WSR 11-13-060
RULES OF COURT
STATE SUPREME COURT
[June 10, 2011]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENTS TO GR 30—ELECTRONIC FILING; MAR—3.2—AUTHORITY OF ARBITRATOR; MAR 6.2—FILING OF AWARD; MAR 6.3—JUDGMENT ON AWARD; MAR 6.4—~~WITNESS~~ COSTS AND ATTORNEY FEES ~~AND COSTS~~ AND MAR 7.1—REQUEST FOR TRAIL DE NOVO; RPC 1.10 (a), (e)—IMPUTATION ON CONFLICTS OF INTEREST: GENERAL RULE; RPC 1.15A (h)(7)—SAFEGUARDING PROPERTY; RPC 1.2(f)—SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN LAWYER AND CLIENT; RPC 1.6—CONFIDENTIALITY OF INFORMATION; RPC 1.8(g)—CONFLICT OF INTEREST: CURRENT CLIENT: SPECIFIC RULES; RPC 3.4—FAIRNESS TO OPPOSING PARTY AND COUNSEL; AND RPC 5.5—UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW; CrRLJ 6.13—EVIDENCE	ORDER NO. 25700-A-979

The JIS Committee having recommended the adoption of the proposed amendments to GR 30—Electronic Filing; the Washington State Bar Association having recommended the adoption of the proposed amendments to MAR—3.2—Authority of Arbitrator; MAR 6.2—Filing of Award; MAR 6.3—Judgment on Award; MAR 6.4—~~Witness~~ Costs and Attorney Fees ~~and Costs~~ and MAR 7.1—Request for Trail De Novo; RPC 1.10 (a), (e)—Imputation of Conflicts of Interest: General Rule; RPC 1.15A (h)(7)—Safeguarding Property; RPC 1.2(f)—Scope of Representation and Allocation of Authority Between Lawyer and Client; RPC 1.6—Confidentiality of Information; RPC 1.8(g)—Conflict of Interest: Current Client: Specific Rules; RPC 3.4—Fairness to Opposing Party and Counsel; and RPC 5.5—Unauthorized Practice of Law; Multijurisdictional Practice of Law; and the Department of Licensing having recommended the adoption of the proposed amendments to CrRLJ 6.13—Evidence, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

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

(b) That the amendments will be published in the Washington Reports and will become effective September 1, 2011.

DATED at Olympia, Washington this 10th day of June, 2011.

Madsen, C.J.

C. Johnson, J. J. M. Johnson, J.

Alexander, J. Fairhurst, J.

Owens, J. Stephens, J.

Chambers, J. Wiggins, J.

GR 30 ELECTRONIC FILING

(a) Definitions

(1) "Digital signature" is defined in RCW 19.34.020.

(2) "Electronic Filing" is the electronic transmission of information to a court or clerk for case processing.

(3) "Electronic Document" is an electronic version of information traditionally filed in paper form, except for documents filed by facsimile which are addressed in GR 17. An electronic document has the same legal effect as a paper document.

(4) "Electronic Filing Technical Standards" are those standards, not inconsistent with this rule, adopted by the Judicial Information System committee to implement electronic filing.

(5) "Filer" is the person whose user ID and password are used to file an electronic document.

Comment: The form of "digital signature" that is acceptable is not limited to the procedure defined by chapter 19.34 RCW, but may include other equivalently reliable forms of authentication as adopted by local court rule or general.

(b) Electronic filing authorization, exception, service, and technology equipment.

(1) The clerk may accept for filing an electronic document that complies with the Court Rules and the Electronic Filing Technical Standards.

(2) A document that is required by law to be filed in non-electronic media may not be electronically filed. Comment Certain documents are required by law to be filed in non-electronic media. Examples are original wills, certified records of proceedings for purposes of appeal, negotiable instruments, and documents of foreign governments under official seal.

(3) Electronic Transmission from the Court. The clerk may electronically transmit notices, orders, or other documents to a party who has filed electronically, or has agreed to accept electronic documents from the court, and has provided the clerk the address of the party's electronic mailbox. It is the responsibility of the filing or agreeing party to maintain an electronic mailbox sufficient to receive electronic transmissions of notices, orders, and other documents.

(4) Electronic Service by Parties. Parties may electronically serve documents on other parties of record only by agreement.

(5) A court may adopt a local rule that mandates electronic filing by attorneys provided that the attorneys are not additionally required to file paper copies except for those documents set forth in (b)(2). The local rule shall not be inconsistent with this Rule and the Electronic Filing Technical Standards, and the local rule shall permit paper filing

upon a showing of good cause. Electronic filing should not serve as a barrier to access.

Comment: When adopting electronic filing requirements, courts should refrain from requiring counsel to provide duplicate paper pleadings as "working copies" for judicial officers.

(c) Time of Filing, Confirmation, and Rejection.

(1) An electronic document is filed when it is received by the clerk's designated computer during the clerk's business hours; otherwise the document is considered filed at the beginning of the next business day.

(2) The clerk shall issue confirmation to the filing party that an electronic document has been received.

(3) The clerk may reject a document that fails to comply with applicable electronic filing requirements. The clerk must notify the filing party of the rejection and the reason therefore.

(d) Authentication of Electronic Documents.

(1) Procedures

(A) A person filing an electronic document must have ~~applied for and~~ received a user ID and password from a government agency or a person delegated by such agency in order to use the applicable electronic filing service ~~provider~~.

Comment: The committee encourages local clerks and courts to develop a protocol for uniform statewide single user ID's and passwords.

(B) All electronic documents must be filed by using the user ID and password of the filer.

(C) A filer is responsible for all documents filed with his or her user ID and password. No one shall use the filer's user ID and password without the authorization of the filer.

(2) Signatures

(A) Attorney Signatures - An electronic document which requires an attorney's signature may be signed with a digital signature or signed in the following manner:

s/John Attorney
State Bar Number 12345
ABC Law Firm
123 South Fifth Avenue
Seattle, WA 98104
Telephone: (206) 123-4567
Fax: (206) 123-4567
E-mail: John.Attorney@lawfirm.com

(B) Non-attorney signatures - An electronic document which requires a non-attorney's signature and is not signed under penalty of perjury may be signed with a digital signature or signed in the following manner:

s/John Citizen
123 South Fifth Avenue
Seattle, WA 98104
Telephone: (206) 123-4567
Fax: (206) 123-4567
E-mail: John.Citizen@email.com

(C) **Non-attorney signatures on documents signed under penalty of perjury** - Except as set forth in (d)(2)(D) of this rule, if the original document requires the signature of a non-attorney signed under penalty of perjury, the filer must either:

(i) Scan and electronically file the entire document, including the signature page with the signature, and maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter; or

(ii) Ensure the electronic document has the digital signature of the signer.

(D) **Law enforcement officer signatures on documents signed under penalty of perjury**. ~~Arresting or citing officer signatures on citations, and notices of infraction filed electronically in courts of limited jurisdiction~~ -

(i) A citation or notice of infraction initiated by an arresting or citing officer as defined in IRLJ 1.2(j) and in accordance with CrRLJ 2.1 or IRLJ 2.1 and 2.2 is presumed to have been signed when the arresting or citing officer uses his or her user id and password to electronically file the citation or notice of infraction.

(ii) Any document initiated by a law enforcement officer is presumed to have been signed when the officer uses his or her user ID and password to electronically submit the document to a court or prosecutor through the Statewide Electronic Collision & Traffic Online Records application, the Justice Information Network Data Exchange, or a local secured system that the presiding judge designates by local rule. Unless otherwise specified, the signature shall be presumed to have been made under penalty of perjury under the laws of the State of Washington and on the date and at the place set forth in the citation.

(E) Multiple signatures - If the original document requires multiple signatures, the filer shall scan and electronically file the entire document, including the signature page with the signatures, unless:

(i) The electronic document contains the digital signatures of all signers; or

(ii) For a document that is not signed under penalty of perjury, the signator has the express authority to sign for an attorney or party and represents having that authority in the document.

If any of the non-digital signatures are of non-attorneys, the filer shall maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter.

(F) Court Facilitated Electronically Captured Signatures - An electronic document that requires a signature may be signed using electronic signature pad equipment that has been authorized and facilitated by the court. This document may be electronically filed as long as the electronic document contains the electronic captured signature. (3) An electronic document filed in accordance with this rule shall bind the signer and function as the signer's signature for any purpose, including CR 11. An electronic document shall be deemed the equivalent of an original signed document if the filer has complied with this rule. All electronic documents signed under penalty of perjury must conform to the oath language requirements set forth in RCW 9A.72.085 and GR 13.

(e) Filing fees, electronic filing fees.

(1) The clerk is not required to accept electronic documents that require a fee. If the clerk does accept electronic documents that require a fee, the local courts must develop procedures for fee collection that comply with the payment

and reconciliation standards established by the Administrative Office of the Courts and the Washington State Auditor.

(2) Anyone entitled to waiver of non-electronic filing fees will not be charged electronic filing fees. The court or clerk shall establish an application and waiver process consistent with the application and waiver process used with respect to non-electronic filing and filing fees.

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.

SUGGESTED AMENDMENT
MANDATORY ARBITRATION RULES (MAR)
Rule 3.2 - Authority of Arbitrator

(a) Authority of Arbitrator. An arbitrator has the authority to:

(1) Decide procedural issues arising before or during the arbitration hearing, except issues relating to the qualifications of an arbitrator;

(2) Invite, with reasonable notice, the parties to submit trial briefs;

(3) Examine any site or object relevant to the case;

(4) Issue a subpoena under rule 4.3;

(5) Administer oaths or affirmations to witnesses;

(6) Rule on the admissibility of evidence under rule 5.3;

(7) Determine the facts, decide the law, and make an award;

(8) Award costs and attorney fees as authorized by law; and

(9) Perform other acts as authorized by these rules or local rules adopted and filed under rule 8.2.

(b) Authority of the Court. The court shall decide:

(1) Motions for involuntary dismissal, motions to change or add parties to the case, and motions for summary judgment ~~shall be decided by the court and not by the arbitrator~~; and

(2) Issues relating to costs and attorney fees if those issues cannot otherwise be decided by the arbitrator.

SUGGESTED AMENDMENT
MANDATORY ARBITRATION RULES (MAR)
Rule 6.2 - Filing of Award

Filing and Service of Award. Within 14 days after the conclusion of the arbitration hearing, the arbitrator shall file the award with the clerk of the superior court, with proof of service ~~of a copy on~~ upon each party. On the arbitrator's application in cases of unusual length or complexity, the arbitrator may apply for and the court may allow up to 14 additional days for the filing and service of the award. If the arbitrator fails to timely file and serve the award and proof of service, a party may, after notice to the arbitrator, file a motion with the court for an order directing the arbitrator to do so by a date certain. Late filing shall not invalidate the award. The arbitrator may file with the court and serve upon the parties an amended award to correct an obvious error made in stating the award if done within the time for filing an award or upon application to the superior court to amend.

SUGGESTED AMENDMENT
MANDATORY ARBITRATION RULES (MAR)
Rule 6.3 - Judgment on Award

Judgment. If within ~~20 days after the award is filed~~ the 20-day period specified in rule 7.1(a) no party has properly sought a trial de novo ~~under rule 7.1~~, the prevailing party on notice as required by CR 54(f) shall present to the court a judgment on the award of arbitration for entry as the final judgment. A judgment so entered is subject to all provisions of law relating to judgments in civil actions, but it is not subject to appellate review and it may not be attacked or set aside except by a motion to vacate under CR 60.

SUGGESTED AMENDMENT
MANDATORY ARBITRATION RULES (MAR)
Rule 6.4 - ~~Witness~~ Costs and Attorney Fees ~~and Costs~~

(a) Request. Any request for costs and attorney fees shall be filed with the arbitrator and served upon all other parties no later than seven days after receipt of the award. Any party failing to timely file and serve such a request is deemed to have waived the right to an award of costs and attorney fees, unless a request for a trial de novo is filed.

(b) Response. Any response to the request for costs and attorney fees shall be filed with the arbitrator and served upon all other parties within seven days after service of the request.

(c) Hearing. The arbitrator has discretion to hold a hearing on the request for costs and attorney fees.

(d) Decision. Within 14 days after the service of the request for costs and attorney fees, the arbitrator shall file an amended award granting the request in whole or in part, or a denial of costs and attorney fees, with the clerk of the superior court, with proof of service upon each party. If the arbitrator fails to timely file and serve the amended award or denial and proof of service, a party may, after notice to the arbitrator, file a motion with the court for an order directing the arbitrator to do so by a date certain. Late filing shall not invalidate the decision. ~~Witness fees and other costs provided for by statute or court rule in superior court proceedings shall be payable upon entry of judgment in the same manner as if the hearing were held in court.~~

SUGGESTED AMENDMENT
MANDATORY ARBITRATION RULES (MAR)
Rule 7.1 - Request for Trial De Novo

(a) Service and Filing. ~~Within 20 days after the arbitration award is filed with the clerk, any~~ Any aggrieved party not having waived the right to appeal may ~~serve and file with the clerk a written~~ request ~~for~~ a trial de novo in the superior court ~~along with proof that a copy has been served~~. Any request for a trial de novo must be filed with the clerk and served, in accordance with CR 5, upon all other parties appearing in the case~~.~~ within 20 days after the arbitrator files proof of service of the later of: (1) the award or (2) a decision on a timely request for costs or attorney fees. A request for a trial de novo is timely filed or served if it is filed or served after the award is announced but before the 20-day period begins to run. The 20-day period within which to request a trial de novo may not be extended.

(b) Form. The request for a trial de novo shall not refer to the amount of the award, including any award of costs or attorney fees, and shall be ~~in~~ substantially in the form set forth below:

[Form unchanged.]

(c) Proof of Service. The party filing and serving the request for a trial de novo shall file proof of service with the court. Failure to file proof of service within the 20-day period shall not void the request for a trial de novo.

(~~b~~d) Calendar. When a trial de novo is requested as provided in section (a), the case shall be transferred from the arbitration calendar in accordance with rule 8.2 in a manner established by local rule.

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 OF PROFESSIONAL CONDUCT (RPC)
RULE 1.10. IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) Except as provided in paragraph (~~e~~e), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the ~~prohibited~~ disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) - (d) [Unchanged.]

(e) When the prohibition on representation under paragraph (a) is based on Rule 1.9 (a) or (b), and arises out of the disqualified lawyer's association with a prior firm, ~~a lawyer becomes associated with a firm~~, no other lawyer in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified ~~under Rule 1.9~~ unless:

(1) the personally disqualified lawyer is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;

(2) the former client of the personally disqualified lawyer receives notice of the conflict and the screening mechanism used to prohibit dissemination of information relating to the former representation;

(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified lawyer serves on his or her former law firm and former client an affidavit attesting that the personally disqualified lawyer will not participate in the matter and will not discuss the matter or the representation with any other lawyer or employee of his or her current law firm, and attesting that during the period of the lawyer's personal disqualification those lawyers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified lawyer. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The law firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.

Comment

[1] - [8] [Unchanged.]

[9] The screening provisions in Washington RPC 1.10 differ from those in the Model Rule. Washington's adoption of a nonconsensual screening provision in 1993 preceded the ABA's 2009 adoption of a similar approach in the Model Rules. Washington's rule was amended and the screening provision recodified as paragraph (e) in 2006, and paragraphs (a) and (e) were further amended in 20__ to conform more closely to the Model Rules version. None of the amendments to this Rule, however, represents a change in Washington law. The Rule preserves Washington practice established in 1993 with respect to screening by allowing a lawyer personally disqualified from representing a client based on the lawyer's prior association with a firm to be screened from a representation to be undertaken by other members of the lawyer's new firm under the circumstances set forth in paragraph (e). ~~Former Washington RPC 1.10 differed significantly from the Model Rule. This difference was attributable in part to a 1989 amendment to Model Rule 1.10 that recodified conflicts based on a lawyer's former association with a firm into Model Rule 1.9, and in part to Washington's adoption of a screening rule in 1993. Washington's Rule has been restructured to make it and Rule 1.9 more consistent with the Model Rules. The conflicts that arise based on a lawyer's former association with a firm are now addressed in Rules 1.9 (a) and (b), while Rule 1.10 addresses solely imputation of that conflict. Under Rule 1.9(a), such a lawyer need not have actually acquired information protected by Rules 1.6 and 1.9 to be disqualified personally, but because acquisition of confidential information is presumed in Washington, see, e.g., Teja v. Saran, 68 Wn. App. 793, 846 P.2d 1375 (1993), review denied, 122 Wn.2d 1008, 859 P.2d 604 (1993); Kurbitz v. Kurbitz, 77 Wn.2d 943, 468 P.2d 673 (1970), the recodification does not represent a change in Washington law. The Rule preserves prior Washington practice with respect to screening by allowing a personally disqualified lawyer to be screened from a representation to be undertaken by other members of the firm under the circumstances set forth in paragraph (e).~~ See Washington Comment [10].

[10] Washington's RPC 1.10 was amended in 1993 to permit representation with screening under certain circumstances. ~~Model Rule 1.10 does not contain a screening mechanism.~~ Rule 1.10(e) retains the screening mechanism adopted as Washington RPC 1.10(b) in 1993, thus allowing a firm to represent a client with whom a lawyer in the firm has a conflict based on his or her association with a prior firm if the lawyer is effectively screened from participation in the representation, is apportioned no part of the fee earned from the representation and the client of the former firm receives notice of the conflict and the screening mechanism. How-

ever, prior to undertaking the representation, non-disqualified firm members must evaluate the firm's ability to provide competent representation even if the disqualified member can be screened in accordance with this Rule. While Rule 1.10 does not specify the screening mechanism to be used, the law firm must be able to demonstrate that it is adequate to prevent the personally disqualified lawyer from receiving or transmitting any confidential information or from participating in the representation in any way. The screening mechanism must be in place over the life of the representation at issue and is subject to judicial review at the request of any of the affected clients, law firms, or lawyers. However, a lawyer or law firm may rebut the presumption that information relating to the representation has been transmitted by serving an affidavit describing the screening mechanism and affirming that the requirements of the Rule have been met.

[11] Under Rule 5.3, this Rule also applies to nonlawyer assistants and lawyers who previously worked as nonlawyers at a law firm. See Daines v. Alcatel, 194 F.R.D. 678 (E.D. Wash. 2000); Richards v. Jain, 168 F. Supp. 2d 1195 (W.D. Wash. 2001).

[12] - [13] [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.

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.

RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN LAWYER AND CLIENT

(a) - (d) [Unchanged.]

(e) [Reserved.]

(f) A lawyer shall not purport to act as a lawyer for any person or organization if the lawyer knows or reasonably should know that the lawyer is acting without the authority of that person or organization, unless the lawyer is authorized or required to so act by law or a court order.

Comment

[1] - [13] [Unchanged.]

Additional Washington Comments (14-17)

Agreements Limiting Scope of Representation

[14] [Unchanged.]

Acting as a Lawyer Without Authority

[15] Paragraph (f) was taken from former Washington RPC 1.2(f), which was deleted from the RPC by amendment effective September 1, 2006. The mental state has been changed from "willfully" to one of knowledge or constructive knowledge. See Rule 1.0 (f) & (j). Although the language and structure of paragraph (f) differ from the former version in a number of other respects, paragraph (f) does not otherwise represent a change in Washington law interpreting former RPC 1.2(f).

[16] If a lawyer is unsure of the extent of his or her authority to represent a person because of that person's diminished capacity, paragraph (f) of this Rule does not prohibit the lawyer from taking action in accordance with Rule 1.14 to protect the person's interests. Protective action taken in conformity with Rule 1.14 does not constitute a violation of this Rule.

[17] Paragraph (f) does not prohibit a lawyer from taking any action permitted or required by these Rules, court rules, or other law when withdrawing from a representation, when terminated by a client, or when ordered to continue representation by a tribunal. See Rule 1.16(c).

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 OF PROFESSIONAL CONDUCT (RPC)
RULE 1.15A. SAFEGUARDING PROPERTY

(a) - (g) [Unchanged.]

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

(1) - (6) [Unchanged.]

(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~~ deposits to the account without recourse to the trust account.

(8) - (9) [Unchanged.]

(i) [Unchanged.]

Comment

[1] - [20] [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.

RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 1.6. CONFIDENTIALITY OF INFORMATION

(a) - (b) [Unchanged.]

Comment

[1] - [2] [Unchanged.]

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct ~~or other law~~. See also Scope.

[4] - [26] [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.

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

(a) - (f) [Unchanged.]

(g) A lawyer who represents two or more clients~~:~~ shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, confirmed in writing. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and the participation of each person in the settlement.

(h) - (m) [Unchanged.]

Comment

[1] - [26] [Unchanged.]

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

[28] - [29] [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.

RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 3.4. FAIRNESS TO OPPOSING PARTY AND COUNSEL

(a) - (f) [Unchanged.]

Comment

[1] - [4] [Unchanged.]

[5] Washington did not adopt Model Rule 3.4(f), which delineates circumstances in which a lawyer may request that a person other than a client refrain from voluntarily giving information to another party, because the Model Rule is inconsistent with Washington law. See Wright v. Group Health Hospital, 103 Wn.2d 192, 691 P.2d 564 (~~1994~~ 1984). Advising or requesting that a person other than a client refrain from voluntarily giving information to another party may violate other Rules. See, e.g., Rule 8.4(d).

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 OF PROFESSIONAL CONDUCT (RPC)
RULE 5.5. UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) - (e) [Unchanged.]

Comment

[1] - [6] [Unchanged.]

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" ~~in paragraph (c)~~ contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] - [22] [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.

Suggested Change to CrRLJ 6.13 EVIDENCE

[(a) - (d) No changes.]

(e) <u>Certified Report of Department of Licensing Custodian</u>

(1) *Generally.* A certified report from a Department of Licensing (DOL) custodian of records pertaining to a defendant's driving record(s) and a defendant's driving status on a particular date is admissible at any hearing or trial in lieu of testimony of a DOL custodian of records. The certified report shall have the same effect as if the records custodian had testified, if the report is in substantial compliance with the following certification:

CERTIFICATE OF DEPARTMENT OF LICENSING CUSTODIAN OF RECORD

I, _____ do certify under penalty of perjury as follows:

I have been appointed by the Director of the Department of Licensing as a legal custodian of driving records of the State of Washington. I certify under penalty of perjury that such records are official and are maintained in the office of the Department of Licensing, Olympia, Washington.

All information contained in this report pertains to the driving record of:

Lic. # Birthdate:
Name: Eyes: ____ Sex ___
Hgt: ___ Wgt:_____
License Issued:_____
License Expires:_____

After a diligent search of the computer files, the official record indicates that on (date), the following statements apply to the status of the above named person:

The attached document(s) are a true and accurate copy of the document(s) maintained in the office of the Department of Licensing, Olympia, Washington.
(specify all documents attached to this affidavit)

Dated: _____

_____
(name)
Custodian of Records
Place: Olympia, Washington
Date: _____

(2) Exclusion of Test Reports: The court shall exclude the Certificate of Department of Licensing Custodian otherwise admissible under this section if:

(i) a copy of the certificate has not been served or mailed to the defendant's lawyer, if represented, at least 14 days prior to the trial or hearing date, or upon a showing of cause, such lesser time as the court deems proper, or

(ii) in the case of an unrepresented defendant, a copy of this rule in addition to a copy of the certificate has not been served or mailed to the defendant at least 14 days prior to the trial or hearing date or, upon a showing of cause, such lesser time as the court deems proper;

(iii) at least 7 days prior to the trial or hearing date, or, upon a showing of cause, such lesser time as the court deems proper, the defendant has served or mailed a written demand upon the prosecuting authority to produce a custodian of records from the Department of Licensing for trial or hearing.

(f) Continuance. The court at the time of trial shall hear testimony concerning the alleged offense and, if necessary, may continue the proceedings for the purpose of obtaining (1) the maintenance technician's presence for testimony concerning the working order of the Breathalyzer machine and the certification thereof, (2) evidence concerning the working order of the BAC Verifier Data Master instrument and the certification thereof, (3) evidence concerning the preparation of the BAC Verifier Data Master simulator solution and the certification thereof, ~~or~~ (4) evidence concerning an electronic speed measuring device or laser speed measuring device and the certification thereof, or (5) evidence concerning the certified report of the Department of Licensing. If, at the time it is supplied, the evidence is insufficient, a motion to suppress the results of such test or readings shall be granted.

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

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 11-13-061
RULES OF COURT
STATE SUPREME COURT
[June 10, 2011]

IN THE MATTER OF THE ADOPTION OF NEW GR 31A-ACCESS TO ADMINISTRATIVE RECORDS	)))	ORDER NO. 25700-A-978

The Board for Judicial Administration having recommended the adoption of New GR 31A-Access to Administrative Records, and the Court having approved the proposed new rule for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed new rule as shown below hereto is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's 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 November 30, 2011. 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 10th day of June, 2011.

For the Court

Madsen, C. J.
CHIEF JUSTICE

GR 9 COVER SHEET
Suggested New Rule

GENERAL RULES (GR)
GR 31A - Access to Administrative Records
Submitted by the Board for Judicial Administration

Purpose: At its meeting on February 18, 2011, the Board for Judicial Administration (BJA) adopted a motion to propose to the Supreme Court a new General Rule 31A. The suggested new rule sets forth standards and procedures for providing public access to the Washington State judiciary's administrative records.

The BJA developed its proposal after creating a Public Records Work Group, which included members both from within the judiciary and from outside groups interested in public access to judicial records. The Work Group recommended new standards and procedures for providing public access to the judiciary's administrative records. The BJA carefully reviewed the Work Group's recommendations, made several changes, and approved the suggested new GR 31A for the Supreme Court's consideration.

Need for a new rule. The suggested rule fills a gap in the existing laws. Currently, there is no law that broadly addresses public access to the judiciary's administrative records. The Washington State Public Records Act ("PRA") (Chapter 42.56 RCW) does not apply to judicial records. *See City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009). Furthermore, General Court Rule 31, which addresses public access to "court records," does not apply to the judiciary's administrative records, see GR 31(b); it applies only to court case files and related documents about judicial proceedings. See GR 31(c) (defining "court records" as including "[a]ny document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding" as well as indices, calendars, dockets, orders, and other official records that are related to a judicial proceeding).

The BJA, and its Public Records Work Group, believe that public access to the judiciary's administrative documents is better addressed by court rule than by inclusion within the PRA. The BJA decided to draft a new rule - separate from GR 31 — to address this topic, rather than expanding GR 31 to cover administrative records. Having two distinct rules makes clear that the existing procedures in GR 31 for access to case-related records are separate from, and are not being changed by, the new provisions on access to administrative records.

Entities covered by rule. The suggested rule would apply to judicial agencies and to courts. A few judicial agencies are specifically exempted from the suggested rule, for reasons that are set forth in explanatory comments in suggested GR 31A(c). The suggested rule also provides that judicial officers are not themselves agencies or courts, so they will not be personally required to respond to public records requests. See section (c)(5) of suggested GR 31A. Finally, entities that operate information-technology servers, and other custodians of the judiciary's administrative records, would not be allowed to disclose records except under limited circumstances. See suggested section (c)(7).

Categories of records. The suggested rule divides judicial branch records into three categories:

- "court files", which are governed by GR 31 and not by the suggested GR 31A;
- chambers records; and
- administrative records.

Chambers records. Chambers records, as defined in section (d)(4), are not public records, and are not subject to disclosure. This provision protects judicial officers from intrusion into their decision-making process. See section (d)(4) and its accompanying comments.

Presumptive access to administrative records; exemptions. Administrative records are broadly defined in section (d)(2). Administrative records are presumptively open to public access, except as exempted or prohibited in the suggested rule or in other statutes, court rules, or other laws (including the PRA). See section (e)(1).

The suggested rule incorporates by reference existing exemptions and prohibitions from other sources of law and explicitly states 11 exemptions (see suggested GR 31A (e)(1)(B)). Some of the exemptions in the suggested rule have counterparts in the PRA. For example, the PRA has a "deliberative process" exemption, which extends confidentiality to certain draft documents containing opinions or recommending policies as part of an agency's deliberative or policy-making process. RCW 42.56.280. Under case law, the PRA's deliberative process exemption extends only until such time as the agency makes the final policy decision, at which time the deliberative-process draft documents become open to public access. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 256, 884 P.2d 592 (1994). The suggested rule incorporates a modified version of the PRA's exemption; the suggested rule restates the PRA exemption but adds a sentence providing that the deliberative-process draft documents remain confidential after the final policy decision is made. See section (e)(1)(B)(4) and the accompanying comment.

Procedures. Procedures for obtaining public access to administrative documents are found primarily in section (e)(3). Procedures are provided for requesting records and for responding to records, each of which have many parallels with PRA procedures. A bifurcated, expedited appeals process is provided in section (e)(3)(B)(4), with the intent of providing prompt, final decisions. See the comment that follows sections (e)(3)(B)(4) and (5). The fees that courts and judicial agencies may charge requesters are set forth in section (g).

Sanctions for noncompliance. Monetary sanctions for noncompliance are more limited than under the PRA. See section (e)(3)(B)(6). The suggested rule precludes the imposition of per diem fines and penalties, and it limits the circumstances under which reasonable attorney fees and costs may be awarded. The suggested rule clarifies that monetary sanctions may not be assessed against individuals, only against the applicable entity. See section (e)(3)(B)(6)(iv).

Especially burdensome requests. Several sections provide courts and judicial agencies with tools for addressing particularly broad records requests and other requests that would significantly affect judicial functioning. See section (e)(3)(A)(6) (providing special procedures for extraordinary requests that impact resource limits); section (g)(4) (allowing research fees to be charged for particularly time-consuming records requests); section (g)(3) (allowing entities to provide documents in installments and to require deposits); and section (e) (placing limitations on inmate requests that involve harassment or threats to security, similar to a corresponding provision in the PRA).

Best practices. The suggested rule calls for the creation and recognition of best practices, so that the necessarily general provisions in the suggested rule can be addressed in greater detail. Courts and judicial agencies would be able to

rely on the best practices, once approved by the Supreme Court, when responding to records requests. See section (h).

Delayed effective date and prospective application. Finally, the suggested rule would have a delayed effective date, allowing time for training, development of best practices, and implementation. See section (i)(1). The rule would apply prospectively only, in the sense that it would apply only to documents that are created on or after the rule's effective date. See section (i)(1). Documents created before that date would be analyzed according to other court rules, applicable statutes and the common law balancing test, but the Public Records Act would be used for guidance only. See section (i)(2).

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.

[SUGGESTED NEW RULE]

From the Board for Judicial Administration

General Court Rule 31A

ACCESS TO ADMINISTRATIVE RECORDS

(a) Policy and Purpose. It is the policy of the judiciary to facilitate access to administrative records. Access to administrative records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, section 7 of the Washington State Constitution, restrictions in statutes, restrictions in court rules, and as required for the integrity of judicial decision-making. Access shall not unduly burden the business of the judiciary.

(b) Scope.

This rule governs the right of public access to administrative judicial records. This rule applies to all administrative records, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record. Access to court records is governed by GR 15, 22, and 31.

COMMENT: "Court records" is a term of art, defined in GR 31 as meaning case files and related documents.

(c) Application of Rule.

(1) This rule applies to the Supreme Court, the Court of Appeals, the superior courts, the district and municipal courts, and the following judicial branch agencies:

(A) All judicial entities that are overseen by a court, including entities that are designated as agencies, departments, committees, boards, commissions, task forces, and similar groups;

(B) The Superior Court Judges' Association, the District and Municipal Court Judges' Association, and similar associations of judicial officers and employees; and

(C) All subgroups of the entities listed in this section (1).

COMMENT: The elected court clerks and their staff are not included in this rule because (1) they are covered by the Public Records Act and (2) they do not generally maintain the judiciary's administrative records that are covered by this rule.

(2) This rule does not apply to the Commission on Judicial Conduct. The Commission is encouraged to incorporate any of the provisions in this rule as it deems appropriate.

COMMENT: The Commission on Judicial Conduct is not governed by a court. The commission has a heightened need for maintaining independence from courts. It would be inappropriate to dictate to the commission its policies on public records.

(3) This rule does not apply to the Washington State Bar Association. Public access to the Bar Association's records is governed by GR 12.4.

COMMENT: This paragraph (3) presumes that the Bar Association's proposed rule 12.4 (currently being drafted) is adopted.

(4) This rule does not apply to the Certified Professional Guardian Board. Public access to the board's records is governed by GR 23.

(5) A judicial officer is not a court or judicial agency.

COMMENT: This provision protects judges and court commissioners from having to respond personally to public records requests. Records requests would instead go to the court's public records officer.

(6) An attorney or entity appointed by a court or judicial agency to provide legal representation to a litigant in a judicial or administrative proceeding does not become a judicial agency by virtue of that appointment.

COMMENT: The Washington Association of Criminal Defense Lawyers (WACDL) expressed a concern that appointed criminal defense attorneys and their agencies not be covered by this rule by virtue of their appointment. Paragraph (6) removes them from the scope of this rule.

(7) A person or agency entrusted by a judicial officer, court, or judicial agency with the storage and maintenance of its public records, whether part of a judicial agency or a third party, is not a judicial agency. Such person or agency may not respond to a request for access to administrative records, absent express written authority from the court or judicial agency or separate authority in court rule to grant access to the documents.

COMMENT: Judicial e-mails and other documents sometimes reside on IT servers, some are in off-site physical storage facilities. This provision prohibits an entity that operates the IT server from disclosing judicial records. The entity is merely a bailee, holding the records on behalf of a court or judicial agency, rather than an owner of the records having independent authority to release them. Similarly, if a court or judicial agency puts its paper records in storage with another entity, the other entity cannot disclose the records. In either instance, it is the court or judicial agency that needs to make the decision as to releasing the records. The records request needs to be addressed by the court's or judicial agency's public records officer, not by the person or entity having control over the IT server or the storage area. On the other hand, if a court or judicial agency archives its records with the state archivist, relinquishing by contract its own authority as to disposition of the records, the archivist would have separate authority to disclose the records.

Because of the broad definition of "public record" appearing later in this rule, this paragraph (6) would apply

to electronic records, such as e-mails (and their meta-data) and telephone records, among a wide range of other records.

(d) Definitions.

(1) "Access" means the ability to view or obtain a copy of an administrative record.

(2) "Administrative record" means a public record created by or maintained by a court or judicial agency and related to the management, supervision, or administration of the court or judicial agency.

COMMENT: The work group has developed a list of categories of records maintained by courts and judicial agencies. The list is annotated with the work group's expectation of whether such records are subject to disclosure. The list is found as an appendix to the work group's report. It is intended for illustrative purposes only.

The term "administrative record" does not include any of the following: (1) "court records" as defined in GR 31; (2) chambers records as set forth later in this rule; or (3) an attorney's client files that would otherwise be covered by the attorney-client privilege or the attorney work product privilege.

(3) "Court record" is defined in GR 31.

(4)(A) "Chambers record" means any writing that is created by or maintained by any judicial officer or chambers staff, and is maintained under chambers control, whether directly related to an official judicial proceeding, the management of the court, or other chambers activities. "Chambers staff" means a judicial officer's law clerk and any other staff when providing support directly to the judicial officer at chambers.

COMMENT: Some judicial employees, particularly in small jurisdictions, split their time between performing chambers duties and performing other court duties. An employee may be "chambers staff" as to certain functions, but not as to others. Whether certain records are subject to disclosure may depend on whether the employee was acting in a chambers staff function or an administrative staff function with respect to that record.

(B) Chambers records are not public records. Court records and administrative records do not become chambers records merely because they are in the possession or custody of a judicial officer or chambers staff.

COMMENT: Access to chambers records could necessitate a judicial officer having to review all records to protect against disclosing case sensitive information or other information that would intrude on the independence of judicial decision-making. This would effectively make the judicial officer a de facto public records officer and could greatly interfere with judicial functions. Records may remain under chambers control even though they are physically stored elsewhere. For example, records relating to chambers activities that are stored on a judge's personally owned or workplace-assigned computer, laptop computer, cell phone, and similar electronic devices would still be chambers records. However, records that are otherwise subject to disclosure should not be allowed to be moved into chambers control as a means of avoiding disclosure.

Chambers records do not change in character by virtue of being accessible to another chambers. For example, a data base that is shared by multiple judges and their chambers staff is a "chambers record" for purposes of this rule, as long as the data base is only being used by judges and their chambers staff.

(5) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(6) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(7) "Public record" includes any writing, except chambers records and court records, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any court or judicial agency regardless of physical form or characteristics. "Public record" also includes meta-data for electronic administrative records.

COMMENT: The definition in paragraph (7) is adapted from the Public Records Act. The work group added the exception for chambers records, for consistency with other parts of the proposed rule.

(8) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

COMMENT: The definition in paragraph (8) is taken from the Public Records Act. E-mails and telephone records are included in this broad definition of "writing."

(e) Administrative Records.

(1) Administrative Records—Right of Access.

(A) The public has a right of access to court and judicial agency administrative records unless access is exempted or prohibited under this rule, other court rules, federal statutes, state statutes, court orders, or case law. To the extent that records access would be exempt or prohibited under the Public Records Act, Chapter 42.56 RCW, access is also exempt or prohibited under this rule. In addition, to the extent required to prevent a significant risk to individual privacy or safety interests, a court or judicial agency shall delete identifying details in a manner consistent with this rule when it makes available or publishes any public record; however, in each instance, the justification for the deletion shall be provided fully in writing.

COMMENT: The paragraph states that administrative records are open to public access unless an exemption or prohibition applies. The paragraph's final sentence allows agencies to redact information from documents based on significant risks to privacy or safety.

Any public-access exemptions or prohibitions from the Public Records Act and from other statutes or court rules would also apply to the judiciary's administrative records. For example, GR 33(b) provides that certain medical records

relating to ADA issues are to be sealed; the sealed records would not be subject to access under this proposed GR 31A.

(B) In addition to exemptions referred to in paragraph (A) above, the following categories of administrative records are exempt from public access:

(1) Requests for judicial ethics opinions;

COMMENT: This exemption was requested by the Judicial Ethics Advisory Committee.

(2) Identity of writing assignment judges in the appellate courts prior to issuance of the opinion;

COMMENT: This exemption was suggested by Judge Quinn Brintnall at a BJA meeting.

(3) Minutes of meetings held by judges within a court and staff products prepared for judicial discussion or decision-making during the meeting;

COMMENT: Minutes of the deliberations at judges' meetings are exempt. Records produced by staff for consideration in judges' meetings and identified in the minutes would be exempt under this section. The preliminary recommendations continue to be protected under the next subsection, after final decision. However, final decisions on administrative matters and the documents embodying them are not exempt from disclosure.

(4) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this rule, except that a specific record is not exempt when publicly cited by a court or agency in connection with any court or agency action. This exemption applies both before and after a final decision is made on the opinion or policy;

COMMENT: The first sentence of paragraph (4) is the "deliberative process" exemption from the Public Records Act, RCW 42.56.280.

Unlike the Public Records Act, in which the deliberative process exemption expires once the decision is made (see Progressive Animal Welfare Soc'y v. University of Wash., 125 Wn.2d 243, 257, 884 P.2d 592 (1994)), this rule provides a continuing exemption.

(5) Evaluations and recommendations for candidates seeking appointment or employment within a court or judicial agency;

COMMENT: Paragraph (5) is intended to encompass documents such as those of the Supreme Court's Capital Counsel Committee, which evaluates attorneys for potential inclusion on a list of attorneys who are specially qualified to represent clients in capital cases.

(6) Personal identifying information, including individuals' home contact information, birth dates, Social Security numbers, driver's license numbers, and identification/security photographs;

COMMENT: The exemption was requested by staff for the Office of Public Defense. The work group considered including private financial information in this provision, but ultimately concluded that financial information is already addressed in the Public Records Act's exemptions.

(7) An attorney's request to a court or judicial agency for a trial or appellate court defense expert, investigator, or social worker, any report or findings submitted to the attorney or court or judicial agency by the expert, investigator, or social worker, and the invoicing and payment of the expert, investigator or social worker;

COMMENT: The exemption was requested by the Office of Public Defense.

(8) Documents, records, files, investigative notes and reports, including the complaint and the identity of the complainant, associated with a court's or judicial agency's internal investigation of a complaint against the court or judicial agency or its contractors during the course of the investigation. The outcome of the court's or judicial agency's investigation is not exempt;

COMMENT: The exemption was requested by the Office of Public Defense.

(9) Family court evaluation and domestic violence files when no action is legally pending;

(10) Family court mediation files; and

(11) Juvenile court probation's social files.

COMMENT: The three preceding paragraphs create exemptions for files that are already covered, at least in part, by exemptions in state statutes or elsewhere. These paragraphs are included here to make sure that there is no doubt about their exempt status. The inclusion of these three paragraphs should not be interpreted as excluding other statutory (or rule) exemptions that are not expressly listed here. Per section (e)(1)(A) above, exemptions existing in other rules, statutes, and other authorities apply to records under this rule, even if they are not expressly stated here.

FURTHER COMMENT: Additional express exemptions were also requested. Some were not included in the rule because it is currently believed that the items were already exempt from disclosure under other laws. These items include:

- *Private financial information, including financial account numbers;*
- *Dockets/index information for protected case types; and*
- *Testing/screening materials/results.*

Other items were not included for other reasons, including when insufficient information was available to evaluate the items, such as information about the implications of excluding an item and about the variety of practices used by courts and judicial agencies. These items include:

- *Investigative records of regulatory or disciplinary agencies;*
- *Copyrighted information; and*
- *Performance measures for evaluating court processes. (Some of this subject matter is taken care of with the deliberative process exemption, above.)*

(2) Chambers Records. Chambers records are not subject to disclosure.

(3) Administrative Records—Process for Access.

(A) Administrative Records—Procedures for Records Requests.

(1) AGENCIES TO ADOPT PROCEDURES. Each court and judicial agency must adopt a policy implementing this rule and setting forth its procedures for accepting and responding to administrative records requests. The policy must include the designation of a public records officer and must require

that requests for access be submitted in writing to the designated public records officer. Best practices for handling administrative records requests shall be developed under the authority of the Board for Judicial Administration.

(2) PUBLICATION OF PROCEDURES FOR REQUESTING ADMINISTRATIVE RECORDS. Each court and judicial agency must prominently publish the procedures for requesting access to its administrative records. If the court or judicial agency has a website, the procedures must be included there. The publication shall include the public records officer's work mailing address, telephone number, fax number, and e-mail address.

(3) INITIAL RESPONSE. Each court and judicial agency must initially respond to a written request for access to an administrative record within five working days of its receipt. The response shall acknowledge receipt of the request and include a good-faith estimate of the time needed to respond to the request. The estimate may be later revised, if necessary. For purposes of this provision, "working days" mean days that the court or judicial agency, including a part-time municipal court, is open.

(4) COMMUNICATION WITH REQUESTER. Each court and judicial agency must communicate with the requester as necessary to clarify the records being requested. The court or judicial agency may also communicate with the requester in an effort to determine if the requester's need would be better served with a response other than the one actually requested.

(5) SUBSTANTIVE RESPONSE. Each court and judicial agency must respond to the substance of the records request within the timeframe specified in the court's or judicial agency's initial response to the request. If the court or judicial agency is unable to fully comply in this timeframe, then the court or judicial agency should comply to the extent practicable and provide a new good faith estimate for responding to the remainder of the request. If the court or judicial agency does not fully satisfy the records request in the manner requested, the court or judicial agency must justify in writing any deviation from the terms of the request.

(6) EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS. If a particular request is of a magnitude that the court or judicial agency cannot fully comply within a reasonable time due to constraints on the court's or judicial agency's time, resources, and personnel, the court or judicial agency shall communicate this information to the requester. The court or judicial agency must attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the court's or judicial agency's response, which may include a schedule of installment responses. If the court or judicial agency and requester are unable to reach agreement, then the court or judicial agency shall respond to the extent practicable and inform the requester that the court or judicial agency has completed its response.

(7) LIMITATIONS ON INMATE REQUESTS.

(i) The inspection or production of any nonexempt public record by persons incarcerated in federal, state, local, or privately operated correctional facilities may be enjoined pursuant to this section. The request shall be made by motion and shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise.

(ii) The injunction may be requested by a court or judicial agency which is the recipient of the records request or its representative, or by a person to whom the records request specifically pertains or his or her representative. The injunction request must be filed in the superior court in which the court or judicial agency which is the recipient of the records request is located. If the injunction request is filed by a superior court the decision on the injunction must be made by a visiting judicial officer.

(iii) The court may enjoin all or any part of a request or requests. In order to issue an injunction, the court must find by a preponderance of the evidence that: the request was made to harass or intimidate the court or judicial agency or its employees; fulfilling the request would likely threaten the security of the court or judicial agency; fulfilling the request would likely threaten the safety or security of staff, family members of staff, or any other person; or fulfilling the request may assist criminal activity. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by the same requestor or an entity owned or controlled in whole or in part by the same requestor.

(iv) In deciding whether to enjoin a records request the court may consider all relevant factors including, but not limited to: other requests by the requestor; the type of record or records sought; statements offered by the requestor concerning the purpose for the request; whether disclosure of the requested records would likely harm any person or vital government interest; whether the request seeks a significant and burdensome number of documents; the impact of disclosure on the court's or judicial agency's security and order, the safety or security of court or judicial agency staff, families, or others; and the potential deterrence of criminal activity.

(v) The court or judicial agency shall not be liable for any attorney fees, costs, civil penalties, or fines under (e)(3)(B)(6) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal.

(B) Administrative Records—Review of Public Records Officer's Response.

(1) NOTICE OF REVIEW PROCEDURES. The public records officer's response to a public records request shall include a written summary of the procedures under which the requesting party may seek further review.

(2) TIMELINE FOR SEEKING REVIEW. The timelines set forth in section (e)(3)(A) shall apply likewise to requests for review of the public records officer's response.

(3) FURTHER REVIEW WITHIN COURT OR AGENCY. Each court and judicial agency shall provide a method for review by the judicial agency's director, presiding judge, or judge designated by the presiding judge. For a judicial agency, the presiding judge shall be the presiding judge of the court that oversees the agency. The court or judicial agency may also establish intermediate levels of review. The court or judicial agency shall make publicly available the applicable forms. The review proceeding is informal and summary. The review proceeding shall be held within five working days. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

(4) ALTERNATIVE REVIEW. As an alternative to review under section (e)(3)(B)(3), a requesting person may seek

review by a person outside the court or judicial agency. If the requesting person seeks review of a decision made by a court or made by a judicial agency that is directly reportable to a court, the outside review shall be by a visiting judicial officer. If the requesting person seeks review of a decision made by a judicial agency that is not directly reportable to a court, the outside review shall be by a person agreed upon by the requesting person and the judicial agency. In the event the requesting person and the judicial agency cannot agree upon a person, the presiding superior court judge in the county in which the judicial agency is located shall either conduct the review or appoint a person to conduct the review. The review proceeding shall be informal and summary. In order to choose this option, the requesting person must sign a written waiver of any further review of the decision by the person outside the court or judicial agency. The decision by the person outside the court or judicial agency is final and not appealable. Attorney fees and costs are not available under this option.

COMMENT: The bifurcated procedures for review are intended to provide flexible, prompt, informal, and final procedures for review of public records decisions. The option for a visiting judge allows a requester to have the review heard by an outside decision-maker; in the interest of obtaining prompt, final decisions, a requester selecting this option would be required to waive further review. If the Legislature creates a new entity to review public records decisions made by agencies of the executive branch, then the work group recommends that the BJA consider using this entity for review of judicial records decisions as well.

(5) REVIEW IN SUPERIOR COURT.

(i) A requester may seek review of a decision under section (e)(3)(B)(3) by commencing an action in superior court. The burden of proof shall be on the court or judicial agency that made the public records decision to establish that refusal to permit public inspection and copying is in accordance with section (e)(1) which exempts or prohibits disclosure in whole or in part of specific information or records. Judicial review of all court or judicial agency actions shall be de novo. The superior court shall apply section (e)(1) of this rule in determining the accessibility of the requested documents. Any ambiguity in the application of section (e)(1) to the requested documents shall be resolved by analyzing access under the common law's public-access balancing test.

COMMENT: A civil proceeding to review a denial may be brought in superior court in the same manner as under the Public Records Act.

The common law's balancing test is addressed in detail in Cowles Publishing v. Murphy, 96 Wn.2d 584 (1981), and Beuhler v. Small, 115 Wn.App. 914 (2003). The interest in disclosure is balanced against the extent to which disclosure poses a significant risk to individual privacy or safety.

(ii) The right of de novo review is not available to a requester who sought review under the alternative process set forth in section (e)(3)(B)(4).

COMMENT: The Supreme Court may wish to clarify any period of limitation on the bringing of an action for judicial review under this section, expressly or by reference to the limitations on such actions under the Public Records Act.

(6) MONETARY SANCTIONS.

(i) In the de novo review proceeding under section (e)(3)(B)(5), the superior court may in its discretion award reasonable attorney fees and costs to a requesting party if the court finds that (1) the court's or judicial agency's response was deficient, (2) the requester specified the particular deficiency to the court or judicial agency, and (3) the court or judicial agency did not cure the deficiency.

(ii) Sanctions may be imposed against either party under CR 11, if warranted.

(iii) Except as provided in sections (e)(3)(B)(6)(i) and (ii), a court or judicial agency may not be required to pay attorney fees, costs, civil penalties, or fines.

COMMENT: Monetary penalties for failure to produce records available under the Public Records Act are not available under this rule.

(iv) No individual judicial officers or court or judicial agency employees may be assessed a monetary sanction under this section (6).

COMMENT: Only a court or judicial agency may be assessed monetary sanctions, not an individual. This is consistent with the approach of the Public Records Act. The monetary sanctions would be payable from state/city/county funds, absent some insurance or risk pool availability.

(f) Administrative Records—Court and Judicial Agency Rules. Each court by action of a majority of the judges may from time to time make and amend local rules governing access to administrative records not inconsistent with this rule. Each judicial agency may from time to time make and amend agency rules governing access to its administrative records not inconsistent with this rule.

(g) Judicial Records—Charging of Fees.

(1) A fee may not be charged to view administrative records.

(2) A fee may be charged for the photocopying or scanning of judicial records. If another court rule or statute specifies the amount of the fee for a particular type of record, that rule or statute shall control. Otherwise, the amount of the fee may not exceed the amount that is authorized in the Public Records Act, Chapter 42.56 RCW.

(3) The court or judicial agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If a court or judicial agency makes a request available on a partial or installment basis, the court or judicial agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed within 30 days, the court or judicial agency is not obligated to fulfill the balance of the request.

COMMENT: Paragraph (3) incorporates a modified version of the Public Records Act's "deposit and installments" language.]

(4) A fee not to exceed $30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.

COMMENT: The authority to charge for research services is discretionary, allowing courts to balance the competing interests between recovering the costs of their response and ensuring the open administration of justice. The fee should not exceed the actual costs of response. It is anticipated that

a best-practices group will consider further guidelines in this area, including fee waivers.

(h) Best Practices. Best practice guidelines adopted by the Supreme Court may be relied upon in acting upon public requests for documents.

COMMENT: A new work group is contemplated to recommend best practices to guide courts and judicial agencies in implementing this rule's necessarily broad, general standards. Courts and judicial agencies would benefit greatly from further work in applying the general principles to the specific types of documents and requests that are most likely to arise. For example, best practices could include designating more specific lists of records that are presumptively characterized as "chambers records" or as being within other categories of records under this rule. The BJA's first work group prepared some documents to assist a new best-practices group in this regard. The best-practices group could also recommend the best methods and resources for training judges and staff.

(i) Effective Date of Rule.

(1) This rule goes into effect on July 1, 2012, and applies to records that are created on or after that date.

COMMENT: A delayed implementation date is used to allow time for development of best practices, training, and implementation.

(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test. The Public Records Act, Chapter 42.56 RCW, does not apply to judicial records, but it may be used for non-binding guidance.

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.

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 11-14-004
ATTORNEY GENERAL'S OFFICE

[Filed June 22, 2011, 2:11 p.m.]

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

The Washington attorney general issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the attorney general's office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the attorney general's office of your interest by July 27, 2011. This is not the due date by which comments must be received. However, if you do not notify the attorney general's office of your interest in commenting on an opinion request by this date, the opinion may be issued before your comments have been received. You may notify the attorney general's office of your intention to comment by calling (360) 586-0728, or by writing to the Office of the Attorney General, Solicitor General Division, Attention Jeffrey T. Even, Deputy Solicitor General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you may be provided with a copy of the opinion request in which you are interested; information about the attorney general's opinion process; information on how to submit your comments; and a due date by which your comments must be received to ensure that they are fully considered.

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

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

Opinion Docket No. 11-06-04
Request by Jeff Hall, Court Administrator

1. QUESTION

Does the doubling of monetary penalties pursuant to RCW 46.61.440(3) apply to speeding in a school or playground crosswalk (RCW 46.61.440[1]) and/or speeding in a school or playground speed zone (RCW 46.61.440[2])?

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 11-14-005
NOTICE OF PUBLIC MEETINGS
LIFE SCIENCES DISCOVERY FUND AUTHORITY

[Filed June 22, 2011, 4:10 p.m.]

Please note the updated information in bold below for the life sciences discovery fund authority (agency #3560) 2011 board meetings. Note as well that we will post our public meeting agenda and any call-in information as appropriate on our web site http://www.lsdfa.org/about/staff/meetings.html prior to each meeting.

2011 Public Board Meeting Dates

(times are approximate and subject to change)

Monday, June 27	**12:30 - 12:32 p.m. public session; 12:32 - 1:15 p.m. executive session; *approximately* 1:15 p.m. - 1:30 p.m. public session**	**Via teleconference only: Public call 1-888-272-2618, no password needed**

Wednesday, July 13	9:00 a.m. - 9:30 a.m.; 11:00 a.m. - 1:15 p.m. (Note: There will be an executive session from 9:30 a.m. - 11:00 a.m.	Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA and via phone 1-888-272-2618, no password needed
Tuesday, September 27	8:30 a.m. - 5:00 p.m.	Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA **and via phone 1-888-272-2618, no password needed**
Tuesday, November 1	8:30 a.m. - 5:00 p.m.	Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA **and via phone 1-888-272-2618, no password needed**

WSR 11-14-006

NOTICE OF PUBLIC MEETINGS

ATTORNEY GENERAL'S OFFICE

(Public Records Exemptions Accountability Committee)

[Filed June 23, 2011, 9:40 a.m.]

The following is a revised 2011 meeting schedule for the public records exemptions accountability committee ("sunshine committee").

Please note that the meeting originally scheduled for October 18, 2011, has been changed to September 28, 2011.

- **March 22, 2011, 9 a.m. - 1 p.m.**
  John A. Cherberg Building
  Conference Room B/C
  Olympia, Washington
- **May 17, 2011, 9 a.m. - 1 p.m.**
  John A. Cherberg Building
  Senate Hearing Room 3
  Olympia, Washington
- **August 16, 2011, 9 a.m. - 1 p.m.**
  John A. Cherberg Building
  Conference Room ABC
  Olympia, Washington
- **September 28, 2011, 9 a.m. - 1 p.m.**
  Attorney General's Office
  Room N385
  7141 Cleanwater Lane S.W.
  Tumwater, WA 98501

Meetings will begin at 9 a.m. and last until 1 p.m. Some meetings may be rescheduled or relocated. The meeting location, agenda, and other information will be available five to seven days prior to each meeting at http://www.atg.wa.gov/opengovernment/sunshine.aspx. Please visit this web site to join the sunshine committee listserv to receive notices about when materials are posted.

Please contact Rebecca Podszus if you have any questions regarding this meeting agenda at Rebecca Podszus, Program Specialist, Policy and Government Affairs, Washington State Attorney General's Office, (360) 586-2683, rebeccap3@atg.wa.gov.

WSR 11-14-019

NOTICE OF PUBLIC MEETINGS

SHORELINE COMMUNITY COLLEGE

[Filed June 24, 2011, 9:50 a.m.]

In compliance with the Open Public Meetings Act, the Shoreline Community College board of trustees will participate in the TACTC (Trustees Association for Community and Technical Colleges) annual meeting and the Governance Institute for Student Success beginning at 11:00 a.m. on Sunday, June 26, 2011, and concluding at 1:00 p.m. on Tuesday, June 28, 2011. No final action will be taken.

This special meeting will take place at the Suncadia Resort in Cle Elum, Washington.

Please call (206) 546-4552 or e-mail Lori Y. Yonemitsu at lyonemitsu@shoreline.edu if you need further information.

WSR 11-14-020

NOTICE OF PUBLIC MEETINGS

OLYMPIC COLLEGE

[Filed June 24, 2011, 9:50 a.m.]

Pursuant to RCW 42.30.080, Olympic College hereby gives notice of a special meeting of the board of trustees of Olympic College, District Three, to be held June 29, 2011, in the College Service Center, President's Conference Room, 1600 Chester Avenue, Bremerton, WA.

WSR 11-14-021

NOTICE OF PUBLIC MEETINGS

WENATCHEE VALLEY COLLEGE

[Filed June 24, 2011, 9:50 a.m.]

The Wenatchee Valley College board of trustees has made the following changes to their 2011 meeting schedule:

- August 10 - summer retreat (changed from July 13)
- September 14 - board meeting (changed from September 21)

BOARD OF TRUSTEE[S] MEETING SCHEDULE
2011

UNLESS OTHERWISE NOTIFIED, WORK SESSIONS WILL BEGIN AT 10 A.M. AND BOARD OF TRUSTEE[S] MEETINGS AT 3 P.M.

This schedule is subject to change

January 18, 2011 (board retreat)
January 19, 2011
February 16, 2011
March 16, 2011
April 19, 2011 (board retreat)
April 20, 2011 (at Omak campus)
May 18, 2011
June 15, 2011
July (no meeting)
August 10 (board retreat)
September 14, 2011
October 19, 2011 (at Omak campus)
November 16, 2011
December (no meeting)

WSR 11-14-028

NOTICE OF PUBLIC MEETINGS

COLUMBIA BASIN COLLEGE

[Filed June 27, 2011, 10:16 a.m.]

The Columbia Basin board of trustees will participate in a training session offered by the Governance Institute for Student Success (GISS) on June 26-28, 2011, at Suncadia Resort in Cle Elum, Washington. The GISS, a Bill & Melinda Gates Foundation supported initiative, was designed to help governing boards develop leadership tools needed to improve student success and completion. No official action will be taken during this session, which is for training purposes only.

If you have any questions, please contact Lupe Perez at (509) 542-4802.

WSR 11-14-029

NOTICE OF PUBLIC MEETINGS

COLUMBIA BASIN COLLEGE

[Filed June 27, 2011, 10:17 a.m.]

The Columbia Basin board of trustees' meetings will be held on the second Monday of every month with the exception of July, August, and September when the board annual retreat will be held this year (the date and time TBD). The regularly scheduled meetings will begin at 4:00 p.m. and will be held in the CBC Board Room.

If you have any questions, please contact Lupe Perez at (509) 542-4802.

WSR 11-14-033

NOTICE OF PUBLIC MEETINGS

LIFE SCIENCES DISCOVERY FUND AUTHORITY

[Filed June 27, 2011, 2:45 p.m.]

Please note the updated information struck through or underlined below for the life sciences discovery fund authority (agency #3560) 2011 board meetings. Note as well that we will post our public meeting agenda and any call-in information as appropriate on our web site http://www.lsdfa.org/about/staff/meetings.html prior to each meeting.

2011 Public Board Meeting Dates

(times are approximate and subject to change)

~~Wednesday, July 13~~ Meeting cancelled	~~9:00 a.m. - 9:30 a.m.; 11:00 a.m. - 1:15 p.m. (Note: There will be an executive session from 9:30 a.m. - 11:00 a.m.)~~	~~Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA and via phone 1-888-272-2618, no password needed~~
Tuesday, September 27	8:30 a.m. - 5:00 p.m.	Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA and via phone 1-888-272-2618, no password needed

Tuesday, November 1	8:30 a.m. - 5:00 p.m.	Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA and via phone 1-888-272-2618, no password needed

WSR 11-14-035
AGENDA
EASTERN WASHINGTON UNIVERSITY

[Filed June 28, 2011, 8:36 a.m.]

Semi-Annual Agenda for Rules Under Development (Per RCW 34.05.314) July 2011

1. Rule making for a revision to chapter 172-168 WAC, Library policies, will continue during the second half of 2011.

2. Rule making concerning a revision to chapter 172-122 WAC, General conduct code, is anticipated during the second half of 2011.

3. Rule making concerning a revision to chapter 172-136 WAC, University facilities, is anticipated during the second half of 2011.

4. Rule making concerning a revision to chapter 172-144 WAC, Special charges—Financial responsibility, is anticipated during the second half of 2011.

5. Rule making concerning a revision to chapter 172-124 WAC, Disposition of obligations owed to university by students, is anticipated during the second half of 2011.

6. Rule making for a revision to chapter 172-09 WAC, Administration of duties and obligations required by Initiative 276—Academic transcripts of Eastern Washington State College students, is anticipated during the second half of 2011.

For more information concerning the above rules under review or development contact Trent Lutey, University Policy Administrator, Eastern Washington University, 214 Showalter Hall, Cheney, WA 99004, phone (509) 359-6322, fax (509) 359-7036, or e-mail tlutey@ewu.edu.

WSR 11-14-036
AGENDA
ENERGY FACILITY SITE EVALUATION COUNCIL
UTILITIES AND TRANSPORTATION COMMISSION

[Filed June 28, 2011, 9:05 a.m.]

The Washington utilities and transportation commission submits its semi-annual rule development agenda report for publication in the Washington State Register pursuant to RCW 34.05.314. This report also includes the rule development agenda for the energy facility site evaluation council.

Please direct any questions to Kippi Walker at (360) 664-1139 or kwalker@utc.wa.gov.

Utilities and Transportation Commission Semi-Annual Rules Development Agenda (July 1 - December 31, 2011)

This report is the utilities and transportation commission's semi-annual report rule development agenda for publication in the Washington State Register pursuant to RCW 34.05.314.

Additional rule-making activity not on the agenda may be undertaken to meet conditions not now anticipated.

Dates that are in "bold" print, indicate that filing has occurred. All other dates are projected. The commission maintains a schedule of rule-making activity that is updated several times per month. See <www.utc.wa.gov>.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE AND STATUS			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102 or CR-105	CR-103 HEARING	
CURRENT:						
New WAC chapter	Wastewater companies	Chris Rose (360) 664-1303	**6/22/11**	2/12	4/12	Consider new rules requiring wastewater companies to obtain a certificate of public convenience and necessity prior to owning or developing a "system of sewerage" that provides service to one hundred or more customers for compensation to implement SSB 5034.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE AND STATUS			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102 or CR-105	CR-103 HEARING	
PROPOSED:						
WAC 480-15 480-30	Fitness standard rule making	Sharon Wallace (360) 664-1143	To be determined	To be determined	To be determined	Consider the need to modify existing rules in chapter 480-15 WAC (household goods) and chapter 480-30 WAC (passenger Transportation) to define "fitness" for transportation industries regulated by the statutory "fit, willing and able" entry standard.
WAC 480-07 480-120 480-123	Telecom fee rule making	Sharyn Bate (360) 664-1295	To be determined	To be determined	To be determined	As authorized in the 2011-13 budget, consider the need to establish fees to recover the costs of performing Telecom Act services from telecommunications companies who receive these services.
"999" sections in various chapters of Title 480 WAC	Adoption by reference expedited rule making	Betty Young (360) 664-1202		(CR-105) To be determined		Annual update of the citations to material that's incorporated by reference.
ON-HOLD ***(Per Executive Order 10-06):***						
WAC 480-120	E911 Excise tax clean-up expedited rule making	Sharyn Bate (360) 664-1295		(CR-105) To be determined	N/A	Amend existing rules and statute references in chapter 480-120 WAC in response to SB 6846.
WAC 480-75 480-93	Pipeline GIS data submission standards	Dave Lykken (360) 664-1219	To be determined	To be determined	To be determined	Consider the need to establish rules specifying the geographic and pipeline-related data pipeline operators must report to the commission under RCW 80.88.080.
WITHDRAWN ***(Per Executive Order 10-06):***						
WAC 480-70-016(3)	Solid waste—Definitions rule making	Penny Ingram (360) 664-1242	**5/7/08 Withdrawn 12/8/10 WSR 11-01-059**			Consider the circumstances under which a hauler of construction and demolition waste is not required to have a solid waste certificate.
WAC 480-04	Public access to information and records	Adam Torem (360) 664-1138	**9/22/10 Withdrawn 12/7/10 WSR 11-01-049**			Review of rules in chapter 480-04 WAC relating to public access to information and records.

Energy Facility Site Evaluation Council
Semi-Annual Rules Development Agenda
(July 1 - December 31, 2011)

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE AND STATUS			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102 or CR-105	CR-103 HEARING	
CURRENT:						
PROPOSED:						
WAC 463-58	Charges for EFSEC services	Al Wright (360) 664-1360	To be determined	To be determined	To be determined	Amend existing rule in response to SHB 2527. (Revisions to EFSEC jurisdiction and charges for EFSEC services.)

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE AND STATUS			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102 or CR-105	CR-103 HEARING	
WAC 463-06 463-58	Administrative rules	Al Wright (360) 664-1360	To be determined	To be determined	To be determined	Amend existing rules in response to E2SHB 2658. (Administrative revisions resulting from transfer of EFSEC to UTC.)

David W. Danner
Executive Director
and Secretary

WSR 11-14-041
NOTICE OF PUBLIC MEETINGS
RECREATION AND CONSERVATION OFFICE
(Salmon Recovery Funding Board)

[Filed June 28, 2011, 11:22 a.m.]

The salmon recovery funding board has established a location for the regular meeting scheduled for August 31 through September 1, 2011.

The meeting will be held at the Department of Natural Resources Southeast Regional Office, 713 Bowers Road, Ellensburg, WA 98926-9301. Driving directions and other contact information are available on-line at http://www.dnr.wa.gov/ContactDNR/RegionalDirectory/Pages/Home.aspx.

For further information about the meeting, please contact Rebecca Connolly, rebecca.connolly@rco.wa.gov, (360) 902-2637. Meeting information and materials will be available on-line soon at http://www.rco.wa.gov/boards/srfb_meetings.shtml.

WSR 11-14-042
DEPARTMENT OF HEALTH

[Filed June 28, 2011, 11:33 a.m.]

DECLARATION OF VACCINE SHORTAGE AND SUSPENSION OF RCW 70.95M.115(2) FOR CERTAIN INFLUENZA 2011 VACCINES IN MULTIDOSE VIAL PRESENTATIONS

WHEREAS RCW 70.95M.115(2) prohibits vaccinating a person who is known to be pregnant or under three years of age with influenza vaccine that contains more than 1.0 micrograms thimerosal per 0.5 milliliter dose. RCW 70.95M.115(3) authorizes the secretary of the department of health to temporarily suspend those limits if there is an outbreak of vaccine-preventable disease or a shortage of vaccine that complies with the limits.

Certain influenza vaccines produced in multidose vial exceed state thimerosal limits. Pregnant women or children under three years of age in Washington state may not ordinarily receive those vaccines. Influenza vaccines in single-dose presentations, whether a single-dose vial, prefilled syringe, or nasal spray, do not exceed state thimerosal limits. Pregnant women and children under three may receive single-dose influenza vaccine under Washington law.

On October 7, 2010, I declared a shortage of vaccine for the 2010 influenza virus that complies with the limits of RCW 70.95M.115(2). I also temporarily suspended the thimerosal limits imposed by RCW 70.95M.115(2) on use of the Influenza 2010 Trivalent Vaccines in multidose vial (5mL) presentations. The suspension will last until June 30, 2011. I did this to allow children under three and pregnant women access to protection against the 2010 influenza virus they would not otherwise have. It specifically applies to a subset of these two populations whom a health care provider determined to be at risk of allergic reaction to latex. The declaration also explained that I would determine if an extension of this declaration and suspension is appropriate for the 2011-2012 influenza season.

In July 2010, the federal Food and Drug Administration notified vaccine manufacturers that the tip caps used on prefilled syringes may contain natural rubber latex which may cause allergic reactions in latex-sensitive patients. Manufacturers issued notification to providers in the United States and changed their product label to include this information. The situation remains the same for the 2011 influenza vaccine supply. Rubber stoppers to be used on pre-filled syringes of influenza vaccine for the 2011-2012 influenza season may also contain natural rubber latex. Manufacturers will include the same notices in their product inserts. Influenza vaccine is produced annually and is in limited supply.

NOW, THEREFORE, I, Mary C. Selecky, secretary of the department of health, under RCW 70.95M.115(3), and under the circumstances set forth above and in my original declaration signed October 7, 2010, declare that there remains a shortage of vaccine that complies with the limits in RCW 70.95M.115(2) for influenza vaccine for pregnant women and children under age three who are at risk of allergic reaction to latex.

I also, under RCW 70.95M.115(3), effective immediately, temporarily extend the suspension of thimerosal limits imposed by RCW 70.95M.115(2) on use of the Influenza 2011 Trivalent Vaccines in multidose vial (5mL) presentations licensed for use in the United States and produced by the manufacturers GlaxoSmithKline, Novartis, Sanofi Pasteur, and CSL Biotherapies for administration to pregnant women and children under age three whom a health care provider determines to be at risk of allergic reaction to latex.

This suspension is in effect until June 30, 2012. At the end of this period of suspension, I will reassess the available supply of vaccine to determine if it is necessary to continue this declaration of vaccine shortage.

Signed this 27th day of June 2011, at Olympia, Washington.

Mary C. Selecky
Secretary

WSR 11-14-043
DEPARTMENT OF HEALTH

[Filed June 28, 2011, 11:35 a.m.]

Suspension of Legal Limits of Mercury-Containing Vaccine for 2011 Seasonal Influenza

PARENT/PATIENT NOTICE

June 2011

Why am I receiving this notice? Washington law sets a limit on how much mercury can be in vaccines for pregnant women and children younger than three years old. The law allows the secretary of health to suspend the state's legal mercury limit for a vaccine if there's a shortage of vaccine available to protect the public's health against vaccine-preventable disease.

When the limits are suspended, state law requires the following people be informed they are being given a vaccine containing mercury levels over those limits:

- Women known to be pregnant or lactating.
- The parent or legal guardian of a child under eighteen years of age receiving the vaccine.

Why is the law being suspended? Effective June 27, 2011, the secretary of health extended the suspension of the state's legal limits on mercury in flu vaccine for people in these groups who have or may have latex allergies. The tip cap of the 2011-2012 single dose thimerosal-free flu vaccine that comes in prefilled syringes may contain trace amounts of natural rubber latex.

This means the health care provider may advise that children under three and pregnant women who have or may have latex allergies avoid vaccine from thimerosal-free single dose syringes. Supplies of other types of thimerosal-free flu vaccine are limited and can't be used for everyone.

Suspending the thimerosal limits law removes barriers so people can choose to be protected. Pregnant women, children under three, and people allergic to latex, including those with spina bifida who are considered at high risk for a latex allergy, are at high risk for serious complications if they get the flu. Vaccination is voluntary, and we encourage people to talk to their health care provider about getting vaccinated.

What is mercury and what is thimerosal?[1] Thimerosal - a preservative used in some vaccines - is an organic compound that contains a form of mercury called ethylmercury. This is different from the type found in the environment called methylmercury. Studies comparing ethylmercury and methylmercury suggest that the type used in the flu vaccine is removed from the body more quickly than the type of mercury in the environment.

The federal Food and Drug Administration (FDA) licenses flu vaccines and does not place any limits on thimerosal in vaccines for any people. There's no reliable evidence that the small doses of thimerosal in flu vaccine causes harm, except for minor swelling and redness at the injection site. A wide safety margin was included in the allowable levels for organic mercury exposure. The benefits of thimerosal-containing influenza vaccine outweigh any theoretical risk.

Where can I get more information? Flu vaccine information (www.doh.wa.gov/flunews) is available on-line (www.fda.gov/BiologicsBloodVaccines/vaccines/QuestionsaboutVaccines/ucm070430.htm).

[1] National Network of Immunization Information: http://www.immunizationinfo.org/issues/thimerosal-mercury

Food and Drug Administration at www.fda.gov/cber/vaccine/thimerosal.htm.

WSR 11-14-044
AGENDA
DEPARTMENT OF FINANCIAL INSTITUTIONS

[Filed June 28, 2011, 11:59 a.m.]

Semi-Annual Agenda for Rules Under Development July 1 - December 31, 2011

DIVISION OF CONSUMER SERVICES

- Amendments to chapter 208-660 WAC relating to the Mortgage Broker Practices Act, chapter 19.146 RCW. An amendment is necessary to fix an inconsistency with an existing federal law. The inconsistency is in the mortgage loan originator license renewal process. The inconsistency puts the state law at odds with the federal law and could result in a mortgage loan originator renewing their license under lower standards than were required to obtain the original license. These rules fall within the OFM guidelines of "required by federal or state law" implementing the governor's executive order suspending noncritical rule making.

DIVISION OF SECURITIES

- Chapter 460-24A WAC amendments to rules relating to investment advisers. The Dodd-Frank Wall Street Reform and Consumer Protection Act raised the threshold for federal jurisdiction from $25 million AUM to $100 million AUM. This will result in Washington gaining approximately three hundred new IA licensees that switch from federal to state jurisdiction, an increase of sixty percent. Rule making will be necessary to address regulatory issues presented by these new licensees. These rules fall within the OFM guidelines of "required by federal or state law" implementing the governor's executive order suspending noncritical rule making.
- Chapter 460-33A WAC amendments to rules relating to mortgage paper securities. These rules regulate mortgage broker-dealers which make "hard-money" loans and sell interests in those loans to

investors. These companies have been significantly impacted by the economic downturn and two have been placed into receivership as a result of petitions by the division. As the only agency regulating these companies, it is important that the division regularly examine and update its rules to address regulatory concerns and market changes. The securities division has been working with its mortgage broker-dealer registrants for several months on revisions to the mortgage papers rules and believes that most of the amendments it proposes will be supported by registrants. Any rules that are not fully supported by industry will be necessary to protect the public welfare.

WSR 11-14-045
NOTICE OF PUBLIC MEETINGS
WINE COMMISSION
[Filed June 28, 2011, 12:57 p.m.]

2011 SCHEDULE OF COMMISSIONER BOARD MEETINGS
Updated as of June 24, 2011

Below are the updated 2011 meeting dates for the Washington wine commission board:

Friday, January 28, Seattle (board retreat), 8:00 a.m. - 5:00 p.m., Waterfront Seafood Grill, 2801 Alaskan Way, Pier 70, Seattle, WA 98121, facility phone (206) 956-8171.

Friday, February 11, Richland, 1:30 p.m. - 4:30 p.m., Tri-Cities Visitor & Convention Bureau, 7130 West Grandridge Boulevard, Suite B, Kennewick, WA 99336, facility phone (509) 735-8486.

Friday, March 11, Seattle.

Friday, April 8, Richland.

Friday, May 6, Seattle.

Friday, June 10, Richland.

Friday, July 8, Seattle, **July meeting has been cancelled.**

Friday, August 5, Seattle, ***WSWC Office, 1201 Western Avenue, Suite 450, Seattle, 98101-3402.***

Friday, September 9, Richland.

October, no meeting.

Friday, November 4, Seattle, ***WSWC Office, 1201 Western Avenue, Suite 450, Seattle, 98101-3402.***

Friday, December 2, Seattle, ***WSWC Office, 1201 Western Avenue, Suite 450, Seattle, 98101-3402.***

All meetings (except otherwise noted above) begin at 9:00 a.m. and end at 12:00 p.m. The locations for the Richland and Seattle meetings are as follows (unless noted differently above).

WSU Tri-Cities
2710 University Drive
Room CIC 210
Richland, WA 99354-1671
Switchboard: (509) 372-7000.

Washington State Housing Finance Commission
1000 Second Avenue
28th Floor
Seattle, WA 98104
Switchboard: (206) 464-7139.

WSR 11-14-046
AGENDA
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed June 28, 2011, 1:23 p.m.]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-15 issue of the Register.

WSR 11-14-049
AGENDA
WASHINGTON STATE PATROL
[Filed June 29, 2011, 10:15 a.m.]

Semi-Annual Rule-Making Agenda
July through December 2011

The following is the Washington state patrol's (WSP) semi-annual rule-making agenda for publication in the Washington State Register pursuant to RCW 34.05.314.

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

If you have any questions about this rule-making agenda, please contact Melissa Van Gorkom, Rules Coordinator, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail WSPrules@wsp.wa.gov.

WAC Citation	Subject Matter	Current Activity		
		Preproposal (CR-101)	Proposed (CR-102 or Expedited (CR-105)	Permanent (CR-103)
WAC 204-21-022	Body requirements. The agency anticipates a need to update this language with the passage of ESSB 5585 in the 2011 session.	2011-2012	2011-2012	2011-2012

WAC Citation	Subject Matter	Current Activity		
		Preproposal (CR-101)	Proposed (CR-102 or Expedited (CR-105)	Permanent (CR-103)
Chapter 204-50 WAC	Ignition interlock breath alcohol devices. The agency is reviewing whether there is a need to update this language with the passage of E2SHB 1789 in the 2011 session.	2011-2012	2011-2012	2011-2012
Chapter 204-96 WAC	Vehicle impounds. The agency is reviewing whether there is a need to update this language with the passage of E2SSB 5000 in the 2011 session.	2011-2012	2011-2012	2011-2012
Chapter 204-91A WAC	Towing business. The agency is reviewing whether there is a need to update this language with the passage of E2SSB 5000 and HB 1215 in the 2011 session.	2011-2012	2011-2012	2011-2012
Chapter 204-95 WAC	Limousine carriers. The agency is reviewing whether there is a need to update this language with the passage of SSB 5502 in the 2011 session.	2011-2012	2011-2012	2011-2012

Melissa Van Gorkom
Rules Coordinator

WSR 11-14-056
AGENDA
DEPARTMENT OF NATURAL RESOURCES

[Filed June 29, 2011, 4:27 p.m.]

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

Please call (360) 902-1393 or e-mail peggy.murphy@dnr.wa.gov if you have questions.

RULES DEVELOPMENT AGENDA

July to December 2011

The following WAC section will be removed: WAC 332-18-140.

The purpose of the rule change is to achieve consistency between RCW 78.44.087 [(3)](f) and WAC 332-18-140. In 2006, the Surface Mining Act, under RCW 78.44.087 [(3)](f) "Assignment of interests in real property within the state of Washington," was removed from the statute. The change removes surface mine reclamation rule, WAC 332-18-140, which allows the acceptance of interest in real property in lieu of other performance security for surface mine reclamation permits.

The following WAC chapter will be updated: Chapter 332-24 WAC.

The purpose of the rule change is to implement SSHB [2ESHB] 1087 and achieve consistency with chapter 332-24 WAC related to silviculture burn permit fees. The change in chapter 332-24 WAC will allow DNR's burn permit fees to cover more of the expenses in administering the program, consistent with the directives in SSHB [2ESHB] 1087 approved by the 2011 legislature.

Peggy Murphy
Rules Coordinator

WSR 11-14-059
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF LICENSING
(Real Estate Commission)

[Filed June 30, 2011, 8:22 a.m.]

The real estate commission will hold a special meeting on August 4, 2011, from 11:00 a.m. to 11:30 a.m. or until completion of business at the Department of Licensing, Black Lake 3, 2nd Floor Conference Room, 2000 5th Avenue West, Olympia, WA 98502.

It will be a teleconference call only for commissioners.

WSR 11-14-068
NOTICE OF PUBLIC MEETINGS
BATES TECHNICAL COLLEGE
[Filed June 30, 2011, 10:25 a.m.]

The board of trustees of Bates Technical College has rescheduled its regularly scheduled meeting of September 27, 2011, to September 20, 2011, at Bates Technical College, 1101 South Yakima Avenue, Tacoma, WA 98405, in the Clyde Hupp Boardroom. The meeting will begin at 3:00 p.m.

WSR 11-14-074
INTERPRETIVE STATEMENT
DEPARTMENT OF REVENUE
[Filed June 30, 2011, 2:13 p.m.]

INTERPRETIVE STATEMENT ISSUED

The department of revenue has issued the following excise tax advisory (ETA):

ETA 9001.2011 ***Digital Products—General Implementation.***

ETA 9001.2009 was issued on July 24, 2009, to explain the department's initial phased process for implementing chapter 535, Laws of 2009 (ESHB 2075). The department has reissued ETA 9001 to explain that the phased implementation process ends June 30, 2011. This ETA also explains how to submit a "digital products" letter ruling request to the department.

A copy of this document is available via the internet at Recent Rule and Interpretive Statements, Adoptions, and Repeals.

Alan R. Lynn
Rules Coordinator

WSR 11-14-075
HEALTH CARE AUTHORITY
[Filed June 30, 2011, 2:51 p.m., effective July 1, 2011]

Effective July 1, 2011, the health care authority (HCA) replaces the department of social and health services (DSHS) as Washington state's medicaid single state agency (see 2E2SHB 1738, chapter 15, Laws of 2011 1st sp. sess.).

This change transfers the authority for rules related to medicaid and medical care services from DSHS to HCA. HCA requests that the code reviser recodify the following chapters and sections of the Washington Administrative Code (WAC) from Title 388 WAC to Title 182 WAC:

Old WAC Number	New WAC Number
388-500	182-500
388-501	182-501
388-502	182-502
388-502A	182-502A
388-530	182-530
388-531	182-531
388-532	182-532
388-533	182-533
388-534	182-534
388-535	182-535
388-535A	182-535A
388-537	182-537
388-538	182-538
388-539	182-539
388-540	182-540
388-543	182-543
388-544	182-544
388-545	182-545
388-546-0001	182-546-0001
388-546-0100	182-546-0100
388-546-0150	182-546-0150
388-546-0200	182-546-0200
388-546-0250	182-546-0250
388-546-0300	182-546-0300
388-546-0400	182-546-0400
388-546-0425	182-546-0425
388-546-0450	182-546-0450
388-546-0500	182-546-0500
388-546-0600	182-546-0600
388-546-0700	182-546-0700
388-546-0800	182-546-0800
388-546-0900	182-546-0900
388-546-1000	182-546-1000
388-546-1500	182-546-1500
388-546-2500	182-546-2500
388-546-3000	182-546-3000
388-546-4000	182-546-4000
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388-557	182-557

June 29, 2011
Doug Porter
Director

WSR 11-14-076
ATTORNEY GENERAL'S OFFICE

[Filed June 30, 2011, 2:54 p.m.]

Semi-Annual Rule-Making Agenda
July 1 through December 31, 2011

This is the office of the attorney general's semi-annual rule-making agenda for publication in the Washington State Register pursuant to RCW 34.05.314.

If you have questions about this rule-making agenda, please contact Rebecca Podszus, Rules Coordinator, P.O. Box 40100, Olympia, WA 98504-0100, phone (360) 586-2683, fax (360) 664-0228, e-mail rebeccap3@atg.gov.

WAC Citation	Subject Matter	Current Activity		
		Preproposal (CR-101)	Proposed (CR-102) or Expedited (CR-105)	Permanent (CR-103)
44-06	Amendment to the AGO rules on public records.	Filed March 12, 2008, WSR 08-07-032		

Additional activity on the proposed amendment to the attorney general's office rules on public records is currently suspended. Action may be pursued in the future.

Rebecca Podszus
Rules Coordinator

WSR 11-14-085
INTERPRETIVE STATEMENT
DEPARTMENT OF REVENUE

[Filed July 1, 2011, 10:29 a.m.]

INTERPRETIVE STATEMENT ISSUED

The department of revenue has issued the following excise tax advisory (ETA):

ETA 3167.2011 ***Taxability of Fees Charged for Amusement and Recreation Services***.

Charges for amusement and recreation services provided to a consumer are subject to retail sales tax under RCW 82.04.050. This ETA clarifies the distinction between nontaxable charges and taxable charges often associated with sport activities and sporting events, such as:

- Basketball, football, hockey, and soccer leagues;
- Cycling, running, swimming, and triathlon events; and
- Baseball, golf, softball, and tennis tournaments.

A copy of this document is available via the internet at Recent Rule and Interpretive Statements, Adoptions, and Repeals.

Alan R. Lynn
Rules Coordinator

WSR 11-14-096
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed July 1, 2011, 11:23 a.m.]

ADULT FAMILY HOME STAKEHOLDER MEETING

The department intends to hold a stakeholder group meeting to discuss upcoming changes to the adult family home regulations as a result of several bills that passed the legislature during the 2011 legislative session.

Adult Family Home Stakeholder Group Meeting
August 3, 2011
9:00 a.m. to 12:00 p.m.
Rose Conference Room
Residential Care Services Headquarters
Blake Building
4500 10th Avenue S.E.
Lacey, WA 98503

If you have any questions, need directions or a parking permit, please contact Mike Tornquist via e-mail at tornqmj@dshs.wa.gov or (360) 725-3204.

WSR 11-14-101
OFFICE OF THE GOVERNOR
[Filed July 5, 2011, 9:32 a.m.]

NOTICE OF APPEAL
RCW 34.05.330(3)

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

On May 13, 2011, the Governor's Office received an appeal from William Osmunson relating to the Board of Health's denial of a petition to repeal or amend WAC 246-290-460. The Governor's Office denied the Petition on June 27, 2011.

DATE: July 1, 2011

Narda Pierce
General Counsel to the Governor

June 27, 2011

Bill Osmunson, DDS, MPH, President
Washington Action for Safe Water
1418 - 112th Avenue, No. 200
Bellevue, WA 98004
Via email: bill@teachingsmiles.com

RE: Administrative Rule Appeal — WAC 246-290-460

Dear Dr. Osmunson:

The Board of Health (Board) has denied your "Petition for Rule Making" submitted to the Board on February 27, 2011. Your petition asked the Board to amend WAC 246-290-460 to require:

> Where fluoride concentrations in group A water systems average above 10 ppb (parts per billion) of fluoride or if the system is without the ability to measure low concentrations of fluoride, water suppliers shall include the following notice with each customer's water bill, "This water contains fluoride which may contribute to cancer and tumors for at risk persons."

Your appeal of the Board's denial of your petition was received by the Governor's Office on May 13, 2011. After careful review, I have determined to deny your appeal of the Board's decision.

On January 7, 2011, the U.S. Environmental Protection Agency (EPA) and Department of Health and Human Services (HHS) announced that the agencies would review the standards and guidelines based on the most up to date scientific data for fluoride from the National Academies of Science in an effort to "continue to provide the maximum protection to the American people to support good dental health, especially in children." I understand HHS proposes that community water systems adjust the amount of fluoride to 0.7 milligrams of fluoride per liter of water to achieve an optimal fluoride level that provides the best balance of protection from tooth decay while limiting the risk of dental fluorosis that may result in discoloration or pits in the tooth enamel.

Currently WAC 246-290-460 requires that public water systems choosing to fluoridate shall maintain fluoride concentrations in the range 0.8 through 1.3 milligrams of fluoride per liter of water throughout the distribution system. The Board has indicated it will consider revising this rule if changes are necessary to ensure that the allowed fluoridation level set in WAC 246-290-260 is under the maximum level allowed by EPA, or if HHS changes the recommended optimal fluoride level. The Board looks to the federal agencies for standards and recommendations regarding the safety of drinking water. To this end, the Board has filed a Preproposal Statement of Inquiry for rule making, awaiting the final rule from HHS and the EPA. *See* Washington State Register 11-11-046.

After review, I agree with the Board that the rule language you propose is not supported by the majority scientific opinion, including reports from the Centers for Disease Control (CDC) and National Academies of Science. According to the CDC, "[t]he weight of the peer-reviewed scientific evidence does not support an association between water fluoridation and any adverse health effect or systemic disorder, including an increased risk for cancer." The National Research Council described the evidence on any link between fluoride and cancer as tentative and recommended that EPA await the results of ongoing research before determining if an update of a cancer risk assessment for fluoride is necessary.

For these reasons, I am denying your appeal and declining to recommend that the Board initiate further rule-making proceedings.

Sincerely,

Christine O. Gregoire
Governor

WSR 11-14-102
NOTICE OF PUBLIC MEETINGS
PUGET SOUND CLEAN AIR AGENCY
[Filed July 5, 2011, 9:33 a.m.]

This is to notify you of a change in location for the July 28, 2011, board meeting for publication in the Washington State Register. The short board meeting will be held at the Tacoma Municipal Building from 8:45 to 9:15 a.m. followed by a study session bus trip for board members. If you have any questions, please call Carol Pogers at (206) 689-4080.

WSR 11-14-103
AGENDA
WASHINGTON STATE UNIVERSITY
[Filed July 5, 2011, 10:48 a.m.]

Semi-Annual Agenda for Rules Under Development July 2011

Pursuant to RCW 34.05.314, the following is Washington State University's (WSU) semi-annual agenda for Washington Administrative Code (WAC) rules under development

for the period of July 1 through December 31, 2011. Additional rule-making activity not now anticipated may also be added as conditions warrant between semi-annual agendas.

1. **Chapter 504-40 WAC, Library policies, rules and regulations,** repeal of this chapter. Filed CR-101 in May 2011. Anticipate filing CR-102 in July 2011.

2. **Chapter 504-41 WAC, Library policies, rules and regulations,** new chapter regarding library policies, rules, and regulations, including but not limited to, administration and use of the library and library materials. Filed CR-101 in May 2011. Anticipate filing CR-102 in July 2011.

3. **Chapter 504-26 WAC, Standards of conduct for students,** rule-making amendments to WSU's standards of conduct for students' WACs. Anticipate filing CR-101 in July 2011.

For more information regarding the semi-annual agenda, contact Ralph Jenks, Rules Coordinator, Washington State University, P.O. Box 641225, Pullman, WA 99164-1225, phone (509) 335-2004, e-mail prf.forms@wsu.edu.

Ralph Jenks
Rules Coordinator

WSR 11-14-108
NOTICE OF PUBLIC MEETINGS
WALLA WALLA COMMUNITY COLLEGE
[Filed July 6, 2011, 7:51 a.m.]

The board of trustees of Walla Walla Community College, District Twenty, will hold a special retreat meeting on July 25, 2011, beginning at 9:00 a.m., in the Board Room, Walla Walla Community College, 500 Tausick Way, Walla Walla, WA. The purpose of this retreat meeting is to discuss issues affecting the college, including a review of the college's mission and goals, indicators of institutional effectiveness, enrollment, financial, and facility master planning. No action will be taken.

For additional information, please contact Jerri Ramsey, executive assistant to the president, at (509) 527-4274, fax (509) 527-4249, e-mail jerri.ramsey@wwcc.edu, web www.wwcc.edu.

WSR 11-14-109
NOTICE OF PUBLIC MEETINGS
WALLA WALLA COMMUNITY COLLEGE
[Filed July 6, 2011, 7:51 a.m.]

The board of trustees of Walla Walla Community College, District Number Twenty, has cancelled its July 20, 2011, meeting.

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

WSR 11-14-116
AGENDA
DEPARTMENT OF ECOLOGY
[Filed July 6, 2011, 10:02 a.m.]

Pursuant to RCW 34.05.314, following is the department of ecology's rule agenda for July - December 2011.

If you have any questions please contact Bari Schreiner at (360) 407-6998 or e-mail Bari.Schreiner@ecy.wa.gov.

Rule-Making Agenda July 2011

Dates in bold mean the agency filed the official paperwork (CR-101, CR-102, CR-105, or CR-103). Dates not in bold are estimated dates for when ecology expects to file the official paperwork.

This agenda includes all current rule-making activities for ecology. Ecology has evaluated its current and anticipated rules in development as they relate to Governor Gregoire's executive order to suspend noncritical rule making.

For more information, please visit ecology's web site: http://www.ecy.wa.gov/laws-rules/rulemaking_suspension.html.

WAC Chapter	Program	Chapter Title	CR-101 Filing Date	CR-102 Filing Date	CR-103 Filing Date	Program Contact
173-400 and 173-401 AO 11-04 4/11	AQ	General regulations for air pollution sources and operating permit regulation	**5/4/11**	**6/22/11**	August 2011	Linda Whitcher
173-422A AO 08-01 3/08	AQ	Motor vehicle emission inspection	**8/5/08**	**2/15/11**	July 2011	John Raymond
173-423 AO 11-01 3/11	AQ	Low emission vehicles	**4/12/11**	Fall 2011	Winter 2011/2012	Neil Caudill
173-901 AO 10-17 12/10	HZ	Better brakes	**2/1/11**	May 2012	October 2012	Ian Wesley
173-26-070 AO 08-15 8/08	SEA	Spokane County shoreline master program	**8/5/08**	To be determined		Peter Skowlund

WAC Chapter	Program	Chapter Title	CR-101 Filing Date	CR-102 Filing Date	CR-103 Filing Date	Program Contact
173-182 AO 11-06 6/11	SPPR	Oil spill contingency plan	**7/6/11**	July 2012	December 2012	Ben Rau
173-183 AO 11-05 6/11	SPPR	Preassessment screening and oil spill compensation schedule regulations	**7/6/11**	July 2012	December 2012	Rebecca Post
173-360 AO 08-08 4/08	TCP	Underground storage tank regulations	**7/23/08**	December 2011	May 2012	Martha Hankins
173-351 AO 07-15 7/07	W2R	Criteria for municipal solid waste landfills	**8/21/07**	September 2011	February 2012	Kathleen Scanlan or Wayne Krafft
173-334 AO 09-04 3/09	W2R	Children's safe products rule—Pilot rule making	**5/20/09**	**10/22/10 Continuance filed 12/16/10 Supplemental 5/4/11**	July 2011	John Williams
173-350 AO 10-06 3/10	W2R	Solid waste handling standards	**5/26/10**	Winter 2012	Spring 2012	Kathleen Scanlan
173-98 AO 10-01 1/10	WQ	Uses and limitations of the water pollution control revolving fund	**Emergency Rule - Effective 4/20/11 Expires 8/18/11**			Joseph Coppo
173-98 and 173-95A AO 10-14 8/10	WQ	Uses and limitations of the water pollution control revolving fund and uses and limitations of the centennial clean water funds	**8/19/10 withdrawal 4/6/11 New CR-101 4/6/11**	**6/22/11**	September 2011	Joseph Coppo
173-224 AO 11-02 3/11	WQ	Wastewater discharge permit fees	**4/11/11**	July 2011	September 2011	Bev Poston
173-525 AO 05-03 3/05	WR	Grays Elochoman Instream Resources Protection and Water Management Program WRIA 25	**3/2/05**	**4/19/10 Continuance filed 6/16/10 Expired 11/1/10**	To be determined	Travis Burns
173-526 AO 05-04 3/05	WR	Cowlitz Instream Resources Protection and Water Management Program WRIA 26	**3/2/05**	**4/19/10 Continuance filed 6/16/10 Expired 11/1/10**	To be determined	Travis Burns
173-175 AO 10-09 5/10	WR	Dam safety	**5/24/10**	Summer/Fall 2011	Winter/Spring 2012	David Cummings
173-165 AO 11-03 4/11	WR	Certified water rights examiners	**5/4/11**	September 2011	November 2011	Janet Rajala
508-14 AO 10-16 11/10	OCR	Columbia Basin Project—Groundwaters	**11/15/10**	March 2012	September 2012	Carolyn Comeau

Bari Schreiner

WSR 11-14-121
AGENDA
DEPARTMENT OF COMMERCE

[Filed July 6, 2011, 11:02 a.m.]

Following is the department of commerce's semi-annual rules development agenda for publication in the Washington State Register, pursuant to RCW 34.05.314. There may be additional rule-making activity not on the agenda as conditions warrant. Please contact Nick Demerice if you have questions at nick.demerice@commerce.wa.gov or (360) 725-4010.

Semi-Annual Rule-Making Agenda
July 1 through December 31, 2011

WAC Citation	Subject Matter/Purpose of Rule	Current Activity/ Approximate Filing Date
New rule within Title 365 WAC	Per RCW 43.325.080, the department shall define practicability, and clarify how state agencies and local government subdivisions will be evaluated in determining whether they have met the goals set out in RCW 43.19.648.	Anticipated completion in November 2011.
Chapter 365-230 WAC	Update lead-based paint accreditation to be consistent with EPA due out this July around dust wipe sampling. Changes may make current rules obsolete.	Anticipated completion in December 2011.
Chapter 365-120 WAC	Repeal chapter 365-120 WAC, State funding of local emergency shelter and transitional housing, operating and rent. These rules are no longer necessary due to the enactment of chapter 43.185C RCW that governs the operation of commerce homeless programs.	Anticipated completion in November 2011.

Nick Demerice
Rules Coordinator

WSR 11-14-124
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed July 6, 2011, 11:34 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.

Medicaid Purchasing Administration (MPA)
Division of Legal Services

Document Title: # Memo 11-44.
Subject: Tribal health program.
Effective Date: July 1, 2011.
Document Description: The department of social and health services (the department) informs Indian Health Services (IHS) and Tribal 638 Health Clinic providers of the following:

- **Retroactive to January 1, 2011,** the department has increased the encounter rate in the IHS/office of management and budget (OMB);
- **Effective for dates of service on and after July 1, 2011,** the department will reimburse all claims at the increased encounter rate submitted during calendar year 2011.

To receive a copy of the interpretive or policy statements, contact Amber Dassow, MPA, 636 8th Street, Olympia, WA 98504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@dshs.wa.gov, web site http://hrsa.dshs.wa.gov.

WSR 11-14-125
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed July 6, 2011, 11:34 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.

Medicaid Purchasing Administration (MPA)
Division of Legal Services

Document Title: # Memo 11-48.
Subject: Trauma supplemental payments.
Effective Date: June 6, 2011.
[Document Description:] The MPA overspent its SFY 2010 trauma care fund (TCF) appropriation for trauma care physicians. In accordance with WAC 388-531-2000 (7)(d), MPA will recoup the amount of the overpayment from physicians and physician groups who received lump sum trauma supplemental payments for SFY 2010. The amount to be recouped from each provider is based on that provider's final percentage share of the physician TCF liquidation pool. MPA will begin recoupment immediately and complete this action by June 30, 2011.

To receive a copy of the interpretive or policy statements, contact Amber Dassow, MPA, 636 8th Street, Olympia, WA 98504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@dshs.wa.gov, web site http://hrsa.dshs.wa.gov.

WSR 11-14-126
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed July 6, 2011, 11:35 a.m.]

Notice of Interpretive or Policy Statement

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

Economic Services Administration
Division of Child Support (DCS)

Document Title: Policy Clarification Memo 11-006.

Subject: Garnishment of bank accounts containing federal benefits.

Effective Date: June 21, 2011.

Document Description: This policy clarification memo (PCM) explains the DCS process for garnishment of bank accounts containing federal benefits.

To receive a copy of the interpretive or policy statements, contact Janet Hazelton, DCS, 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/.