:35 a.m.]

SEMIANNUAL RULE DEVELOPMENT AGENDA

Recreation and Conservation Funding Board (RCFB)
Salmon Recovery Funding Board (SRFB)

To comply with RCW 34.05.314, the recreation and conservation office (CRO), on behalf of the RCFB and SRFB, has prepared the following agenda for rules under development. As required, filing will be made with the code reviser for publication in the state register by January 31 and July 31 each year. Within three days of publication, the RCO will provide copies to each person so requesting, the director of the office of financial management, the rules review committee, and other state agencies that may reasonably be expected to have an interest in this subject.

Contact: Megan Duffy, Rules Coordinator, (360) 725-3936, Megan.Duffy@rco.wa.gov.

Rules Development Agenda, July 2008	
Subject of possible rule making	**Reasons why rules on this subject may be needed and what might be accomplished**
Title 286 WAC	Change the agency's name from interagency committee for outdoor recreation to the recreation and conservation funding board and recreation and conservation office as required in HB 1813 (2007).
Title 286 WAC	Update code references such as the state's public disclosure law, recently changed from chapter 42.17 RCW to chapter 42.56 RCW.
Title 286 WAC	Update section titles to an easier to understand format. Many titles have already been improved to this new format.
WAC 286-06-045	Move to a more logical location and clarify the text.

WSR 08-15-079
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE UNIVERSITY
[Filed July 15, 2008, 2:28 p.m.]

The board of regents of Washington State University will hold its summer retreat in Walla Walla, Washington, on Tuesday, July 22, 2008, from 12:00 p.m. to 5:00 p.m., and on Wednesday, July 23, 2008, from 8:30 a.m. to 1:30 p.m. The board also will hold an executive session to conduct its annual review of the president. The retreat will be held in the North Vista conference room at the Walla Walla Country Club, 1390 Country Club Road. Final action will not be taken on any item of business.

The regents are also invited to attend various social functions in the Walla Walla area, including a community-wide reception on Tuesday, July 22 at the Center for Enology and Viticulture on the Walla Walla Community College campus and a reception hosted by Baker Boyer Bank on Wednesday July 23.

This notice is being sent by the direction of the chair of the board of regents pursuant to the requirements of the Open [Public] Meeting Act of 1971 (chapter 250, Laws of 1971 1st ex. sess.), as amended.

WSR 08-15-080
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF LICENSING
(Home Inspector Board)
[Filed July 16, 2008, 11:07 a.m.]

First meeting of the home inspector board on August 7, 2008, 9:00 a.m. to 12:00 noon, Home Inspector Board Meeting, City of Renton City Hall, Council Chambers, Room 702, 1055 South Grady Way, Renton, WA 98057.

WSR 08-15-091
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
[Filed July 17, 2008, 10:45 a.m., effective July 17, 2008]

Because of some ASCII numbering system problems on the Washington state legislature WAC web site, DSHS needs to decodify and recodify sections in chapter 388-828 WAC. See the table below.

Also, please add a new subheading to chapter 388-828 WAC above these newly recodified sections entitled Residential Algorithm.

Current section number	New section number
388-828-10000	388-828-9500
388-828-10020	388-828-9510
388-828-10040	388-828-9520
388-828-10060	388-828-9530
388-828-10080	388-828-9540
388-828-10100	388-828-9550
388-828-10120	388-828-9560
388-828-10130	388-828-9570
388-828-10140	388-828-9580
388-828-10160	388-828-9590
388-828-10180	388-828-9600
388-828-10200	388-828-9610
388-828-10220	388-828-9620
388-828-10240	388-828-9630
388-828-10260	388-828-9640
388-828-10280	388-828-9650
388-828-10300	388-828-9660
388-828-10320	388-828-9670
388-828-10340	388-828-9680
388-828-10360	388-828-9690
388-828-10380	388-828-9700

Stephanie E. Schiller
Rules Coordinator

WSR 08-15-094
NOTICE OF PUBLIC MEETINGS
OFFICE OF CIVIL LEGAL AID
[Filed July 17, 2008, 2:36 p.m.]

The civil legal aid oversight committee established by section 4, chapter 105, Laws of 2005, will meet and conduct business on Friday, September 26, 2008.

What: Quarterly Meeting of the Civil Legal Aid Oversight Committee
When: Friday, September 26, 2008
Time: 9:30 a.m. – 3:30 p.m.
Where: Radisson Gateway Hotel
18118 Pacific Highway South
SeaTac, WA 98188

The agenda will include action on oversight committee business matters, receipt of the quarterly report from the director of the office of civil legal aid and other matters within the charge of the oversight committee. A detailed agenda will be available at the meeting.

Accommodations: The civil legal aid oversight committee fully complies with applicable laws ensuring access for persons with disabilities. Upon request, the civil legal aid oversight committee will make reasonable accommodation to ensure full accessibility and meaningful opportunity for interested individuals to participate in the meeting, regardless of physical, mental, cognitive or other disabilities. Requests for translation services or assistive technology should be submitted at least forty-eight hours prior to the meeting in order to allow the oversight committee to accommodate.

For further information about this meeting and/or to request reasonable accommodation, please contact James A. Bamberger, Director, Office of Civil Legal Aid, 1112 Quince Street S.E., Mailstop 41183, Olympia, WA 98504, (360) 704-4135, jim.bamberger@ocla.wa.gov.

WSR 08-15-101
NOTICE OF PUBLIC MEETINGS
WALLA WALLA COMMUNITY COLLEGE
[Filed July 17, 2008, 3:41 p.m.]

The board of trustees of Walla Walla Community College, District Number Twenty, has canceled its regular board meeting for the month of August; scheduled to be held on Wednesday, August 20, 2008.

Please direct any questions to jerri.ramsey@wwcc.edu or by phone (509) 527-4274.

WSR 08-15-102
NOTICE OF PUBLIC MEETINGS
WALLA WALLA COMMUNITY COLLEGE
[Filed July 17, 2008, 3:41 p.m.]

The board of trustees of Walla Walla Community College, District Number Twenty, will hold a special (retreat) meeting on Tuesday, August 19, 2008, beginning at 9:30 a.m. in the Board Room of Walla Walla Community College, 500 Tausick Way, Walla Walla, WA 99362.

Please direct any questions to jerri.ramsey@wwcc.edu or by phone (509) 527-4274.

WSR 08-15-104
AGENDA
LIQUOR CONTROL BOARD
[Filed July 18, 2008, 9:39 a.m.]

Semi-Annual Rule-Making Agenda
July 1, 2008 through December 31, 2008

Following is the liquor control board's semi-annual rule-making agenda for publication in the Washington state register pursuant to RCW 34.05.314.

There may be additional rule-making activity not on the agenda as conditions warrant.

If you have questions about this rule-making agenda, please contact Pam Madson, Rules Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, phone (360) 664-1648, e-mail rules@liq.wa.gov.

		Current Activity		
WAC Chapter or Section(s)	Subject Matter	Preproposal (CR-101)	Proposal (CR-102) or Expedited (CR-105)	Permanent (CR-103)
314-42 314-29	**Rules review** - general cleanup of rules that outline what happens in an administrative hearing and other rules that implement the Administrative Procedure Act.	WSR 04-08-109 Filed 4/6/04	WSR 08-09-048 Filed 4/9/08	Expect to file CR-103 7/08
314-10	**Rules review -** youth access to tobacco rules.	WSR 07-17-087 Filed 8/15/07	WSR 08-06-107 Filed 3/5/08 Expect to refile 7/9/08	Expect to file CR-103
314-60 314-62	**Rules review -** public records requests, annual reports, and liquor pamphlets.	WSR 07-21-101 Filed 10/19/07	Expect to file CR-102	
314-48	**Rules review -** transportation of liquor.	WSR 08-06-103 Filed 3/5/08	WSR 08-12-113 Filed 6/4/08	Expect to file CR-103 7/08
314-76	**Rules review -** special orders.	WSR 08-06-105 Filed 3/5/08	Expect to file CR-102 7/08	Expect to file CR-103
314-37	**Rules review -** liquor vendors.	Expect to file CR-101		

WAC Chapter or Section(s)	Subject Matter	Current Activity		
		Preproposal (CR-101)	Proposal (CR-102) or Expedited (CR-105)	Permanent (CR-103)
314-64-010 314-64-020 314-64-040 314-64-050	**Rules review -** liquor samples.	Expect to file CR-101		
Rules implementing legislation				
Licensing Process				
314-07-010 Definition (public institution)	**Implementing SSB 6540/06 -** modifies the processing of liquor licenses.	WSR 06-09-102 Filed 4/19/06	Expect to file CR-102	
314-09-010 314-09-015	Process for local government objections to liquor license renewals (technical correction).	WSR 06-19-117 Filed 9-20-06	May be incorporated with other license processing rule making.	
314-09 (new sections)	**Implementing EHB 2113/07 -** guidelines for interpreting the terms "pervasive pattern" and "unreasonably high number of DUI referrals" as part of the definition of chronic illegal activity included in a local government objection to a liquor license application or renewal of a liquor license.	WSR 07-17-085 Filed 8/15/07		
New Hotel License				
314-02-005 What is the purpose of this chapter? 314-02-010 Definitions. 314-02-041 What is a hotel license? (new sections)	**Implementing portions of E2SSB 5859** - establishing a hotel liquor license.	WSR 08-02-090 Filed 1/2/08	WSR 08-12-114 Filed 6/4/08	Expect to file CR-103
Tied House Exceptions				
314-05-020 What is a special occasion license?	**Implementing SHB 3128/06 -** allows winery licensees to sit on boards of charitable nonprofit organizations holding retail liquor licenses.	WSR 06-09-105 Filed 4/19/08	Expect to file CR-102	
314-05-020 What is a special occasion license? 314-05-030 Guidelines for special occasion license events.	**E2SSB 5859 -** allowing a nonprofit winery trade organization to hold a special occasion license. **SSB 6770/08 -** allows domestic breweries and wineries to furnish beer and wine without charge to nonprofit trade associations.	WSR 08-15-070 Filed 7/15/08	Expect to file CR-102	
Brewery and microbrewery regulation				
314-20-015 Licensed brewers—Retail sales of beer on brewery premises—Spirit, beer and wine restaurant operation.	**Implementing HB 3154/06 -** allows a domestic brewery or microbrewery holding a spirits, beer, and wine restaurant license to sell kegs "to go" of its own production and to sell its beer in small containers from the tap in the restaurant "to go."	WSR 06-09-104 Filed 4/19/06	Expect to file CR-102	
314-20 (new sections)	**Implementing SSB 6572/08 -** allows microbrewery to have an off-site warehouse.	WSR 08-15-068 Filed 7/15/08	Expect to file CR-102	

WAC Chapter or Section(s)	Subject Matter	Current Activity		
		Preproposal (CR-101)	Proposal (CR-102) or Expedited (CR-105)	Permanent (CR-103)
Retail licensee regulation				
314-02-015 What is a spirits, beer, and wine restaurant license? 314-02-060 What is a caterer's endorsement? 314-02-120 How do licensees get keg registration forms?	**Implementing SSB 6770/08 -** allows SBW restaurant to sell bottled wine for off-premises consumption; **E2SSB 5859/07 -** allows restaurant licensees with a catering endorsement to store alcohol off the restaurant site; and **HB 1349/07** - allows spirits, beer, and wine restaurant licensees to sell kegs "to go."	WSR 08-15-071 Filed 7/15/08	Expect to file CR-102	
Winery regulation				
314-24-220 Licensing and operation of bonded wine warehouses. 314-24 (new sections)	**Implementing SSB 6770/08 -** allows wineries to sell wine of their own production at retail for on or off premises consumption at additional winery location; and allows additional activity to take place at a bonded wine warehouse.	WSR 08-15-072 Filed 7/15/08	Expect to file CR-102	
Craft distillery regulation				
314-28 (new sections)	**Implementing SHB 2959/08 -** establishes a craft distillery license.	WSR 08-15-069 Filed 7/15/08	Expect to file CR-102	

WSR 08-15-105
PUBLIC RECORDS OFFICER
DEPARTMENT OF INFORMATION SERVICES

[Filed July 18, 2008, 10:07 a.m.]

On July 1, 2008, I appointed Monika Vasil as the public records officer for the department of information services. Ms. Vasil will be responsible for the implementation of the department's rules and regulations regarding the release of public records, and generally ensuring compliance with the public record disclosure requirements of chapter 42.17 RCW.

Ms. Vasil's contact information is as follows: Monika Vasil, Department of Information Services, 1110 S.E. Jefferson Street, P.O. Box 42445, Olympia, WA 98504-2445, phone (360) 902-9887, fax (360) 586-1414.

Gary Robinson
Director

WSR 08-15-116
AGENDA
DEPARTMENT OF TRANSPORTATION

[Filed July 21, 2008, 9:32 a.m.]

Following is the department of transportation's July 1st through December 31, 2008, semi-annual rules development agenda for publication in the Washington state register pursuant to RCW 34.05.314.

There may be additional rule-making activity not on this agenda as conditions warrant.

Semi-Annual Rules Agenda
RCW 34.05.314
July 2008 - December 2008

WAC Chapter	Chapter Title	Sections	Purpose of Rule	Agency Contact	Approximate Filing Date
468-06	Public access to information and records.	ALL	Updating rule.	Cathy Downs (360) 705-7761	Public Hearing 7/28/08

WAC Chapter	Chapter Title	Sections	Purpose of Rule	Agency Contact	Approximate Filing Date
468-550	Safety oversight of rail fixed guideway systems rules.	ALL	Amend language to comply with federal and state law.	Kathryn Taylor (360) 705-7920	CR-103 Filed 7/15/08
468-310	Prequalification of ferry system contractors.	020 and 050	Modifies the financial prequalification requirements for the new ferry procurement which will include a larger ferry design than previously advertised. The changes are required in order to promote the competitive process by increasing the number of potential bidders.	Tim McGuigan (206) 515-3601	CR-102 7/15/08 Public Hearing 8/27/08
468-60	Trip reduction performance program.	010	Revise policies to enhance program implementation processes.	Hiep Tran (360) 705-7806	9/08
468-300	State ferries and toll bridges.	New	Revise policies to toll for the HOT lanes.	Lucinda Broussard (253) 534-4699	9/08
468-070	Motorist information signs.	050 and 060	Add new language regarding operating hours for recreational businesses and revise the city population to match new statutory requirements; change the number of logos that can be displayed for intersections from four to six.	Rick Mowlds (360) 705-7988	9/15/08
468-100	Uniform Relocation Assistance and Real Property Acquisition Policies Act.	100	To adopt mandatory requirements to have an appeal reviewed at two internal levels before going to an administrative law judge.	Dianna Nausley (360) 705-7329	8/08

Cathy Downs
Rules Coordinator

WSR 08-15-120
DEPARTMENT OF AGRICULTURE

[Filed July 21, 2008, 3:12 p.m.]

PUBLIC NOTICE FOR SPARTINA TREATMENT
IN WESTERN WASHINGTON

LEGAL NOTICE: The Washington state department of agriculture (WSDA) plant protection division is hereby notifying the affected public that the herbicides glyphosate (e.g. Aquamaster®, Aquaneat®, or Rodeo®) and imazapyr (e.g. Habitat® or Polaris AQ®), surfactants (e.g. Agri-Dex™, Class Act Next Generation™, Competitor™, Dyne-Amic™, Kinetic™, or LI-700™) and marker dyes may be used to control invasive *Spartina* grass species between June 1, 2008, and October 31, 2008. Properly licensed pesticide applicators who have obtained coverage under the WSDA national pollutant discharge elimination system waste discharge general permit may apply glyphosate or imazapyr to control the noxious weed *Spartina* on the saltwater tideflats of Grays Harbor, Hood Canal, Willapa Bay, Puget Sound, and the north and west sides of the Olympic Peninsula.

Use of herbicides is one of the options used to control *Spartina*. These infestations may also be treated, but not eradicated, by mowing, digging, crushing, or covering.

For more information, including locations of possible application sites or information on *Spartina*, contact the WSDA *Spartina* control program at (360) 902-1923. Or write WSDA *Spartina* Program, P.O. Box 42560, Olympia, WA 98504-2560. To contact the WSDA NPDES permit coordinator, call Brad White at (360) 902-2071. The Washington state department of ecology 24-hour emergency number for reporting concerns about Spartina treatments is (360) 407-6562.

WSR 08-15-121
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF LICENSING
(Title and Registration Advisory Committee)
[Filed July 22, 2008, 8:08 a.m.]

The next title and registration advisory committee meeting is:

DATE:	August 5, 2008
TIME:	2:00 - 2:20 p.m.
PLACE:	Department of Licensing Highways Licenses Building Conference Room 104 Olympia, Washington

If you have any questions, please contact Angela Cherry, title and registration administrative assistant, at (360) 902-3756 or at acherry@dol.wa.gov.

WSR 08-15-122
NOTICE OF PUBLIC MEETINGS
WENATCHEE VALLEY COLLEGE
[Filed July 22, 2008, 8:55 a.m.]

The Wenatchee Valley College board of trustees has decided to change their meeting date in November 2008 from November 26 to November 19, 2008.

BOARD OF TRUSTEE MEETING SCHEDULE 2008

Unless otherwise notified, work sessions will begin at 10 a.m. and board of trustee meetings at 3 p.m.

January 16, 2008
February 20, 2008
March 19, 2008
April 16, 2008 (at Omak campus)
May 21, 2008
June 18, 2008
July 15-16, 2008 (Board retreat)
August 20, 2008
*September 17, 2008 (Board retreat)
October 15, 2008 (at Omak campus)
November 19, 2008
December 2008 - no meeting

*This schedule is subject to change.

WSR 08-15-124
NOTICE OF PUBLIC MEETINGS
RECREATION AND CONSERVATION OFFICE
(Invasive Species Council)
[Filed July 22, 2008, 9:06 a.m.]

The next public meeting of the Washington invasive species council (WISC) will be **Wednesday, August 8, 2008, from 9:00 a.m. to 3:00 p.m.** in Room 172, Natural Resources Building, 1111 Washington Street, Olympia, WA 98501.

For further information, please contact Rachel LeBaron Anderson, WISC, (360) 902-3012.

WISC schedules all public meetings at barrier free sites. Persons who need special assistance, such as large type materials, may contact Rachel LeBaron Anderson at the number listed above or by e-mail at Rachel.LeBaron@rco.wa.gov.

WSR 08-15-162
PROCLAMATION
OFFICE OF THE GOVERNOR
[Filed July 23, 2008, 9:34 a.m.]

PROCLAMATION BY THE GOVERNOR
08-05

WHEREAS, a truck towing an over-height load struck an I-5 overpass on July 10, 2008, in Skagit County, Washington, causing extensive damage to the overpass which continues to impact the citizens, property, and infrastructure of Washington State; and

The estimated cost to correct the damage is $1,115,000, requiring the approval of the Secretary of Washington State's Department of Transportation to commence repair work. An emergency condition restricting traffic to weight limits exists on the overpass. Conditions warrant emergency contracting procedures; and

The Washington State Department of Transportation is coordinating resources to repair the overpass to alleviate the immediate impacts upon the infrastructure and is continuing to assess the magnitude of this event.

NOW, THEREFORE, I, Christine O. Gregoire, Governor of the state of Washington, as a result of the above-noted situation and under Chapters 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency exists in Skagit County in the State of Washington, and direct the plans and procedures to the *Washington State Comprehensive Emergency Management Plan* be implemented. State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the event.

Signed and sealed with the official seal of the state of Washington this 17th day of July, A.D, Two Thousand and Eight at Olympia, Washington.

By:

Christine O. Gregoire
Governor

BY THE GOVERNOR:
Sam Reed
Secretary of State

WSR 08-15-163
PROCLAMATION
OFFICE OF THE GOVERNOR
[Filed July 23, 2008, 9:35 a.m.]

PROCLAMATION BY THE GOVERNOR
08-04

WHEREAS, current projected weather conditions and fire fuel conditions present a continuing high risk of severe wild-fires in Washington State; and

Multiple fires in Eastern Washington currently require the use of significant levels of fire fighting resources; and

Significant fires have damaged several homes and may result in additional damage to other homes, infrastructure, natural resources, and businesses beginning in July 2008, threatening citizens and property in Washington State; and

The potential threat to life and property from wild-fires is extreme and could cause extensive additional damage to homes, public facilities, businesses, public utilities, and infrastructure in Washington State and endanger the public welfare; and

Wild-fire fighting resources will be scarce throughout the state, region, and nation due to projected fire fighting efforts in other areas, and

Wild-fire has the potential to cause injuries to the citizens and property in every county in Washington, and

Current resource availability may not be adequate to address the outbreak of simultaneous large fires in Washington State and in such a case the Washington National Guard may be needed to assist other jurisdictions and agencies in fire fighting duties and other activities necessary for the protection of people, property, and the environment and/or the economy;

NOW, THEREFORE, I, Christine O. Gregoire, Governor of the state of Washington, as a result of the above - noted situation and under Chapters 38.08, 38.52, 43.06, 43.20, 43.43, 43.70, and 70.05 RCW, do hereby proclaim that a State of Emergency exists in all the counties of Washington and direct the plans and procedures to the Washington State Comprehensive Emergency Management Plan be implemented. State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the event. I also hereby order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of the Adjutant General, to perform such duties as directed by competent authority of the Washington Military Department.

Additionally, the Washington State Military Department, Emergency Management Division is instructed to coordinate all event-related assistance to the affected areas.

Signed and sealed with the official seal of the state of Washington this 10th day of July, A.D, Two Thousand and Eight at Olympia, Washington.

By:

Christine O. Gregoire
Governor

BY THE GOVERNOR:
Sam Reed
Secretary of State

WSR 08-15-164
NOTICE OF PUBLIC MEETINGS
FORENSIC INVESTIGATIONS COUNCIL
[Filed July 23, 2008, 9:35 a.m.]

Pursuant to RCW 42.30.075, the forensic investigations council meeting scheduled for August 22, 2008, at the Washington Counties Building in Olympia, Washington is being cancelled.

If you have questions or need further information, contact David McEachran at (360) 676-6784.

WSR 08-15-166
AGENDA
DEPARTMENT OF FINANCIAL INSTITUTIONS
[Filed July 23, 2008, 9:48 a.m.]

Semi-Annual Agenda for Rules Under Development
July 1, 2008 - December 31, 2008

DIVISION OF BANKS

- Amendments to WAC 208-512-045(2), 208-544-020(1), 208-544-025, and 208-544-030 (1) and (2) to increase fees charged to entities regulated by the division of banks.
- Adopt rules pursuant to SHB 2770 relating to application of the guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending to financial institutions.
- Adopt disclosure form and rules pursuant to SHB 2770 relating to residential mortgage loans.

DIVISION OF CONSUMER SERVICES

- Adoption of rule amendments under chapter 208-620 WAC (the Consumer Loan Act rules). This rule-making project was begun in 2007.
- Amendments to chapter 208-620 WAC implementing legislation from the Laws of 2008 and generally revising the rules.
- Adoption of rule amendments under chapter 208-630 WAC (the Check Cashers and Sellers Act).
- Rule making under SHB 2770 (chapter 108, Laws of 2008).
- Amendments to chapter 208-660 WAC (the Mortgage Broker Practices Act) implementing legislation from the Laws of 2008 and generally revising the rules.

DIVISION OF CREDIT UNIONS

- Amendments to chapter 208-418 WAC to increase fees paid by credit unions.
- Adopt rules pursuant to SHB 2770 relating to application of the guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending to financial institutions.
- Adopt disclosure form and rules pursuant to SHB 2770 relating to residential mortgage loans.

DIVISION OF SECURITIES

- WAC 460-24A-040 and 460-24A-045, "holding out" as a "financial planner" or "investment counselor."
- Chapter 460-80 WAC, Franchise registration, rules.
- WAC 460-44A-500 through 460-44A-508, private and limited offering rules.
- WAC 460-24A-005, 460-24A-105, 460-24A-108, and 460-24A-170, investment adviser custody rules.
- WAC 208-705-010 Securities prosecution fund rules.

WSR 08-15-170
DEPARTMENT OF ECOLOGY

[Filed July 23, 2008, 10:38 a.m.]

Notification: Draft lead chemical action plan (CAP) complete and ready for public comment.

This is to notify the public that the sixty day comment period for the draft lead CAP will begin on August 6, 2008, when the notice is published in the Washington state register. The comment period will end on October 6, 2008. The draft lead CAP will be posed on the ecology web site at www.ecy.wa.gov/programs/swfa/pbt/leadcap/.

For information, or to request copies of the CAP, contact Holly Davies, PBT Chemical Action Plan Developer, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7398, fax (360) 407-6102, e-mail hdav461@ecy.wa.gov.

During the comment period, ecology will hold two public meetings on the draft CAP. One meeting will be held on the western side of the state, and one meeting will be held on the eastern side of the state.

Ecology will accept written comments on the draft. Comments should reference specific text when possible. Please submit written comments to Holly Davies, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, fax (360) 407-6102, e-mail hdav461@ecy.wa.gov. Written, e-mailed and faxed comments must be **received** no later than 5 p.m., October 6, 2008.

WSR 08-15-172
DEPARTMENT OF ECOLOGY

[Filed July 23, 2008, 10:40 a.m.]

PUBLIC NOTICE

Public Hearing and Comment Period to Accept Comments on the Department of Ecology's Plan to Reissue the Industrial Stormwater General Permit

Reissuing the Industrial Stormwater General Permit: The industrial stormwater NPDES and state waste discharge general permit, issued by the Washington state department of ecology (ecology) on August 21, 2002, and reissued on August 15, 2007, expired on May 31, 2008. Ecology has recently initiated a collaborative external advisory committee process to develop a simpler and more effective general permit. The committee will also address a broad range of related issues, including stormwater research and development, education and outreach, compliance inspections and enforcement. More information on the external advisory committee process is available at ecology's web site at http://www.ecy.wa.gov/programs/wq/stormwater/industrial/index.html. In the mean time, ecology proposes to reissue the expired general permit, without changes, with an expiration date of April 30, 2009. The draft industrial stormwater general permit and fact sheet are available for review and public comment from **August 6, 2008, through September 12, 2008**. Ecology will host an informational workshop and public hearing on its proposal to reissue the industrial stormwater general permit. Ecology will accept written comments on the draft permit and fact sheet or oral comments can be given at the public hearing.

Purpose of the Industrial Stormwater General Permit: The general permit provides coverage for industries located in Washington state that discharge stormwater associated with industrial activities. Under federal and state water quality law (Federal Clean Water Act and State Water Pollution Control Act); a permit is required for the discharge of wastewater. A discharge of stormwater associated with industrial activities is a discharge of wastewater.

Most industrial activities that discharge stormwater either directly or indirectly to surface water are required to obtain permit authorization for their discharge unless they apply for and receive a "no exposure" certificate. Specifically, facilities listed in the Code of Federal Regulations (CFR) at 40 C.F.R. Subpart 122.26 (b)(14)(i)-(xi), excluding (x), stormwater discharges, are included for coverage under the modified permit. A more complete listing of facilities and applicable standard industrial codes (SIC) can be found in the draft permit in Appendix #1-Section C, categories 1-9 and 11.

Applying for Coverage under the Industrial Stormwater General Permit: Facilities covered under the existing industrial stormwater general permit will be automatically covered under the reissued permit. New or unpermitted facilities may obtain coverage under the reissued general permit by submitting a complete permit application to ecology and satisfying all applicable public notice and State Environmental Policy Act (SEPA) requirements (WAC 173-226-200).

The application is available online at http://www.ecy.wa.gov/biblio/ecy02084.html.

Requesting Copies of the Permit: You may download copies of the draft permit and fact sheet from the web site www.ecy.wa.gov/programs/wq/stormwater/industrial/index.html; or you may request copies from Julie Robertson, phone (360) 407-6575, e-mail jrob461@ecy.wa.gov.

Submitting Written and Oral Comments: Ecology will accept written and oral comments on the draft industrial stormwater general permit and fact sheet. Comments should reference specific text when possible. Comments may address the following:

- Technical issues,
- Accuracy and completeness of information,
- The scope of facilities proposed for coverage,
- Adequacy of environmental protection and permit conditions, or
- Any other concern that would result from issuance of the revised permit.

Ecology prefers comments be submitted by e-mail to industrialstormwatercomments@ecy.wa.gov. Written comments must be postmarked or received via e-mail no later than **5 p.m., Friday, September 12, 2008**.

You may provide oral comments by testifying at the public hearings.

Submit written, hard copy comments to Julie Robertson, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

Public Workshops/Hearings: The public workshop and hearing on the draft general permit will be held at the Washington State Department of Ecology, 300 Desmond Drive, Lacey, WA, (360) 407-6000, driving directions http://www.ecy.wa.gov/images/offices/map_hq_swro.pdf, on **September 11, 2008, at 1 p.m.** The purpose of the workshop is to explain ecology's rationale for reissuing the general permit for an interim period until it issues a revised permit in early 2009. The purpose of the hearings is to provide an opportunity for people to give formal oral testimony and comments on the draft permit.

Issuing the Final Industrial Stormwater General Permit: The final permit will be issued after ecology receives and considers all public comments. If public comments represent a substantial departure from the scope or conditions in the original draft permit, another public notice of draft and comment period may ensue.

Ecology expects to issue the general permit on October 1, 2008. It will be effective thirty days later. When issued, a copy of the notice of issuance and ecology's responses to the comments will be sent to all persons who submitted written comment or gave public testimony.