

WSR 09-09-003

**NOTICE OF PUBLIC MEETINGS
ECONOMIC DEVELOPMENT
FINANCE AUTHORITY**

[Filed April 2, 2009, 8:28 a.m.]

The Washington economic development finance authority (WEDFA) is an independent agency (#106) within the executive branch of state government. The authority has four regular board meetings each year, one per quarter. The authority's meetings are open to the public, and access for persons with disabilities is provided at all meetings of the authority.

All future WEDFA board meetings will start at 9:00 a.m., without a work session. There are no other changes.

Please call Rodney Wendt at (206) 587-5634 if you have any questions.

WSR 09-09-004

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

(Invasive Species Council)

[Filed April 2, 2009, 8:44 a.m.]

The next public meeting of the Washington invasive species council (WISC) will be **Thursday, May 7, 2009, from 9:00 a.m. to 3:00 p.m.** in Room 172, at the 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 Rachel.LeBaronAnderson@rco.wa.gov.

WSR 09-09-005

**NOTICE OF PUBLIC MEETINGS
WHATCOM COMMUNITY COLLEGE**

[Filed April 2, 2009, 11:04 a.m.]

The board of trustees of Whatcom Community College, District Number Twenty-One, will hold its regularly scheduled April board meeting on Thursday, April 9, 2009, at 2 p.m. on the campus of Whatcom Community College in the Laidlaw Building Boardroom #143, 237 West Kellogg Road, Bellingham, WA 98226. Board of trustees meetings are open to the public.

WSR 09-09-010

**RULES OF COURT
STATE SUPREME COURT**

[April 2, 2009]

IN THE MATTER OF THE ADOPTION)	ORDER
OF THE AMENDMENT TO GR 29-PRE-)	NO. 25700-A-916
SIDING JUDGE IN SUPERIOR COURT)	
DISTRICT AND LIMITED JURISDIC-)	
TION COURT DISTRICT-EMPLOY-)	
MENT CONTRACT)	

The District and Municipal Court Judges Association having recommended the adoption of the proposed amendment to GR 29-Presidentint Judge in Superior Court District and Limited Jurisdiction Court District-Employment Contract, and the Court having determined that the proposed amendment 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 amendment as attached hereto is adopted.

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

DATED at Olympia, Washington this 2nd day of April, 2009.

Alexander, C.J.

C. Johnson, J.

Chambers, J.

Madsen, J.

Owens, J.

Sanders, J.

J. M. Johnson, J.

Fairhurst, J.

Stephens, J.

Reviser's note: The spelling error in the above material occurred in the copy filed by the State Supreme Court and appears in the Register pursuant to the requirements of RCW 34.08.040.

General Rule 29

PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED JURISDICTION COURT DISTRICT

(a) - (j) [Unchanged.]

(k) ~~Judicial Services~~ Employment Contracts. A part-time judicial officer may contract with a municipal or county authority for salary and benefits to serve as a judicial officer. The ~~personal service~~ employment contract shall not contain provisions which conflict with this rule, the Code of Judicial Conduct or statutory judicial authority, or which would create an impropriety or the appearance of impropriety concerning the judge's activities. The employment contract should acknowledge the court is a part of an independent branch of government and that the judicial officer or court employees are bound to act in accordance with the provisions of the Code of Judicial Conduct and ~~this~~ Washington State Court rules.

Commentary

~~The Board for Judicial Administration should establish a model judicial services contract.~~

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 09-09-011
RULES OF COURT
STATE SUPREME COURT**

[April 2, 2009]

IN THE MATTER OF THE ADOPTION) ORDER
OF NEW GR 34-WAIVER OF COURT'S) NO. 25700-A-917
AND CLERK'S FEES AND CHARGES IN)
CIVIL MATTERS)

The Washington State Bar Association having recommended the adoption of New GR 34-Waiver of Court's and Clerk's Fees and Charges in Civil Matters, and the Court having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January, 2010.

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

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2010. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Camilla.Faulk@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 2nd day of April, 2009.

For the Court

Gerry L. Alexander

CHIEF JUSTICE

GR 9 COVER SHEET

**Suggested Amendment
GENERAL RULES (GR)**

GR 34 - Waiver of Court and Clerk's Fees and Charges in Civil Matters (New Rule; revised December 2008)

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

Purpose: An initial version of this suggested rule was presented to and approved by the Board of Governors of the Washington State Bar Association in 2007. The rule was

published for comment by the Supreme Court in November 2007. Substantial comments were submitted to the Court, including comments from the Washington Association of County Clerks (Clerks Association) and the Superior Court Judges Association (SCJA) opposing the rule. Principal substantive grounds for their opposition were:

- The proposed rule authorized non-judicial officials to accept filings without payment of fees and without independent review by a judicial officer.
- The proposed rule established a 200% threshold for indigency which, if adopted, would result in a substantial revenue loss for cash strapped court systems.
- The rule authorized waiver of a wide range of costs.
- The forms developed to implement the rule were complex, unwieldy and difficult for pro se litigants to understand.

A revised version of the suggested rule was submitted to the Supreme Court in March 2008. The Superior Court Judges Association filed additional comments which reflected continuing objections to the rule. In response to these objections, the WSBA Pro Bono and Legal Aid Committee (PBLAC) worked directly with the SCJA leadership and that of the Clerks Association to see whether a consensus approach might be developed. PBLAC achieved a meeting of the minds with the SCJA on a substantially revised version of the draft rule, but was not able to achieve agreement with the Clerks Association.

The revised draft is substantially different in approach than that which was previously submitted to the Court. It includes no forms, but directs that pattern forms be developed by the Administrative Office of the Courts. It provides a simple mechanism for the submission and presentation of requests for fee and cost waivers, consistent with local court practices. It allows for simultaneous filing of requests for fee and cost waivers with the underlying pleadings. It establishes a uniform standard for determining indigency - one that is consistent with the standard for determining eligibility used by "qualified legal services providers" (see APR 8(e)). It provides for presumptive eligibility for waivers for those litigants represented by attorneys affiliated with qualified legal services providers (including pro bono attorneys who receive client referrals from a qualified legal services provider). It preserves the proper balance between judicial and executive branch functions. And, consistent with longstanding Supreme Court case law,¹ it affirms the power of judicial officers, in the exercise of inherent judicial authority, to waive such fees and costs as are appropriate, consistent with their responsibility to ensure fair access to the courts.

¹ *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969).

The WSBA believes that this revision is consistent with the objectives initially sought to be achieved with the original GR 34 proposal, to wit:

- Establishment of a statewide, uniform approach to presentation, consideration and approval of requests for waiver of fees and costs for low income civil litigants, whether they are represented by legal aid programs, pro bono attorneys or appear in the proceeding *pro se*.

- Establishment of a uniform standard for determining indigency that is consistent with the standard employed by state and federally funded civil legal aid programs.
- Streamlining the process such that those who have been found eligible for state or federally funded civil legal aid services are presumed eligible for a waiver of filing fees and appropriate costs.
- Reducing the amount of time that pro bono attorneys spend developing and presenting *in forma pauperis* (IFP) requests, thereby allowing them to spend more time on the substantive issues presented in their cases.

The revised rule preserves the proper balance between judicial and executive branch functions. Upon the rule's adoption by the Supreme Court, the PBLAC and the SCJA will work with the Administrative Office of the Courts, the Clerks Association and representatives of the legal aid community to develop appropriate forms and a training curriculum designed to ensure the effective and proper application of this rule by judicial officers throughout the state.

GENERAL RULES (GR)

[New Rule - Revised WSBA Proposal December 2008]

RULE 34. WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

(a) Any individual, on the basis of indigent status as defined herein, may seek a waiver of filing fees or costs from a judicial officer in the applicable trial court.

(1) The application for such a waiver may be made *ex parte* in writing or orally, accompanied by a mandatory pattern form created by the Administrative Office of the Courts (AOC) whereby the applicant attests to his or her financial status or, in the case of an individual represented by a qualified legal services provider ("QLSP") or an attorney working in conjunction with a QLSP, a declaration of counsel stating that the individual was screened and found eligible by the QLSP.

(2) The court shall accept an application submitted in person, by mail and where authorized by local practices, electronic filing. The process for presentation of the application shall conform to local court and clerk processes for presenting *ex parte* orders to the court directly or via the clerk. All applications shall be presented to a judicial officer for consideration in a timely manner and in conformity with the local court's established procedures. There shall be no locally imposed fee for making an application. The applicant or applicant's attorney filing by mail, shall provide the court with a self addressed stamped envelope for timely return of a conformed copy of the order.

COMMENT

This rule establishes the process by which judicial officers may waive civil filing fees and such other costs for which judicial officers have authority to grant a waiver.

(3) An individual who is not represented by a qualified legal services provider (as that term is defined below) or an attorney working in conjunction with a qualified legal ser-

vices provider shall be determined to be indigent within the meaning of this rule if such person, on the basis of the information presented, establishes that:

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

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

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

(iii) Federal Supplemental Security Income (SSI);

(iv) Federal poverty-related veteran's benefits; or

(v) Food Stamp Program (FSP); or

(B) his or her household income is at or below 125% of the federal poverty guideline; or

(C) his or her household income is above 125% of the federal poverty guideline and the applicant has recurring basic living expenses (as defined in RCW 10.101.010 (4)(d)) that render him or her without the financial ability to pay the filing fees and other fees or costs for which a request for waiver is made.

(D) other compelling circumstances exist that demonstrate an applicant's inability to pay fees and/or costs.

(4) An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services.

(5) As used in this rule, "qualified legal services provider" means those legal services providers that meet the definition of APR 8(e).

COMMENT

The adoption of this Rule is rooted in the constitutional premise that every level of court has the inherent authority to waive payment of filing fees and costs on a case by case basis. Each court is responsible for the proper and impartial administration of justice which includes ensuring that meaningful access to judicial review is available to the poor as well as to those who can afford to pay.

(b) Nothing in this rule shall prohibit or delay action on the underlying petition upon the court's approval of a waiver and presentation of an original petition may accompany the initial fee waiver.

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

WSR 09-09-012
RULES OF COURT
STATE SUPREME COURT

[April 2, 2009]

IN THE MATTER OF THE ADOPTION) ORDER
OF THE AMENDMENTS TO APR 15-) NO. 25700-A-918
LAWYERS' FUND FOR CLIENT PRO-)
TECTION AND APR 15-LAWYERS')
FUND FOR CLIENT PROTECTION)
RULES 1 AND 5)

The Washington State Bar Association having recom-
mended the adoption of the proposed amendments to APR
15-Lawyers' Fund for Client Protection and APR 15-Law-
yers' Fund for Client Protection Rules 1 and 5, and the Court
having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the pro-
posed amendment as attached hereto are to be published for
comment in the Washington Reports, Washington Register,
and on the Washington State Bar Association and Office of
the Administrator for the Courts' websites expeditiously.

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

(c) Comments are to be submitted to the Clerk of the
Supreme Court by either U.S. Mail or Internet E-Mail by no
later than 60 days from the published date. Comments may
be sent to the following addresses: P.O. Box 40929, Olym-
pia, Washington 98504-0929, or Camilla.Faulk@courts.wa.
gov. Comments submitted by e-mail message must be lim-
ited to 1500 words.

DATED at Olympia, Washington this 2nd day of April,
2009.

For the Court

Gerry L. Alexander

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment
ADMISSION TO PRACTICE RULES (APR)

APR 15. LAWYERS' FUND FOR CLIENT PROTECTION

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

(1) Purpose: To more precisely define the purposes of
the Fund.

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
APR 15. LAWYERS' FUND FOR CLIENT PROTECTION

(a) Purpose. [No change.]

(b) Establishment. There is established the Lawyers'
Fund for Client Protection (Fund). The Fund may be used for

the purpose of relieving or mitigating a pecuniary loss sus-
tained by any client by reason of the dishonesty of, or failure
to account for money or property entrusted to, any member of
the WSBA in connection with as a result of or directly related
to the member's practice of law (as defined in GR 24) or
while acting as a fiduciary in a matter directly related to the
member's practice of law. The Fund may also be used to
relieve or mitigate like loss sustained by persons by reason of
similar acts of an individual who was at one time a member
of the WSBA but who was, at the time of the act complained
of, under court ordered suspension. The Fund shall not be
used for the purpose of relieving any pecuniary loss resulting
from an attorney's negligent performance of services or for
acts performed after a member is disbarred. Payments from
the Fund shall be considered gifts to the recipients and shall
not be considered entitlements.

(c) Funding. [No change.]

(d) Enforcement. [No change.]

(e) Restitution. [No change.]

(f) Administration. [No change.]

(g) Subpoenas. [No change.]

(h) Reports. [No change.]

(i) Communications to the Association. [No change.]

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 Reg-
ister pursuant to the requirements of RCW 34.08.040.

GR 9 COVER SHEET

Suggested Amendment
ADMISSION TO PRACTICE RULES (APR)

APR 15. Lawyers' Fund for Client Protection
Procedural Rules

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

Purpose: To more precisely define the purposes of the
Fund and the eligibility requirements for payment from the
Fund.

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
APR 15. LAWYERS' FUND FOR CLIENT PROTECTION
PROCEDURAL RULES

RULE 1. PURPOSE

A.***

B. Funds accruing and appropriated to the Fund may be
used for the purpose of relieving or mitigating a pecuniary
loss sustained by any person by reason of the dishonesty of,
or failure to account for money or property entrusted to, any
member of the WSBA in connection with as a result of or
directly related to the member's practice of law (as defined in
GR 24), or while acting as a fiduciary in a matter directly
related to the member's practice of law. Such funds may also,

through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was at the time of the act complained of under a court ordered suspension.

RULE 5. ELIGIBLE CLAIMS

A. Eligibility. To be eligible for payment from the Fund, the loss must be caused by the dishonest conduct of a lawyer or the failure to account for money or property entrusted to a lawyer in connection with as a result of or directly related to the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law (as defined in GR 24). The loss must also have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship in a matter directly related to the lawyer's practice of law.

D. Excluded Losses. Except as provided by Section E of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred by related persons, law partners and associate attorneys of the lawyer causing the loss. For purposes of these Rules, "related persons" includes a spouse, domestic partner, child, grandchild, parent, grandparent, sibling, or other Relative or individual with whom the lawyer maintains a close, familial relationship;

(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 any governmental entity or agency.

(6) Losses arising from business or personal investments not arising in the course of or arising out of the client-lawyer relationship;

(7) Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.

Reviser's note: The typographical error in the above material occurred in the copy filed by the State Supreme Court and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 09-09-013
RULES OF COURT
STATE SUPREME COURT

[April 2, 2009]

IN THE MATTER OF THE ADOPTION OF) ORDER
THE AMENDMENTS TO RPC 1.15A-SAFE-) NO. 25700-A-919
GUARDING PROPERTY, NEW ELC 15.7-)
TRUST ACCOUNTS AND THE LEGAL)
FOUNDATION OF WASHINGTON, ELC 15.4-)
TRUST ACCOUNT OVERDRAFT NOTIFICA-)
TION, ELC TITLE 15, IOLTA, AUDITS, AND)
TRUST ACCOUNT OVERDRAFT NOTIFICA-)
TION (CAPTION), ELPOC 15.4-TRUST)
ACCOUNT OVERDRAFT NOTIFICATION)

The Washington State Bar Association and the Legal Foundation of Washington having recommended the adoption of the proposed amendments to RPC 1.15A-Safeguarding Property, New ELC 15.7-Trust Accounts and the Legal Foundation of Washington, ELC 15.4-Trust Account Overdraft Notification, ELC Title 15, IOLTA, Audits, and Trust Account Overdraft Notification (Caption), ELPOC 15.4-Trust Account Overdraft Notification, and the Court having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendment as attached hereto are to be published for comment in the Washington Reports, Washington Register, and on the Washington State Bar Association and Office of the Administrator for the Courts' websites expeditiously.

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

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than 60 days from the published date. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Camilla.Faulk@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 2nd day of April, 2009.

For the Court

Gerry L. Alexander

CHIEF JUSTICE

Reviser's note: The typographical error in the above material occurred in the copy filed by the State Supreme Court and appears in the Register pursuant to the requirements of RCW 34.08.040.

GR 9 COVER SHEET

Suggested Amendments to
the RULES OF PROFESSIONAL CONDUCT (RPC) RPC 1.15A and
the RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)
ELC 15.4, ELC 15.7 (new rule), and Title 15 caption, and the
RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER
CONDUCT (ELPOC) ELPOC 15.4

Purpose of the Suggested Amendment:

The Legal Foundation of Washington suggests an amendment to RPC 1.15A, together with adoption of a new

rule, ELC 15.7, and related amendments to ELC 15.4 and ELPOC 15.4 and the caption of ELC Title 15. The purpose of this proposal is to require attorneys to establish and maintain IOLTA accounts only with financial institutions that pay IOLTA accounts the highest rates generally paid to other, similarly-situated customers at that financial institution. This proposal is consistent with a national trend requiring equitable treatment of IOLTA accounts with other similar depository instruments. As of the time of the filing of this Petition, twenty states and Washington, DC have amended their IOLTA rules to contain a comparability requirement similar to the rule amendment suggested here.

Interests of the Proponent

The Legal Foundation of Washington (LFW) is a not-for-profit 501 (c)(3) corporation established by the Supreme Court in 1984 to collect and distribute interest on IOLTA accounts pursuant to DR 9-102 (recodified as RPC 1.15A). *In re Adoption of an IOLTA Program*, 102 Wn.2d 1101, 1115 (1984). Since 1985, LFW has received interest income from attorneys' pooled trust accounts. These funds have been used to support the delivery of civil legal aid services to low income people in Washington State.

In addition to its authority and responsibility to collect, administer and disburse IOLTA funds, LFW is also authorized to work to expand funding for civil legal aid services under its Supreme Court-approved charter. ARTICLES OF INCORPORATION OF THE LEGAL FOUNDATION OF WASHINGTON, Article IV. In recent years, LFW has actively exercised this authority by managing the Washington State Equal Justice Coalition (EJC), which educates public and governmental leaders about efforts to expand funding for civil legal aid. LFW also serves as the administrative host for the Legal Aid for Washington (LAW) Fund and the Campaign for Equal Justice, as well as the Endowment for Equal Justice, which are statewide efforts dedicated to increasing private, charitable support for civil legal aid. In 2005, LFW and the Washington Supreme Court's Access to Justice Board (ATJ Board) requested the Supreme Court amend Court Rule 23 to direct 25% of residuals from class action law suits in state court to LFW. The Court approved this rule amendment and this has generated some incremental additional funding for civil legal aid.

The grants made by LFW are the primary source of discretionary funding to the more than 30 legal aid programs that make up Washington State's Alliance for Equal Justice. In making decisions about how to allocate the resources available to it, LFW is guided by the ATJ Board's *Hallmarks of an Effective Legal Services Delivery System* (2004)¹ and *State Plan for the Delivery of Civil legal Services to Low Income People in Washington State* (revised May 2006)². Over the past five years, LFW's grant making decisions have also been guided by the *Civil Legal Needs Study* published by the Supreme Court's Task Force on Civil Equal Justice Funding (October 2003)³.

¹<http://www.wsba.org/atj/documents/hallmark.htm>

²<http://www.wsba.org/lawyers/groups/probono/2006stateplan.pdf>

³<http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>

The degree to which low income people who experience civil legal problems are forced to face the justice system without any help is staggering. The *Civil Legal Needs Study* documents that:

- o Eighty-seven percent (87%) of low-income households in our state experience a civil legal problem each year. Almost 9 out of 10 face their legal problems without any assistance.
- o Low-income women and children experience a disproportionate number of unmet civil legal needs. Domestic violence victims experience the greatest number of civil legal problems.
- o The most common civil legal needs are in areas involving basic human needs such as housing, personal safety and security and public safety. Many legal needs experienced by persons with disabilities and members of minority groups also involve concerns about differential treatment and discrimination.
- o Legal assistance is the key to securing effective outcomes. Nearly two-thirds of those who secure legal assistance feel that they obtain a fair resolution to their legal problems, while only one-quarter of those who do not secure legal assistance are satisfied with the outcome of their problem.
- o The lack of adequate legal assistance for those who are poor or vulnerable erodes public confidence in the fairness of the state's civil justice system. Nearly three-quarters of those who do not secure legal assistance have negative attitudes toward the civil justice system.

The Need and Rationale for a Rule Requiring Equitable Treatment of IOLTA Deposits

A. There Are Current Economic Pressures on Civil Legal Aid Funding

Washington State's civil legal aid system faces an immediate threat of significant proportions. Funding comes from three principal sources: The Federal Legal Services Corporation, the State of Washington through its Office of Civil Legal Aid, and the Legal Foundation of Washington.

Federal funding from the Legal Services Corporation has been flat for five years and is unlikely to see appreciable increases in the coming years. Despite significant gains at the state legislative level in recent years, current and prospective budget constraints present sobering obstacles to the Office of Civil Legal Aid's efforts to close the Justice Gap chronicled in the *Civil Legal Needs Study* and the Task Force on Civil Equal Justice Funding's *Final Report*.

IOLTA income is inherently sensitive to two principal factors - (a) the level of overall business activity which drives the number of legal transactions and correspondingly the overall level of money held in IOLTA accounts; and (b) interest rates. A significant decline in Washington State-based business activity (including, but not limited to, the level of real estate activity) has resulted in substantial reductions in average daily balances of IOLTA accounts. Similarly, interest rates have plunged in the past year, which has resulted in decreased IOLTA revenue available for civil legal aid.

B. There Is Unfair Treatment of IOLTA Accounts

Even in better times, IOLTA revenues are lagging behind where they should be. The problem is that approved depository institutions historically have not paid market rates on IOLTA accounts. The rates paid on IOLTA accounts fall substantially below those of other similarly situated accounts.

Previously, only NOW accounts (interest-bearing checking accounts) were used for the deposit of IOLTA funds. In today's banking landscape, this creates disparities because even IOLTA accounts which, as pooled accounts, regularly carry very large balances receive only basic checking (NOW) account interest rates from virtually every IOLTA depository. In Washington State, many banks routinely pay one tenth of one percent interest (.10%), while at the same time paying 75% of the target Federal Funds rate - more than ten times than what is paid on the IOLTA account - on other similarly sized accounts. Some banks have paid higher rates, but only out of their own goodwill. The suggested amendments will make it clear that banks must pay comparable rates on comparable balances to participate in IOLTA.

The current Washington IOLTA rule, RPC 1.15A, simply states:

"(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 absence of any requirement to pay more than a minimal level on interest bearing accounts, it is not surprising that financial institutions do not automatically provide return on IOLTA accounts like they do on comparable accounts. Traditional efforts in Washington State have focused on voluntary measures to persuade banks to pay higher rates. However, even with some banks paying acceptable interest rates with respect to the targeted Federal Funds rate, most financial institutions have chosen to maintain IOLTA accounts at substantially lower rates. The money that IOLTA funds have failed to earn is an "opportunity cost" that directly results in fewer civil legal aid services to vulnerable and low income people in Washington State.

LFW requests that the Supreme Court require that attorneys establish and maintain IOLTA accounts in otherwise qualifying depository institutions that treat IOLTA accounts on an equal footing with other similarly situated accounts.

What Does Comparability Mean?

The proposed comparability rule would require lawyers to maintain IOLTA accounts at eligible financial institutions that treat pooled interest trust accounts on an equal footing with other similarly-sized demand accounts - *i.e.*, comparability of treatment. The suggested amendment offers financial institutions that maintain IOLTA accounts five different instruments with which to structure IOLTA accounts and meet the terms of comparability. It also gives financial institutions the option of how to meet the comparable rate requirements: by establishing the IOLTA account as the comparable higher rate product; by instead paying that rate on the existing IOLTA account; or by paying a "benchmark" percentage named in the rule. The rule also authorizes LFW to determine which institutions are successfully meeting the requirements of comparability. Finally, the suggested rule sets forth

significant safety standards to ensure that pooled client funds are adequately protected.

The proponent has not drafted a proposed rule amendment that includes comparability for IOLTA accounts of Limited Practice Officers (LPOs), who are given a limited license to practice law in real estate closings. Instead, the proponents intend to work with the Limited Practice Board and other interested entities or persons to determine whether and when it is appropriate to similarly amend the LPO rules.

Other States' Experiences with Comparability Rules

Twenty one jurisdictions have added comparability requirements to their IOLTA rule⁴. States that have adopted comparability amendments to their IOLTA rules generally experience revenue increases of between 50% and 100%.

⁴ The jurisdictions include that have adopted and implemented comparability rules are Florida, Connecticut, Michigan, Ohio, Illinois, Massachusetts, New York, California, New Jersey, Maryland, New Mexico, Utah, Missouri, Pennsylvania, Texas, Washington, DC, Hawaii, Alabama, Arizona, Minnesota, and Maine.

To date, not one financial institution has dropped participation in the IOLTA program due to comparability rules in any of the states that have implemented an IOLTA comparability rule. Indeed, IOLTA program administrators generally report that IOLTA comparability rules have not disrupted relationships between law firms and financial institutions. Virtually all banks have opted to pay the comparable rate on the existing IOLTA account rather than require that the higher rate product be established as the IOLTA account. That means that after banks work with the IOLTA program on implementing this, lawyers have not had to take any action to effect the new rates paid on qualified IOLTA balances. Even when banks pay comparable rates, IOLTA accounts remain profitable for the banks. Banks are only paying what they already pay to other depositors. While some banks offered initial resistance to the implementation of comparability rules, none have stopped offering IOLTA accounts and indeed, many banks have embraced the comparability rule concept with enthusiasm.

The Mechanics of Implementing Comparability - How the Rules Will Change

The key change recommended in order to implement comparability is the adoption of a new Rule for Enforcement of Lawyer Conduct (ELC) to become part of ELC Title 15 (Audits and Trust Account Overdraft Notification). If these changes are adopted, it is further suggested that Title 15 be re-named "IOLTA, Audits, and Trust Account Overdraft Notification."

New ELC 15.7, in paragraph (a), defines and describes the LFW and specifies its duty to maintain a list of authorized financial institutions and prepare an annual report for the Supreme Court. Most of these provisions at present are found in RPC 1.15A and are relocated to ELC 15.7. Paragraph (b), a definitions section, defines a number of financial concepts relevant to the types of IOLTA accounts that may be established. Paragraph (c) sets forth the requirements that a financial institution must adhere to in order for the LFW to list the financial institution as authorized for lawyers to use for IOLTA accounts. Paragraph (d) states fundamental requirements for all trust accounts (both IOLTA accounts and

non-IOLTA trust accounts). Paragraph (e) establishes the requirements that IOLTA accounts must pay comparable rates of interest and remit that interest to the LFW. It also defines the types of account fees and service that may be charged on IOLTA accounts. In addition, paragraph (e) sets forth the forms of IOLTA accounts that may be used.

The suggested amendments to RPC 1.15A are primarily designed to shift provisions relating to the function of LFW, the nature of authorized financial institutions, the requirements for financial institutions to become authorized, the system for remittance of interest to LFW, and the like, to new ELC 15.7. Thus, the focus of RPC 1.15A (with respect to funds) will be on the lawyer's obligation to hold client funds in a trust account, to choose the proper type of trust account under the circumstances, and to choose a financial institution that is on the LFW's "authorized" list. The text of amended RPC 1.15A references the provisions in ELC 15.7, making it clear that in selecting a financial institution a lawyer's obligation is to exercise ordinary prudence and to choose a financial institution on the authorized list. Newly drafted comments [18] - [20] further explain the relationship between the RPC 1.15A and ELC Title 15. These amendments will achieve a beneficial simplification of RPC 1.15A. Apart from the deletion of several provisions to be located in ELC 15.7 and the addition of references to ELC 15.4 and 15.7, the only significant change to the text of RPC 1.15A specifies that LFW determines which financial institutions may be selected by a lawyer when depositing funds into a trust account. One word ("transaction") has been added to paragraph (a) to correct a clerical error that has existed since the adoption of RPC 1.15A in 2006. Finally, amendments to ELC 15.4 and ELPOC 15.4 shift responsibility for receipt and administration of trust account notification agreements from the WSBA Disciplinary Board to the LFW. Currently, administrative functions related to the IOLTA program are being performed by both the LFW and the WSBA. In light of the other changes being recommended, it is appropriate, in order to avoid duplication of effort and potential confusion, for the LFW to maintain a master list of all authorized financial institutions. The financial institutions will still be required to file overdraft notification agreements (though they would now be filed with the LFW rather than the Disciplinary Board) and to report trust account overdrafts to the WSBA, but the LFW would manage all of the clerical and administrative aspects of this process. This change will improve the administration of the IOLTA program with no perceptible drawbacks.

Reviser's note: The spelling error in 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.

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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 transaction. Additionally, 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 ensure 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 LPORPC 1.12A. The lawyer's duty to ensure that all funds received or held by the Closing Firm incidental to the closing of the transaction are held and maintained as set forth in this rule or LPORPC 1.12A shall not apply to a lawyer when that lawyer's participation in the matter is incidental to the closing and (i) the lawyer or lawyer's law firm has a preexisting client-lawyer relationship with a buyer or seller in the transaction, and (ii) neither the lawyer nor the lawyer's law firm has an existing client-lawyer relationship with the Closing Firm or an LPO participating in the closing.

(b) A lawyer must not use, convert, borrow or pledge client or third person property for the lawyer's own use.

(c) A lawyer must hold property of clients and third persons separate from the lawyer's own property.

(1) A lawyer must deposit and hold in a trust account funds subject to this Rule pursuant to paragraph (h) of this Rule.

(2) Except as provided in Rule 1.5(f), and subject to the requirements of paragraph (h) of this Rule, a lawyer shall deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

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

(d) A lawyer must promptly notify a client or third person of receipt of the client or third person's property.

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

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

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

(h) A lawyer must comply with the following for all trust accounts:

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

(iii) funds necessary to restore appropriate balances.

(2) A lawyer must keep complete records as required by Rule 1.15B.

(3) A lawyer may withdraw funds when necessary to pay client costs. The lawyer 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 lawyer 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 1.15B (a)(2).

(7) A lawyer must not disburse funds from a trust account until deposits have cleared the banking process and been collected, unless the lawyer and the bank have a written agreement by which the lawyer 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.

(9) Only a lawyer admitted to practice law may be an authorized signatory on the account.

(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 and meet the requirements of ELC 15.7(d) and ELC 15.7(e). In the exercise of ordinary prudence, a lawyer may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ELC 15.7(c) 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 ELC 15.4. Trust account funds must not be placed in mutual funds, stocks, bonds, or similar investments. In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, a lawyer shall apply the following criteria:

(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 lawyer. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ELC 15.4 and ELC 15.7(e).~~

(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 two types of non-IOLTA trust accounts, 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 sub-accounting that allows for computation of interest earned by each client or third person's funds with the interest paid to the appropriate client or third person.

(3) In determining whether to use the account specified in paragraph (i)(1) or an account specified in paragraph (i)(2), a lawyer 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 lawyer's 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), lawyers or law firms 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 lawyer or law 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 lawyer or law firm; and~~

~~(iii) to bill fees and transaction costs not authorized by paragraph (i)(1) to the lawyer or law firm.~~

~~(5) The provisions of paragraph (i) do not relieve a lawyer or law firm from any obligation imposed by these Rules or the Rules for Enforcement of Lawyer Conduct.~~

~~(j) The Legal Foundation of Washington must prepare an annual report to the Supreme Court of Washington that summarizes the Foundation's income, grants and operating expenses, implementation of its corporate purposes, and any problems arising in the administration of the program established by paragraph (i) of this Rule.~~

Washington Comments

[1] A lawyer must also comply with the recordkeeping rule for trust accounts, Rule 1.15B.

[2] Client funds include, but are not limited to, the following: legal fees and costs that have been paid in advance other than retainers and flat fees complying with the requirements of Rule 1.5(f), funds received on behalf of a client, funds to be paid by a client to a third party through the lawyer, other funds subject to attorney and other liens, and payments received in excess of amounts billed for fees.

[3] This Rule applies to property held in any fiduciary capacity in connection with a representation, whether as trustee, agent, escrow agent, guardian, personal representative, executor, or otherwise.

[4] The inclusion of ethical obligations to third persons in the handling of trust funds and property is not intended to expand or otherwise affect existing law regarding a Washington lawyer's liability to third parties other than clients. See, e.g., *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994); *Hetzl v. Parks*, 93 Wn. App. 929, 971 P.2d 115 (1999).

[5] Property covered by this Rule includes original documents affecting legal rights such as wills or deeds.

[6] A lawyer has a duty to take reasonable steps to locate a client or third person for whom the lawyer is holding funds or property. If after taking reasonable steps, the lawyer is still unable to locate the client or third person, the lawyer should treat the funds as unclaimed property under the Uniform Unclaimed Property Act, RCW 63.29.

[7] A lawyer may not use as a trust account an account in which funds are periodically transferred by the bank financial institution between a trust account and an uninsured account or other account that would not qualify as a trust account under this Rule or ELC 15.7.

[8] If a lawyer accepts payment of an advanced fee deposit by credit card, the payment must be deposited directly into the trust account. It cannot be deposited into a general account and then transferred to the trust account. Similarly, credit card payments of earned fees, of retainers meeting the requirements of Rule 1.5 (f)(1), and of flat fees meeting the requirements of Rule 1.5 (f)(2) cannot be deposited into the trust account and then transferred to another account.

[9] Under paragraph (g), the extent of the efforts that a lawyer is obligated to take to resolve a dispute depend on the amount in dispute, the availability of methods for alternative dispute resolution, and the likelihood of informal resolution.

[10] The requirement in paragraph (h)(4) that receipts must be deposited intact means that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, commonly known as a split deposit.

[11] Paragraph (h)(7) permits Washington lawyers to enter into written agreements with the trust account financial institution to provide for disbursement of trust deposits prior to formal notice of dishonor or collection. In essence the trust account bank is agreeing to or has guaranteed a loan to the lawyer and the client for the amount of the trust deposit pending collection of that deposit from the institution upon which the instrument was written. A Washington lawyer may only enter into such an arrangement if 1) there is a formal written agreement between the attorney and the trust account institu-

tion, and 2) the trust account financial institution provides the lawyer with written assurance that in the event of dishonor of the deposited instrument or other difficulty in collecting the deposited funds, the financial institution will not have recourse to the trust account to obtain the funds to reimburse the financial institution. A lawyer must never use one client's money to pay for withdrawals from the trust account on behalf of another client who is paid subject to the lawyer's guarantee. The trust account financial institution must agree that the institution will not seek to fund the guaranteed withdrawal from the trust account, but will instead look to the lawyer for payment of uncollectible funds. Any such agreement must ensure that the trust account funds or deposits of any other client's or third person's money into the trust account would not be affected by the guarantee.

[12] The Legal Foundation of Washington was established by Order of the Supreme Court of Washington.

[13] A lawyer may, but is not required to, notify the client of the intended use of funds paid to the Foundation.

[14] If the client or third person requests that funds that would be deposited in a ~~separate interest-bearing account~~ a non-IOLTA trust account under paragraph (i)(2) instead be held in the IOLTA account, the lawyer should document this request in the lawyer's trust account records and preferably should confirm the request in writing to the client or third person.

[15] A lawyer may not receive from financial institutions earnings credits or any other benefit from the financial institution based on the balance maintained in a trust account.

[16] The term "Closing Firm" as used in this rule has the same definition as in ELPOC 1.3(g).

[17] The lawyer may satisfy the requirement of paragraph (a), that the lawyer must ensure 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 LPORPC 1.12A, by obtaining a certification or other reasonable assurance from the Closing Firm that the funds are being held in accordance with RPC 1.15A and/or LPORPC 1.12A. The lawyer is not required to personally inspect the books and records of the Closing Firm.

The last sentence of Paragraph (a) is intended to relieve a lawyer from the duties of paragraph (a) only if the lawyer or the lawyer's law firm has a previous client-lawyer relationship with one of the parties to the transaction and that party is a buyer or seller. Lawyers may be called on by clients to review deeds prepared during the escrow process, or may be asked to prepare special deeds such as personal representative's deeds for use in the closing. A lawyer may also be asked by a client to review documents such as settlement statements or tax affidavits that have been prepared for the closing. Such activities are limited in scope and are only incidental to the closing. The exception stated in the last sentence of paragraph (a) does not apply if the lawyer or the lawyer's law firm has an existing client-lawyer relationship with the Closing Firm or with a limited practice officer who is participating in the closing.

[18] When selecting a financial institution for purposes of depositing and holding funds in a trust account, a lawyer is obligated to exercise ordinary prudence under paragraph (i).

All trust accounts must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments. See ELC 15.7(d).

[19] Only those financial institutions authorized by the Legal Foundation of Washington (Legal Foundation) are eligible to offer trust accounts to Washington lawyers. To become authorized, the financial institution must satisfy the Legal Foundation that it qualifies as an authorized financial institution under ELC 15.7(c) and must have on file with the Legal Foundation a current Overdraft Notification Agreement under ELC 15.4. A list of all authorized financial institutions is maintained and published by the Legal Foundation and is available to any person on request.

[20] Upon receipt of a notification of a trust account overdraft, a lawyer must comply with the duties set forth in ELC 15.4(d) (lawyer must promptly notify the Office of Disciplinary Counsel of the Washington State Bar Association and include a full explanation of the cause of the overdraft).

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.

RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

[New Rule]

RULE 15.7. TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

(a) Legal Foundation of Washington. The Legal Foundation of Washington (Legal Foundation) was established by Order of the Supreme Court of Washington to administer distribution of Interest on Lawyer's Trust Account (IOLTA) funds to civil legal aid programs.

(1) Administrative Responsibilities. The Legal Foundation is responsible for assessing the products and services offered by financial institutions operating in the state of Washington and determining whether such institutions meet the requirements of this rule, ELC 15.4, and ELPOC 15.4. The Legal Foundation must maintain a list of financial institutions authorized to establish client trust accounts and publish the list on a website maintained by the Legal Foundation for public information. The Legal Foundation must provide a copy of the list to any person upon request.

(2) Annual Report. The Legal Foundation must prepare an annual report to the Supreme Court of Washington that summarizes the Foundation's income, grants and operating expenses, implementation of its corporate purposes, and any problems arising in the administration of the IOLTA program.

(b) Definitions. The following definitions apply to this rule:

(1) United States Government Securities. United States Government Securities are defined as direct obligations of the United States Government, or obligations issued or guaranteed as to principal and interest by the United States or any

agency or instrumentality thereof, including United States Government-Sponsored Enterprises.

(2) Daily Financial Institution Repurchase Agreement. A daily financial institution repurchase agreement must be fully collateralized by United States Government Securities and may be established only with an authorized financial institution that is deemed to be "well capitalized" under applicable regulations of the Federal Deposit Insurance Corporation and the National Credit Union Association.

(3) Money Market Funds. A money market fund is an investment company registered under the Investment Company Act of 1940, as amended, that is regulated as a money market funder under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act, and at the time of the investment, has total assets of at least five hundred million dollars (\$500,000,000). A money market fund must be comprised solely of United States Government Securities or investments fully collateralized by United States Government Securities.

(c) Authorized Financial Institutions. Any bank, savings bank, credit union, savings and loan association, or other financial institution that meets the following criteria is eligible to become an authorized financial institution under this rule:

(1) is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration;

(2) is authorized by law to do business in Washington;

(3) complies with all requirements set forth in section (d) of this rule and in ELC 15.4; and

(4) if offering IOLTA accounts, complies with all requirements set forth in section (e) of this rule.

The Legal Foundation determines whether a financial institution is an authorized financial institution under this section. Upon a determination of compliance with all requirements of this rule and ELC 15.4, the Legal Foundation must list a financial institution as an authorized financial institution under section (a)(1). At any time, the Legal Foundation may request that a listed financial institution establish or certify compliance with the requirements of this rule or ELC 15.4. The Legal Foundation may remove a financial institution from the list of authorized financial institutions upon a determination that the financial institution is not in compliance.

(d) Requirements of All Trust Accounts. All trust accounts established pursuant to RPC 1.15A(i) or LPORPC 1.12A(h) must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments.

(e) IOLTA Accounts. To qualify for Legal Foundation approval as an authorized financial institution offering IOLTA accounts, in addition to meeting all other requirements set forth in this Rule, a financial institution must comply with the requirements set forth in this section.

(1) Interest Comparability. For accounts established pursuant to RPC 1.15A, authorized financial institutions must pay the highest interest rate generally available from the

institutions to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available to its non-IOLTA customers, authorized financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. An authorized financial institution may satisfy these comparability requirements by selecting one of the following options:

(i) Establish the IOLTA account as the comparable interest-paying product; or

(ii) Pay the comparable interest rate on the IOLTA checking account in lieu of actually establishing the comparable interest-paying product; or

(iii) Pay a rate on IOLTA equal to 75% of the Federal Funds Targeted Rate as of the first business day of the month or IOLTA remitting period, or .75%, whichever is higher, and which rate is deemed to be already net of allowable reasonable service charges or fees.

(2) Remit Interest to Legal Foundation of Washington. Authorized financial institutions must remit the interest accruing on all IOLTA accounts, net of reasonable account fees, to the Legal Foundation monthly, on a report form prescribed by the Legal Foundation. At a minimum, the report must show details about the account, including but not limited to the name of the lawyer, law firm, LPO, or Closing Firm for whom the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the balance used to compute the interest. Interest must be calculated on the average monthly balance in the account, or as otherwise computed in accordance with applicable state and federal regulations and the institution's standard accounting practice for non-IOLTA customers. The financial institution must notify each lawyer, law firm, LPO, or Closing Firm of the amount of interest remitted to the Legal Foundation on a monthly basis on the account statement or other written report.

(3) Reasonable account fees. Reasonable account fees may only include per deposit charges, per check charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administration fee. No service charges or fees other than the allowable, reasonable fees may be assessed against the interest or dividends on an IOLTA account. Any service charges or fees other than allowable reasonable fees must be the sole responsibility of, and may be charged to, the lawyer, law firm, LPO, or Closing Firm maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account must not be deducted from interest or dividends earned on any other account or from the principal.

(4) Comparable Accounts. Subject to the requirements set forth in sections (d) and (e), an IOLTA account may be established as:

(i) A business checking account with an automated investment feature, such as a daily bank repurchase agreement or a money market fund; or

(ii) A checking account paying preferred interest rates, such as a money market or indexed rates; or

(iii) A government interest-bearing checking account such as an account used for municipal deposits; or

(iv) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, business checking account with interest; or

(v) Any other suitable interest-bearing product offered by the authorized financial institution to its non-IOLTA customers.

(5) Nothing in this rule precludes an authorized financial institution from paying an interest rate higher than described above or electing to waive any service charges or fees on IOLTA accounts.

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.

RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC) RULE 15.4. TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) Overdraft Notification Agreement Required. To be authorized as a depository for lawyer trust accounts referred to in RPC 1.15A(i) or LPO trust accounts referred to in LPO RPC 1.12A(i), a Every financial institution, bank, credit union, savings bank, or savings and loan association referred to in RPC 1.15A(i) and LPO RPC 1.12A(i) must will be approved as a depository for lawyer trust accounts and LPO trust accounts if it files with the Legal Foundation of Washington Disciplinary Board an agreement, in a form provided by the Washington State Bar Association Board, to report to the Washington State Bar Association 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 Legal Foundation of Washington Board. The Legal Foundation of Washington must provide copies of signed agreements and notices of cancellation to the Washington State Bar Association 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 the (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.

(c) Costs. Nothing in these rules precludes a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule, but those charges may not be a transac-

tion cost charged against funds payable to the Legal Foundation of Washington under RPC 1.15A (i)(1) and ELC 15.7(e).

(d) **Notification by Lawyer.** Every lawyer who receives notification that any instrument presented against his or her trust account was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Office of Disciplinary Counsel of the Association of the information required by section (b). The lawyer must include a full explanation of the cause of the overdraft.

**RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)
[Caption]**

TITLE 15. IOLTA, AUDITS, AND TRUST ACCOUNT OVERDRAFT NOTIFICATION

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.

RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT (ELPOC)

RULE 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) **Overdraft Notification Agreement Required.** To be authorized as a depository for LPO trust accounts, Every a 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 must file with the Legal Foundation of Washington (Legal Foundation) Association's Disciplinary Board an agreement as provided for under ELC 15.4 (a) and (b). The Legal Foundation Association's Disciplinary Board annually publishes a list of approved maintains a list of financial institutions authorized to establish LPO trust accounts and publishes the list on a website maintained by the Legal Foundation for public information.

(b) - (c) [Unchanged.]

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 09-09-014
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed April 3, 2009, 11:03 a.m.]

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

The 2009 state legislature has passed changes to the method for determining facility-specific, per resident day medicaid payment rates for nursing facility care in Washington. The changes are effective February 18, 2009. This notice includes a justification, description, and estimated rate impact of the changes.

These changes were the subject of a notice published in Issue 09-06 of the Washington state register, distributed on March 18, 2009. No comments were received in response to the notice.

JUSTIFICATION

The changes are mandated by the 2009 Washington state legislature in the amended State Operating Budget Supplemental Appropriations Act; see section 205, chapter 4, Laws of 2009. It was passed by the legislature on February 18, 2009, and signed by the governor the same day; it included an emergency clause making it effective immediately.

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 \$163.72 per resident day, at a maximum, for state fiscal year 2009, running from July 1, 2008, to June 30, 2009. However, because rate changes made to comply with the statewide average nursing facility payment rate can be made only prospectively, and because of legal notice requirements, the change in the statute did not affect the actual rates paid to nursing facilities under medicaid until April 1, 2009.

WSR 09-09-019

**PUBLIC RECORDS OFFICER
CLARK COLLEGE**

[Filed April 6, 2009, 8:48 a.m.]

Please note that Clark College designates Bob Williamson, Vice President of Administrative Services, Clark College, 1933 Fort Vancouver Way, Vancouver, WA 98663, (360) 992-2289, fax (360) 992-2884, bwilliamson@clark.edu, to serve as public records officer per RCW 42.56.580.

Robert K. Knight
President

WSR 09-09-020

**RULES COORDINATOR
CLARK COLLEGE**

[Filed April 6, 2009, 8:48 a.m.]

Please note that Clark College designates Theresa Heaton, Executive Assistant, Administrative Services, Clark College, 1933 Fort Vancouver Way, Vancouver, WA 98663, (360) 992-2289, fax (360) 992-2884, theaton@clark.edu, to serve as rules coordinator per RCW 34.05.312.

Robert K. Knight
President

WSR 09-09-021**NOTICE OF PUBLIC MEETINGS
CENTRAL WASHINGTON UNIVERSITY**

[Filed April 6, 2009, 8:51 a.m.]

Central's board of trustees took action March 6 to change their meeting time for regular meetings to 1:00 p.m.

Regular meetings of the Central Washington University board of trustees will be held May 1 and June 12, 2009, at **1:00 p.m.** in Barge Hall, Room 412, on the Central Washington University Ellensburg campus.

WSR 09-09-023**INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed April 6, 2009, 9:27 a.m.]

Notice of Interpretive or Policy Statement

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

**Health and Recovery Services Administration
Division of Rates and Finance**

Document Title: State Plan Amendment (SPA) TN#09-005.

Subject: Dispensing fees.

Effective Date: February 19, 2009.

Document Description: The health and recovery services administration is making an amendment to the Title XIX medicaid state plan regarding a change in the agency's dispensing fees.

To receive a copy of the interpretive or policy statements, contact Ann Myers, Division of Legal Services, P.O. Box 45504, Olympia, WA 98504, phone (360) 725-1345, TDD/TTY (800) 848-5429, fax (360) 586-9727, e-mail myersea@dshs.wa.gov, web site weblink <http://maa.dshs.wa.gov>.

WSR 09-09-026**NOTICE OF PUBLIC MEETINGS
FIRE PROTECTION POLICY BOARD**

[Filed April 6, 2009, 1:41 p.m.]

The April 22, 2009, the location of the fire protection policy board meeting will be changing from the General Administration Building, 210 11th Avenue S.W., Room G3, Olympia, WA 98504, to the Tumwater Fire Department, 311 Israel Road S.W., Tumwater, WA 98501.

The change in meeting locations will be posted at the original meeting place. The meeting time will change from 9:00 to 9:30 to allow for extra time for travel between locations.

WSR 09-09-028**INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed April 6, 2009, 3:16 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 8.01: Travel Receipt Retention.

Subject: Travel receipt retention.

Effective Date: April 6, 2009.

Document Description: This administrative policy explains that division of child support (DCS) procedures for retaining and archiving travel receipts in a centralized location within the DCS accounting unit.

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://www.dshs.wa.gov/dcs/>.

WSR 09-09-034**NOTICE OF PUBLIC MEETINGS
PUGET SOUND PARTNERSHIP
(Puget Sound Partnership Science Panel)**

[Filed April 7, 2009, 2:00 p.m.]

The chair of the Puget Sound partnership science panel has called for a conference call meeting of the panel on April 13, 2009, from 10:00 a.m. to 12:00 p.m. This call will be a discussion to clarify whether the panel is developing a strategic science plan or program and the steps needed to complete the process.

Call information will be posted on the web page at http://www.psp.wa.gov/SP_meetings.php.

WSR 09-09-038**NOTICE OF PUBLIC MEETINGS
PUBLIC WORKS BOARD**

[Filed April 8, 2009, 11:26 a.m.]

The public works board will be holding a special meeting on Monday, April 27, 2009, at 9:00 a.m. at the Radisson Hotel, 18118 International Boulevard, SeaTac, WA 98118, (206) 244-6666.

Please contact the public works board at (360) 725-3150 for any further information.

WSR 09-09-043
NOTICE OF PUBLIC MEETINGS
RECREATION AND CONSERVATION
OFFICE

(Invasive Species Council)
[Filed April 9, 2009, 8:47 a.m.]

The next public meeting of the Washington invasive species council (WISC) workgroup lead meeting will be **Thursday, April 16, 2009, from 1:00 p.m. to 3:00 p.m.** in Room 285, at the 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 Rachel.LeBaronAnderson@rco.wa.gov.

WSR 09-09-048
RULES COORDINATOR
WASHINGTON STATE PATROL

[Filed April 10, 2009, 9:14 a.m.]

The Washington state patrol has changed the Washington Administrative Code (WAC) coordinator position. The new contact for this agency will be Ms. Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, office (360) 596-4017, fax (360) 596-4015, Melissa.vangorkom@wsp.wa.gov.

John R. Batiste
Chief

WSR 09-09-053
POLICY STATEMENT
UNIVERSITY OF WASHINGTON

[Filed April 10, 2009, 3:08 p.m.]

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

- "Shared Leave Program for Classified Non-Union and Contract-Classified Staff, Professional Staff Employees, and Librarians," revised effective January 14, 2009 (Administrative Policy Statement 45.10).
- "Leave Related to Active Military Duty," effective January 16, 2009 (Administrative Policy Statement 45.4).
- "University Organization Chart," revised effective January 28, 2009 (Administrative Policy Statement 1.1).
- "Policy on Domestic Violence in the Workplace and Leave Related to Domestic Violence, Sexual Assault, or Stalking," revised effective February 13, 2009 (Administrative Policy Statement 11.7).

- "On-Site Childcare Center Enrollment Policy," effective February 20, 2009 (Administrative Policy Statement 51.1).
- "Accountability for Tax-Free Ethyl Alcohol," revised effective February 28, 2009 (Administrative Policy Statement 15.1).
- "Delegation of Authority," revised effective March 19, 2009 (University Handbook, Vol. 1, Part III, Chapter 1).
- "The Chief Executive Officer (CEO), UW Medicine and Executive Vice President for Medical Affairs and Dean of the School of Medicine, University of Washington," Executive Order No. 6, revised effective March 27, 2009 (University Handbook, Vol. 2, Part I, Chapter 12, Section 12-23, Subsection II).
- "Partial Suspension of Executive Order No. 64," Executive Order No. 29, effective March 31, 2009 (University Handbook, Vol. 2, Part II, Chapter 24, Section 24-57, Footnote #3).

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 351210, Seattle, WA 98195, by e-mail at rules@u.washington.edu, or by fax at (206) 685-3825.

WSR 09-09-057
NOTICE OF PUBLIC MEETINGS
LAW ENFORCEMENT OFFICERS' AND
FIREFIGHTERS' PLAN 2 RETIREMENT BOARD

[Filed April 13, 2009, 9:01 a.m.]

The law enforcement officers' and firefighters' plan 2 retirement board has cancelled the April 21, 2009, board meeting.

The next regularly scheduled meeting is **Wednesday, May 27**, at 9:30 a.m. located in the Washington state investment board room.

Please feel free to contact Jessica Burkhart at (360) 586-2322 or by e-mail at jessica.burkhart@leoff.wa.gov, should you have any questions.

WSR 09-09-058
RULES OF COURT
STATE SUPREME COURT

[April 2, 2009]

IN THE MATTER OF THE ADOPTION)	ORDER
OF THE AMENDMENTS TO APR 15-)	NO. 25700-A-918
LAWYERS' FUND FOR CLIENT PRO-)	
TECTION AND APR 15-LAWYERS')	
FUND FOR CLIENT PROTECTION)	
RULES 1 AND 5)	

The Washington State Bar Association having recommended the adoption of the proposed amendments to APR 15-Lawyers' Fund for Client Protection and APR 15-Lawyers' Fund For Client Protection Rules 1 and 5, and the Court having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendment as attached hereto are to be published for comment in the Washington Reports, Washington Register, and on the Washington State Bar Association and Office of the Administrator for the Courts' websites expeditiously.

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

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than 60 days from the published date. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Camilla.Faulk@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 2nd day of April, 2009.

For the Court

Gerry L. Alexander

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment
ADMISSION TO PRACTICE RULES (APR)

APR 15. LAWYERS' FUND FOR CLIENT PROTECTION

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

(1) Purpose: To more precisely define the purposes of the Fund.

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
APR 15. LAWYERS' FUND FOR CLIENT PROTECTION

(a) Purpose. [No change.]

(b) Establishment. There is established the Lawyers' Fund for Client Protection (Fund). The Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any client by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA ~~in connection with~~ as a result of or directly related to the member's practice of law (as defined in GR 24) or while acting as a fiduciary in a matter directly related to the member's practice of law. The Fund may also be used to relieve or mitigate like loss sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was, at the time of the act complained

of, under court ordered suspension. The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performance of services or for acts performed after a member is disbarred. Payments from the Fund shall be considered gifts to the recipients and shall not be considered entitlements.

(c) Funding. [No change.]

(d) Enforcement. [No change.]

(e) Restitution. [No change.]

(f) Administration. [No change.]

(g) Subpoenas. [No change.]

(h) Reports. [No change.]

(i) Communications to the Association. [No change.]

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.

GR 9 COVER SHEET

Suggested Amendment
ADMISSION TO PRACTICE RULES (APR)

APR 15. Lawyers' Fund for Client Protection
Procedural Rules

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

Purpose: To more precisely define the purposes of the Fund and the eligibility requirements for payment from the Fund.

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
APR 15. LAWYERS' FUND FOR CLIENT PROTECTION
PROCEDURAL RULES

RULE 1. PURPOSE

A. ***.

B. Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA ~~in connection with~~ as a result of or directly related to the member's practice of law (as defined in GR 24), or while acting as a fiduciary in a matter directly related to the member's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was at the time of the act complained of under a court ordered suspension.

RULE 5. ELIGIBLE CLAIMS

A. Eligibility. To be eligible for payment from the Fund, the loss must be caused by the dishonest conduct of a lawyer or the failure to account for money or property entrusted to a lawyer ~~in connection with~~ as a result of or directly related to the lawyer's practice of law ~~or while acting as a fiduciary in a matter related to the lawyer's practice of law~~ (as defined in GR 24). The loss must also have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship in a matter directly related to the lawyer's practice of law.

D. Excluded Losses. Except as provided by Section E of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred by related persons, law partners and associate attorneys of the lawyer causing the loss. For purposes of these Rules, "related persons" includes a spouse, domestic partner, child, grandchild, parent, grandparent, sibling, or other Relative or individual with whom the lawyer maintains a close, familial relationship;

(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;

(6) Losses incurred by any governmental entity or agency;

(7) Losses arising from business or personal investments not arising in the course of or arising out of the client-lawyer relationship;

(7)(8) Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.

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 09-09-061

**INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed April 13, 2009, 12:40 p.m.]

April 13, 2009

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 1.21: DCS Building Visitor Sign-in.

Subject: DCS building visitor sign-in.

Effective Date: April 6, 2009.

Document Description: This administrative policy explains the division of child support (DCS) sign-in procedures for all visitors to DCS office buildings.

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://www.dshs.wa.gov/dcs/>.

WSR 09-09-067

**PUBLIC RECORDS OFFICER
COMMUNITY COLLEGES
OF SPOKANE**

[Filed April 14, 2009, 8:46 a.m.]

In accordance with RCW 42.56.580, Linda McDermott is designated as the public records officer for Community Colleges of Spokane. Ms. McDermott's contact information is Linda McDermott, Chief Financial Officer, Community Colleges of Spokane, Mailstop 1006, P.O. Box 6000, Spokane, WA 99217-6000, e-mail lmcdermott@ccs.spokane.edu, phone (509) 434-5275, fax (509) 434-5279.

Please feel free to contact Gary Livingston at (509) 434-5006, if you have questions.

Dr. Gary A. Livingston
Chancellor

WSR 09-09-074**DEPARTMENT OF ECOLOGY**

[Filed April 14, 2009, 10:50 a.m.]

PUBLIC NOTICE OF ISSUANCE

**FOR THE REISSUANCE OF THE FRESH FRUIT PACKING
GENERAL PERMIT**

INTRODUCTION: The Washington state department of ecology (ecology) proposes to reissue the fresh fruit packing general permit. This general permit regulates the discharges of wastewater from fresh fruit packing facilities. It was developed and is being reissued in accordance with the requirements of chapters 90.48, 90.52, and 90.54 RCW, chapters 173-226 and 173-220 WAC, and the Federal Water Pollution Control Act (the Clean Water Act) as amended. All requirements of 40 C.F.R. are incorporated in this general permit by reference.

IDENTIFICATION OF FACILITIES AND GEOGRAPHIC AREA COVERED: Although the fresh fruit packing industry is located primarily in the state's centralized fruit growing

region along the Yakima, Columbia, Wenatchee, and Okanogan rivers, this general permit covers the entire state of Washington. Every new or existing fresh fruit packing facility which receives, packs, stores, and/or ships either hard or soft fresh fruit and discharges wastewater, must apply for and obtain coverage under this general permit, according to the waste discharge general permit program, chapter 173-226 WAC. Individual permits will be applied in those instances where ecology determines this general permit is not appropriate for that facility. Dischargers authorized by this general permit may request to be excluded from coverage under the permit by applying for and obtaining coverage under an individual permit.

APPLYING FOR COVERAGE: All fresh fruit packing facilities must apply for coverage by submitting to ecology a completed and signed *Application for Coverage* form, which is specifically prescribed by ecology for this general permit and was developed in accordance with WAC 173-226-200. Existing facilities currently under permit should have submitted to ecology an *Application for Renewal of Coverage* by January 2, 2009. New facilities must apply for coverage no later than one hundred eighty days prior to the discharge of any wastewater. Any facility required to obtain coverage under either this general permit or an individual NPDES/state waste discharge permit, with the exception of those stipulated in WAC 173-216-050, and found not to have done so within the time limits given, will be subject to enforcement for unlawfully discharging without a permit.

PUBLIC HEARINGS, COMMENTS, AND CHANGES IN THE PERMIT: Ecology held public hearings concerning this general permit's reissuance on March 12, 2009, in Yakima and March 13, 2009, in Wenatchee. A total of three testimonials were given. All three testimonials were in support of the permit's reissuance. Four written comments were received prior to the April 13, 2009, comment period deadline. A summary of ecology's response to these testimonials and comments is available for public review as an appendix to the fact sheet.

PERMIT APPEALS: Pursuant to the provisions of chapter 43.21B RCW and chapter 173-226 WAC, any person who objects to the terms and conditions of this general permit as it applies to the fresh fruit packing industry may file an appeal of the permit by July 11, 2009.

Appeals should be sent to: Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903.

Copies of the appeals must be sent to: Washington State Department of Ecology, Central Regional Office, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902, Attention: Cory Hixon.

In accordance with the rules of the hearings board, any appeal must contain the following: (1) The appellant's name and address; (2) a description of the part of the permit that is the reason for the appeal; (3) the date of the permit; (4) a clear and concise statement of facts upon which the appellant relies to sustain his or her statement of error; (5) a clear, separate, and concise statement of every error alleged to have been committed; and (6) a statement setting forth the relief sought.

Pursuant to the provisions of chapter 43.21B RCW and chapter 173-226 WAC, the terms and conditions of this general permit, as they apply to an individual facility, are appealable, within thirty days of the effective date of coverage of

that facility. This appeal is limited to this general permit's applicability and nonapplicability to that individual facility. The appeal of coverage under this general permit by an individual facility does not affect other facilities covered under this general permit. If the terms and conditions of this general permit are found to be inapplicable to any individual facility, the matter will be remanded to ecology to consider the issuance of an individual permit.

ADDITIONAL INFORMATION: The proposed permit, fact sheet, *Application for Coverage* form, economic impact analysis, and other related documents are on file and may be inspected and copied Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m. at the Yakima address listed above. Copies of these documents can be sent to interested parties upon request. For further information contact Cory Hixon, general permit manager, Washington State Department of Ecology, at the address given above or by phone (509) 454-7298 or e-mail chix461@ecy.wa.gov.

The Washington State Department of Ecology is an equal opportunity agency and does not discriminate on the basis of race, creed, color, disability, age, religion, national origin, sex, marital status, sexual orientation, disabled veteran's status, or Vietnam era veteran's status.

If you need special accommodation needs or require this document in alternative format, please contact Cindy Huwe at (509) 457-7105 (voice) or 800-833-6388 (TDD).

WSR 09-09-077

NOTICE OF PUBLIC MEETINGS EDMONDS COMMUNITY COLLEGE

[Filed April 15, 2009, 10:06 a.m.]

Please be advised of the following revision to the 2009 meeting schedule of the Edmonds Community College board of trustees.

The Edmonds Community College board of trustees will hold a special meeting on Wednesday, May 13, 2009, 3:00 p.m. This meeting will replace the May 7 meeting which has been cancelled. The meeting will be held on the Edmonds Community College Campus, Snohomish Hall 304, 20000 68th Avenue West, Lynnwood, WA 98036.

If you have any questions, please feel free to contact Patty Michajla at (425) 640-1516.

WSR 09-09-081

INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed April 15, 2009, 2:52 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 1.19: Discovery and Public Disclosure Requests in Litigation.

Subject: DCS response to requests for discovery and public disclosure.

Effective Date: April 3, 2009.

Document Description: This administrative policy explains the division of child support (DCS) policy and procedures for DCS response to requests for discovery and public disclosure when DCS is involved in litigation.

To receive a copy of the interpretive or policy statements, contact Janet Hazelton, Division of Child Support, P.O. Box 11520, Tacoma, WA 98411-5520, phone (360) 664-5236, TDD/TTY (360) 753-9122, fax (360) 586-3274, e-mail JHazelto@dshs.wa.gov, web site <http://www.dshs.wa.gov/dcs/>.

WSR 09-09-090

**NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF LICENSING**

(Real Estate Commission)

[Filed April 16, 2009, 3:20 p.m.]

Special Meeting
Conference Call

DATE: April 21, 2009
PLACE: Department of Licensing
Real Estate Program
Second Floor Conference
Room 3204
2000 4th Avenue West
Olympia, WA 98502
CONTACT PERSON: Jerry McDonald
Assistant Administrator
(360) 664-6524
jmcdonald@dol.wa.gov
ORDER OF AGENDA: Conference call
TIME: 11:00 a.m. until completion of
business

WSR 09-09-092

**NOTICE OF PUBLIC MEETINGS
CITIZEN COMMISSION FOR PERFORMANCE
MEASUREMENT OF TAX PREFERENCES**

[Filed April 17, 2009, 9:03 a.m.]

The **May 15** meeting of the citizen commission for performance measurement of tax preferences has been **cancelled**. The next commission meeting is scheduled for **Friday, August 14**, in Olympia, Washington.

Should you have questions, please contact Lisa Hennesy at (360) 786-5288.

WSR 09-09-095

INTERPRETIVE OR POLICY STATEMENT

**DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed April 17, 2009, 1:56 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 6.03: Privacy of Information Exchanged Through the DCS Public Internet Site.

Subject: DCS privacy of information.

Effective Date: April 6, 2009.

Document Description: This administrative policy explains how the division of child support (DCS) collects, uses, and secures the information obtained from users of the DCS public internet site.

To receive a copy of the interpretive or policy statements, contact Janet Hazelton, Division of Child Support, P.O. Box 11520, Tacoma, WA 98411-5520, phone (360) 664-5236, TDD/TTY (360) 753-9122, fax (360) 586-3274, e-mail JHazelto@dshs.wa.gov, web site <http://www.dshs.wa.gov/dcs/>.

WSR 09-09-098

**NOTICE OF PUBLIC MEETINGS
RENTON TECHNICAL COLLEGE**

[Filed April 20, 2009, 9:56 a.m.]

Pursuant to RCW 42.30.075, please be advised that the Renton Technical College board of trustees' at its April 14, 2009, regularly scheduled meeting approved a motion to change the start time for trustee meetings from 8 a.m. to 4 p.m. beginning with the June 9, 2009, regular board of trustees' meeting. Regular meetings for the remainder of 2009 will be held on the second Tuesday of each month except for the months of July and August. Meetings will be held at 4:00 p.m., at the Roberts Campus Center Board Room, Room 202, Renton Technical College, 3000 Northeast 4th Street, Renton, WA 98056-4195.

June 9, 2009
September 8, 2009
October 13, 2009
November 10, 2009
December 8, 2009

If you need further information, please contact Karen DeBruyn at (425) 235-2426.

WSR 09-09-108
NOTICE OF PUBLIC MEETINGS
GUARANTEED EDUCATION
TUITION PROGRAM
 [Filed April 21, 2009, 8:46 a.m.]

In accordance with RCW 28B.95.020 and WAC 14-276-030, the advanced college tuition program, known as guaranteed education tuition program has made a revision to the following committee meeting schedule:

Date and location change:
 Monday, May 11, 2009
 1:00 p.m. - 3:00 p.m.
 Insurance Building
 Capitol Campus
 Olympia, Washington 98504

If anyone wishes to request disability accommodations, notice should be given to the guaranteed education tuition program at least ten days in advance of the meeting in question. Notice may be given by any of the following methods: (360) 753-7860 (voice); (360) 753-7809 (TDD); or (360) 704-6200 (fax).

WSR 09-09-110
NOTICE OF PUBLIC MEETINGS
HEALTH CARE AUTHORITY
 (Public Employees Benefits Board)
 [Filed April 21, 2009, 10:53 a.m.]

Amended 2009 Meeting Schedule

The public employees benefits board meetings will be held at the Health Care Authority, The Sue Crystal Center Conference Room, 676 Woodland Square Loop S.E., Lacey, WA, unless otherwise noted. The meetings begin at 11:30 a.m. and end at 3:00 p.m.

May 20, 2009
 June 24, 2009
 July 8, 2009
 July 15, 2009
 July 20, 2009
 October 28, 2009 Board retreat

If you are a person with a disability and need a special accommodation, please contact Lynn Kennedy, (360) 923-2829.

WSR 09-09-121
DEPARTMENT OF ECOLOGY
 [Filed April 22, 2009, 7:52 a.m.]

PUBLIC NOTICE

**Public Hearing and Comment Period to Accept
 Comments on the Department of Ecology's Plan to
 Reauthorize the Water Treatment Plant General Permit**

Reauthorizing the Water Treatment Plant General Permit: The water treatment plant (WTP) general permit, issued by the Washington state department of ecology (ecology) on June 16, 2004, expires on July 15, 2009. Ecology proposes to reauthorize the general permit, with minor changes. The draft WTP general permit, fact sheet, and fact sheet addendum are available for review and public comment from **May 6, 2009, through June 9, 2009**. Ecology will host a public hearing on its proposal to reauthorize the WTP general permit. Ecology will accept written comments on the draft permit, fact sheet, and fact sheet addendum or oral comments can be given at the public hearing.

Purpose of the Water Treatment Plant General Permit: The WTP general permit is a statewide permit providing permit coverage for thirty-two water treatment plants. Water treatment plants under this permit treat water through filtration processes producing a finished water for drinking or for industrial activities. The filtration process removes silt, organics, microorganisms, and other impurities, trapping this material in the filter. Periodically, plant operators back-flush filters to remove the trapped material and restore filtration capacity. Other wastewaters are generated through routine cleaning. Treatment plants typically treat these wastewaters using settling basins. Potential pollutants include fine silt, and trace amounts of organics, microorganisms, additives and other impurities removed during filtration as well as additives. Additives may include chlorine, chemicals to adjust pH, and chemicals that enhance the removal of impurities in the water.

Applying for Coverage under the Water Treatment Plant General Permit: Facilities covered under the existing WTP general permit will be automatically covered under the reissued permit. New or unpermitted facilities may obtain coverage under the reauthorized 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/programs/wq/wtp/index.html>.

Requesting Copies of the Permit: You may download copies of the draft permit, fact sheet, and fact sheet addendum from the web site at <http://www.ecy.wa.gov/programs/wq/wtp/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 WTP general permit, fact sheet, and fact sheet addendum. 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. Send comments via e-mail to Carey Cholski at the department of ecology (cgru461@ecy.wa.gov). **Written comments must be postmarked or received via e-mail no later than 5 p.m., Tuesday, June 9, 2009.**

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

If you are sending comments via the mail, mail your comments to Carey Cholski, Department of Ecology, P.O. Box 47775, Olympia, WA 98504-7775.

Public Hearings: The public hearing on the draft general permit will be held at the Washington State Department of Ecology, 300 Desmond Drive, Lacey, (360) 407-6000 (Driving directions http://www.ecy.wa.gov/images/offices/map_hq_swro.pdf), Lacey, Washington, on June 8, 2009, at 1:00 p.m. The purpose of the hearings is to provide an opportunity for people to give formal oral testimony and comments on the draft permit.

Reauthorizing the Final WTP 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 July 15, 2009. It will be effective September 1, 2009. 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.

WSR 09-09-122

DEPARTMENT OF ECOLOGY

[Filed April 22, 2009, 7:54 a.m.]

PUBLIC NOTICE

Ecology Accepts Comments on the Revised Bridge and Ferry Terminal Washing and Painting Individual Permit

Revising and Reissuing the Bridge and Ferry Washing and Painting Individual Permit: The bridge and ferry washing and painting individual NPDES and state waste discharge general permit, issued by the Washington state department of ecology (ecology) on April 3, 2004, expired on April 3, 2009. Ecology has revised the permit and is proposing to reissue it on or about July 8, 2009. The proposed draft bridge and ferry washing and painting individual permit and fact sheet will be made available for public review on May 6, 2009. Ecology will accept comments on the draft permit and fact sheet from May 6, 2009, to June 5, 2009.

Purpose of the Bridge and Ferry Washing and Painting Individual Permit: This individual permit provides coverage to the Washington state department of transportation for washing and painting activities having an associated discharge to surface waters on bridge and ferry transfer spans located in the state of Washington. The permit is different

from other individual permits issued by ecology because it covers a specific activity rather than a specific facility or location. This permit does implement the Federal Clean Water Act and State Water Pollution Control Act. 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. The proposed individual permit addresses these legal requirements and controls the discharge of pollutants to protect surface water and ground water quality in Washington state. As the applicant receiving coverage under the individual bridge and ferry washing and painting permit, the Washington department of transportation is required to comply with the terms and conditions of the permit.

Applying for the Permit: The Washington department of transportation did reapply for permit coverage before the expiration of the existing permit. Their application covered all bridge and ferry terminals owned, operated, and maintained by Washington state.

Requesting Copies of the Permit: Beginning May 6, 2009, you can download copies of the proposed permit and fact sheet from the web site at http://www.ecy.wa.gov/programs/wq/permits/hq_permits.html. **You may also request paper copies from the contact person given below.**

Submitting Written Comments: During the public comment period (May 6 - June 5, 2009) ecology will accept written comments on the draft bridge and ferry washing and painting individual 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 will accept comments by mail or e-mail. Comments submitted by e-mail must contain a name and postal address for the sender. Written comments must be postmarked no later than midnight, Friday, June 5, 2009. You may send your written or e-mail comments and/or get on the mailing list for this permit by contacting Penny Kelley, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7298, e-mail pkel461@ecy.wa.gov.

Issuing the Final Bridge and Ferry Washing and Painting Individual Permit: The final permit will be issued after ecology receives and considers all public comments. If public comments cause a substantial change in the permit conditions from the original draft permit, another public notice of draft and comment period may ensue.

Ecology expects to issue the permit on or about July 8, 2009, if there is no substantial change to the draft. 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 comments.

If you have special accommodation needs or require a copy of the permit and fact sheet in an alternative format, please contact Gary Bailey at (360) 407-6433. If you are a

person with a speech or hearing impairment, call 711 or 800-833-6388 for TTY.

From: May 14, 2009 9:00 a.m. Pasco, Washington
 To: May 14, 2009 9:00 a.m. Richland, Washington

WSR 09-09-129
NOTICE OF PUBLIC MEETINGS
LIFE SCIENCES
DISCOVERY FUND

[Filed April 22, 2009, 10:54 a.m.]

If there are any questions, please contact the WSFC offices at (509) 453-4837.

Please note the updated information in bold for the life sciences discovery fund authority (agency #3560) 2009-2010 board meetings. Note as well that we will post our public meeting agenda and any call-in information as appropriate on our web site at <http://www.lsdfa.org/about/staff/meetings.html> prior to each meeting.

2009-2010 Public Board Meeting Dates
(times are approximate and subject to change)

Tuesday, May 19	8 a.p. [a.m.] - 5 p.m.	Talaris Conference Center 4000 N.E. 41st Street Seattle, WA 98105
Tuesday, July 28	8 a.m. - 6 p.m.	Talaris Conference Center 4000 N.E. 41st Street Seattle, WA 98105
Tuesday, August 4	10 a.m.	via telecon
Tuesday, September 15	8 a.m. - 6 p.m.	Talaris Conference Center 4000 N.E. 41st Street Seattle, WA 98105
Tuesday, November 10	9 a.m. - 12 p.m.	via telecon
Tuesday, December 8	8 a.m. - 6 p.m.	Talaris Conference Center 4000 N.E. 41st Street Seattle, WA 98105
Tuesday, December 15	10 a.m.	via telecon
Tuesday, February 9	8:30 a.m. - 5 p.m.	Talaris Conference Center 4000 N.E. 41st Street Seattle, WA 98105
Tuesday, February 16	10 a.m. - 11 a.m.	via telecon

WSR 09-09-136
NOTICE OF PUBLIC MEETINGS
FRUIT COMMISSION

[Filed April 22, 2009, 11:45 a.m.]

Due to a conflict in the chosen venue's reservation space, it is necessary for the Washington state fruit commission (WSFC) board to change the following meeting location during the 2009 year: