WSR 13-15-054

RULES OF COURT

STATE SUPREME COURT

[July 10, 2013]

IN THE MATTER OF THE ADOPTION OF AMENDMENTS TO REVISED NEW SET OF RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)	))))	ORDER NO. 25700-A-1029

The Supreme Court Rules Committee having recommended the adoption of the Washington State Bar Association's proposed amendments to the Revised New Set of Rules for Enforcement of Lawyer Conduct (ELC), 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 January 1, 2014.

DATED at Olympia, Washington this 10th day of July, 2013.

	Madsen, C.J.
C. Johnson, J.	Stephens, J.
Owens, J.	Wiggins, J.
Fairhurst, J.	Gonzalez, J.
J. M. Johnson, J.	Gordon McCloud, J.

RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

TITLE 1 – SCOPE, JURISDICTION, AND DEFINITIONS

RULE 1.1 SCOPE OF RULES

These rules govern the procedure by which a lawyer may be subjected to disciplinary sanctions or actions for violation of the Rules of Professional Conduct adopted by the Washington Supreme Court.

RULE 1.2 ~~JURISDICTION~~ DISCIPLINARY AUTHORITY

Except as provided in RPC 8.5(c), any lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction and these Rules for Enforcement of Lawyer Conduct, regardless of where the lawyer's conduct occurs~~, or permitted by rule, to practice law in this state, and any lawyer specially admitted by a court of this state for a particular case, is subject to these Rules for Enforcement of Lawyer Conduct.~~ A lawyer not admitted to practice in this jurisdiction is also subject to the disciplinary authority of this jurisdiction and these rules if the lawyer provides or offers to provide any legal services in this jurisdiction. ~~Jurisdiction~~ Disciplinary authority exists regardless of the lawyer's residency or authority to practice law in this state. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

RULE 1.3 DEFINITIONS

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

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

(b) "Association counsel" means counsel for the Association other than disciplinary counsel.

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

(~~c~~d) "Board" when used alone means the Disciplinary Board.

(~~d~~e) "Chair" when used alone means the Chair of the Disciplinary Board.

(~~e~~f) "Clerk" when used alone means the Clerk to the Disciplinary Board.

(~~f~~g) "Disciplinary action" means sanctions under rule 13.1 and admonitions under rule 13.5.

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

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

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

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

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

(*l*) "Party" means disciplinary counsel or respondent, except in rules 2.3(h) and 2.6(~~e~~d) "party" also includes a grievant.

(m) "Respondent" means a lawyer against whom a grievance is filed or a lawyer investigated by disciplinary counsel.

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

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

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

(q) "RPC" means the Rules of Professional Conduct adopted by the Washington Supreme Court.

(r) Words of authority.

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

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

(3) "Should" means recommended but not required, except:

(A) in rules 2.3(h) and 2.6, "should" has the meaning ascribed to it in the Code of Judicial Conduct; and

(B) in title 12, "should" has the meaning ascribed to it in the Rules of Appellate Procedure.

RULE 1.4 NO STATUTE OF LIMITATION

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

RULE 1.5 VIOLATION OF DUTIES IMPOSED BY THESE RULES

A lawyer violates RPC 8.4(l) and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

- respond to inquiries or requests about matters under investigation, rule 5.3 (f) and (g);
- file an answer to a formal complaint or to an amendment to a formal complaint, rule 10.5;
- cooperate with discovery and comply with hearing orders, rules 10.11(~~g~~h) and 5.5;
- attend a hearing and bring materials requested by disciplinary counsel, rule 10.13 (b) and (c);
- respond to subpoenas and comply with orders enforcing subpoenas, rule 10.13(e);
- notify clients and others of inability to act, rule 14.1;
- discontinue practice, rule 14.2;
- file an affidavit of compliance, rule 14.3;
- maintain confidentiality, rule 3.2(f);
- report being disciplined or transferred to disability inactive status in another jurisdiction, rule 9.2(a);
- cooperate with an examination of books and records, rule 15.2;
- notify the ~~Association~~ Office of Disciplinary Counsel of a trust account overdraft, rule 15.4(d);
- ~~file a declaration or questionnaire certifying compliance with RPC 1.15A, rule 15.5;~~
- comply with conditions of probation, rule 13.8;
- comply with conditions of a stipulation, rule 9.1;
- pay restitution, rule 13.7; or
- pay costs, rule 5.3(~~f~~h) or 13.9.

TITLE 2 – ORGANIZATION AND STRUCTURE

RULE 2.1 SUPREME COURT

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

RULE 2.2 BOARD OF GOVERNORS; DISCIPLINARY SELECTION PANEL

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

(1) ~~supervises the general functioning of~~ through the Executive Director, provides administrative and managerial support to enable the Office of Disciplinary Counsel, the Disciplinary Board, review committees, ~~disciplinary counsel,~~ and other Association staff and appointees to perform the functions specified by these rules~~, and adjunct investigative counsel~~;

(2) makes appointments, removes those appointed, and fills vacancies as provided in these rules; and

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

(b) Limitation of Authority. The Board of Governors, officers of the Association, and the Executive Director of the Association have ~~has~~ no right or responsibility to direct the investigations, prosecutions, appeals or discretionary decisions of the Office of Disciplinary Counsel under these rules, or to review hearing officer, ~~hearing panel,~~ review committee, or Disciplinary Board decisions or recommendations in specific cases.

(c) Restriction on Advising or Representing Respondents or Grievants. ~~Former members of the Board of Governors and former Presidents of the Association are subject to the restrictions on representing respondents in rule 2.13(b).~~ Current and former members of the Board of Governors, Executive Directors, and officers of the Association are subject to the restrictions set forth in rule 2.14

(d) Disciplinary Selection Panel. The Disciplinary Selection Panel makes recommendations to the Board of Governors for appointment, reappointment, and removal of Disciplinary Board members, hearing officers, chief hearing officer, and Conflicts Review Officers. The Panel is appointed by the Supreme Court, upon the recommendation of the Board of Governors, shall include a Board of Governors member who serves as its chair, and should include, without limitation, one or more former Chairs of the Disciplinary Board, one or more current or former hearing officers, and one or more former nonlawyer members of the Disciplinary Board.

(e) Diversity. The Disciplinary Selection Panel and the Board of Governors considers diversity in gender, ethnicity, disability status, sexual orientation, geography, area of practice, and practice experience, when making appointments under Rules 2.2, 2.3, 2.5, 2.7, and 2.9.

RULE 2.3 DISCIPLINARY BOARD

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

(b) Membership.

(1) *Composition*. The Board consists of not fewer than ~~three~~ four nonlawyer members, appointed by the Court, and not fewer than ~~one~~ ten lawyers ~~member from each congressional district~~, appointed by the Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel.

(2) *Qualifications*. A ~~l~~Lawyer Board members must ~~have been active members of the Association for at least seven years~~ be an Active member of the Association, have been an Active or Judicial member of the Association for at least five years, and have no record of public discipline.

(3) *Voting.* Each member, including the Chair and the Vice Chair, whether nonlawyer or lawyer, has one vote. Recused members may not attend or participate in the Board's deliberations on a matter. Board staff may attend Board deliberations, to serve as a resource.

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

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

(A) ~~the~~ The member initially decides whether to remain on the Board or take a leave of absence until the matter is resolved~~:~~.

(B) ~~if~~ If the member chooses to remain on the Board, the Conflicts Review Officer who is conducting the review of the grievance under rule 2.7 must promptly provide a confidential summary of the grievance to ~~the Board of with a Gover-~~

~~nors~~ a different Conflicts Review Officer who is not conducting the review. A copy of the summary is provided to the member at the same time~~;~~.

(C) ~~t~~The ~~Board of Governors~~ Conflicts Review Officer who is not conducting the review of the grievance should then, or at any time thereafter ~~it~~ as deem~~s~~ed appropriate, determine if the member is so impaired from serving on the Disciplinary Board that the member should take, or continue to take, a leave of absence to protect the integrity of the discipline system. In making this determination, the ~~Board of Governors~~ Conflicts Review Officer should consider, among other things, the facts, circumstances, and nature of the misconduct alleged, the possible outcome, and the extent of public concern regarding the matter~~;~~.

(D) ~~t~~The ~~Board of Governors's deliberations are~~ Conflict Review Officer's determination is confidential. All materials ~~of the Board of Governors~~ used in connection with such a ~~matter~~ determination are confidential unless released under rule 3.4 (d) or (e).

(c) Terms of Office. The term of office for a Board member is three years. Newly created Board positions may be filled by appointments of less than three years, as designated by the Court ~~or the Board of Governors~~, to permit as equal a number of positions as possible to be filled each year. Terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members continue to serve until replaced, except a member's term of office ends immediately if a disciplinary sanction is imposed.

(d) Chair. The Supreme Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, annually designates one lawyer member of the Board to act as Chair and another as Vice Chair. The Vice Chair serves in the absence of or at the request of the Chair.

(e) Unexpired Terms. The Supreme Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, fills unexpired terms in ~~lawyer~~ membership on the Board. ~~The Supreme Court fills unexpired terms in nonlawyer membership.~~ A member appointed to fill an unexpired term will complete the unexpired term of the member replaced, and may be reappointed to a consecutive term if the unexpired term is less than 18 months.

(f) Pro Tempore Members. If a Board member is disqualified or unable to function, the Chair may, by written order, designate a member pro tempore. A member pro tempore must have ~~either~~ previously served on the Board ~~or be appointed as an alternate Board member by the Board of Governors if a lawyer or by the Supreme Court if a nonlawyer~~. Only a lawyer may be appointed to substitute for a lawyer member, and only a nonlawyer to substitute for a nonlawyer member.

(g) Meetings. The Board meets regularly at times and places it determines. The Chair may convene special Board meetings. In the Chair's discretion, the Board may meet and act through electronic, telephonic, written, or other means of communication.

(h) Disqualification.

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

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

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

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

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

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

(ii) is acting as a lawyer in the matter;

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

(E) the member served as a hearing officer ~~or hearing panel member~~ for a hearing on the matter, or served on a review committee that issued an admonition to the lawyer regarding the matter.

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

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

(k) Restriction on Representing or Advising Respondents or Grievants. ~~F~~Current and former members of the Disciplinary Board are subject to the restrictions set forth in rule 2.~~13(b)~~14.

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.

RULE 2.4 REVIEW COMMITTEES

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

(b) Membership. The Chair appoints three or more review committees of three members each from among the Board members. Each review committee consists of two lawyers and one nonlawyer. The Chair may reassign members among the several committees on an interim or permanent basis. The Chair does not serve on a review committee.

(c) Review Committee Chair. The Chair of the Disciplinary Board designates one member of each review committee to act as its chair.

(d) Terms of Office. A review committee member serves as long as the member is on the Board.

(e) Distribution of Cases. The Clerk assigns matters to the several review committees under the Chair's direction, equalizing the committee's caseloads as possible.

(f) Meetings. A review committee meets at times and places determined by the review committee chair, under the general direction of the Chair of the Disciplinary Board. In the review committee chair's discretion, the committee may meet and act through electronic, telephonic, written, or other means of communication. A majority of a review committee constitutes a quorum. A review committee can only act upon at least two affirmative votes.

(g) Adjunct Review Committee Members. Notwithstanding other provisions of these rules, if deemed necessary to the efficient operation of the discipline system, the Board may authorize the Chair to appoint former Board members as adjunct review committee members for a period deemed necessary by the Chair, but those appointments terminate at the end of the term of the Chair making the appointment. The Chair may remove adjunct review committee members when deemed appropriate. The Chair may appoint adjunct review committee members to existing review committees or may create adjunct review committees. An adjunct member has the same authority as a regular review committee member and must comply with rule 2.3 (b)(5) but is not otherwise a Board member.

RULE 2.5 HEARING OFFICERS ~~OR PANEL~~

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

(b) Qualifications. A hearing officer must be an active member of the Association, have been an active or judicial member of the Association for at least seven years, have no record of public discipline, and have experience as an adjudicator or as an advocate in contested adjudicative hearings.

~~**(c) Hearing Officer Selection Panel.** The hearing officer selection panel makes recommendations to the Board of Governors for appointment, reappointment, and removal of hearing officers. The panel is appointed by the Board of Governors and includes, but is not limited to, a Board of Governors member who serves as its chair, one or more former Chairs of the Disciplinary Board, and one or more former nonlawyer members of the Disciplinary Board.~~

(~~d~~c) Appointment. The Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, appoints hearing officers to the hearing officer list ~~giving consideration to recommendations of the hearing officer selection panel~~. The list should include as many lawyers as ~~the Board of Governors considers~~ necessary to carry out the provisions of these rules effectively and efficiently. ~~In making appointments, the Board of Governors should consider diversity in gender, ethnicity, geography, and practice experience. The Board of Governors also maintains a list of nonlawyers willing to serve on hearing panels under section (h).~~

(e~~d~~) Terms of Appointment. Appointment to the hearing officer list~~, or the list of nonlawyers,~~ is for an initial period of ~~one~~ two years, followed by periods of ~~five~~ four years. Reappointment is in the ~~Board of Governors~~' discretion of the Supreme Court upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel. A hearing officer ~~or panel member~~ may continue to act in any matter assigned before his or her term expires. On the recommendation of the ~~hearing officer~~ Board of Governors in consultation with the Disciplinary ~~s~~Selection ~~p~~Panel, the ~~Board of Governors~~ Supreme Court may remove a person from the list of hearing officers ~~or from the list of nonlawyer panel members~~.

(~~f~~c) Chief Hearing Officer.

(1) Appointment. The ~~Board of Governors~~ Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, appoints a chief hearing officer for a renewable term of two years. ~~who, in addition to hearing matters, assigns cases, monitors and evaluates the performance of hearing officers and panel members, establishes requirements for and supervises hearing officer and hearing panel member training, administers hearing officer compensation, hears prehearing motions when no hearing officer has been assigned, and performs other administrative duties necessary for an efficient and effective hearing system.~~ The person appointed as chief hearing officer must meet the qualifications for hearing officers set forth in paragraph (b) above, have significant experience in the adjudication of contested matters, and have substantial administrative and managerial skills. If the chief hearing officer position is vacant or the chief hearing officer has recused or been disqualified from a particular matter, the Chair may, as necessary, perform the ~~administrative~~ duties of chief hearing officer.

(2) Duties and Authority. The chief hearing officer:

(A) hears matters,

(B) assigns cases,

(C) monitors and evaluates hearing officer performance,

(D) hears motions for hearing officer disqualification,

(E) hears prehearing motions when no hearing officer has been assigned,

(F) hears motions for protective orders under rule 3.2(e),

(G) hears motions prior to a matter being ordered to hearing, including while a grievance is being investigated,

(H) hears requests for amendment or formal complaints under rule 10.7(b),

(I) approves stipulations to discipline not involving suspension or disbarment as provided by rule 9.1 (d)(2),

(J) responds to hearing officer requests for information or advice related to their duties,

(K) supervises hearing officer training in accordance with established policies, and

(L) performs other duties as the chief hearing officer deems necessary for an efficient and effective hearing system.

(~~g~~f) Case Assignment. The chief hearing officer assigns hearing officers to cases from the list of hearing officers appointed by the ~~Board of Governors~~ Supreme Court. The chief hearing officer shall be given confidential notice of any grievances filed against any hearing officers, and the ultimate disposition of those grievances, and shall consider this information when making assignments.

~~**(h) Hearing Panel.** If a hearing panel is assigned to hear a matter, the chief hearing officer appoints the panel. A panel consists of three persons, with at least one from the hearing officer list and at least one nonlawyer from the list maintained by the Board of Governors.~~

(~~i~~g) Training. Hearing officers ~~and hearing panel members~~ must comply with training requirements established by the chief hearing officer.

(h) Staff. The Executive Director of the Association may appoint a suitable person or persons to assist the hearing officers and the chief hearing officer in carrying out their functions under these rules.

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.

RULE 2.6 HEARING OFFICER CONDUCT

~~**(a) "Hearing Officer" Includes Panel Members.** In this rule, the term "hearing officer" includes hearing panel members.~~

(~~b~~a) Integrity of Hearing Officer System. The integrity and fairness of the disciplinary system requires that hearing officers observe high standards of conduct. ~~To the extent applicable, t~~The Code of Judicial Conduct ~~should guide~~ is useful guidance for hearing officers. The following rules have been adapted from ~~Canon 2 and Canon 3 of~~ the Code of Judicial Conduct ~~as particularly applicable to hearing officers,~~ and the words "should" and "shall" have the meanings ascribed to them in those rules.

(~~e~~b) Hearing Officer's Duty to Avoid Impropriety and the Appearance of Impropriety. Hearing officers should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Hearing officers should not allow family, social, or other relationships to influence their conduct or judgment. Hearing officers should not lend the prestige of the hearing officer position to advance the private interests of the hearing officer or others; nor should hearing officers convey or permit others to convey the impression that they are in a special position to influence them. Hearing officers should not be members of any organization practicing discrimination prohibited by law.

(~~d~~c) Conduct of Those on Hearing Officer List. A person on the hearing officer list should not:

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

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

(3)serve as special disciplinary counsel, adjunct investigative counsel, or respondent's counsel.

(~~e~~d) Performing Duties Impartially and Diligently. When acting as a hearing officer, the following standards apply:

(1) *Adjudicative Responsibilities.*

(A) Hearing officers should be faithful to the law and maintain professional competence in it. Hearing officers should be unswayed by partisan interests, public clamor, or fear of criticism.

(B) Hearing officers should maintain order and decorum in proceedings before them.

(C) Hearing officers should be patient, dignified, and courteous to parties, witnesses, lawyers, and others with whom hearing officers deal in their official capacity, and should require similar conduct of lawyers, and of the staff, and others subject to their direction and control.

(D) Hearing officers should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Hearing officers, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

(E) Hearing officers shall perform their duties without bias or prejudice.

(F) Hearing officers should dispose promptly of assigned matters.

(G) Hearing officers shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. The hearing officer shall require similar abstention on the part of personnel subject to the hearing officer's direction and control. This section does not prohibit hearing officers from making public statements in the course of their official duties or from explaining for public information the procedures of the discipline system.

(2) *Administrative Responsibilities.*

(A) Hearing officers should diligently discharge their administrative responsibilities.

(B) Hearing officers should require their staff and others subject to their direction and control to observe the standards of fidelity and diligence that apply to them.

(3) *Disciplinary Responsibilities.*

(A) Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules should take appropriate action. Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules that raises a substantial question as to the other hearing officer's fitness for office should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(B) Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of Lawyer Conduct should take appropriate action. Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of Lawyer Conduct that raises a substantial question as to the lawyer's fitness as a lawyer should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(4) *Disqualification.*

(A) Hearing officers should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(i) the hearing officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the hearing officer previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the hearing officer previously practiced law served during such association as a lawyer concerning the matter, or such lawyer has been a material witness concerning it;

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

(iv) the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, or the spouse of such a person:

(*a*) is a party to the proceeding, or an officer, director, or trustee of a party;

(*b*) is acting as a lawyer in the proceeding;

(*c*) is to the hearing officer's knowledge likely to be a material witness in the proceeding.

(B) Hearing officers should inform themselves about their personal and fiduciary economic interests, and make a reasonable effort to inform themselves about the personal economic interests of their spouse and minor children residing in their household.

(5) *Remittal of Disqualification.* A hearing officer disqualified by the terms of subsections (~~e~~d)(4)(A)(iii) or (iv) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the hearing officer's participation, all agree in writing or on the record that the hearing officer's relationship is immaterial or that the hearing officer's economic interest is de minimis, the hearing officer is no longer disqualified and may participate in the proceeding. When a party is not immediately available, the hearing officer may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

(e) Restriction on Advising or Representing Respondents or Grievants. Appointees to the hearing officer list are subject to the restrictions set forth in rule 2.14.

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.

RULE 2.7 CONFLICTS REVIEW OFFICER

(a) Function. Conflicts Review Officers review grievances filed against disciplinary counsel and other lawyers employed by the Association, hearing officers, conflicts review officers and conflicts review officers pro tempore, ~~and~~ members of the Disciplinary Board, officers and members of the Board of Governors, and staff, attorneys, and judicial officers of the Supreme Court. Conflicts Review Officers also review grievances filed against persons who have been assigned cases as adjunct investigative or special disciplinary counsel, or appointed in disability matters pursuant to ELC 8.2 (c)(2), at the time the grievance is filed. A Conflicts Review Officer performs other functions as set forth in these rules.

(1) Limitation of Authority. The Conflicts Review Officer's duties are limited to performing the initial review of grievances covered by this Rule. A Conflicts Review Officer may obtain the respondent lawyer's response to the grievance, if he/she feels it necessary to do so, in his/her sole discretion. A Conflicts Review Officer may dismiss the grievance, defer the investigation, or assign the grievance to special disciplinary counsel for investigation.

(2) Independence. Conflicts Review Officers act independently of disciplinary counsel and the Association.

(b) Appointment and Qualifications.

(1) The Supreme Court, on the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, shall appoint three active members of the Association as Conflicts Review Officers. Each Conflicts Review Officer is appointed for a three-year term on a staggered basis, and may be recommended for reappointment at the discretion of the Board of Governors. Applications shall be solicited from those eligible to serve, and submitted to the Board of Governors, in such manner as the Association deems most appropriate under the policies and procedures then in effect for recruitment and appointment of volunteers in the discipline system.

(2) When no Conflicts Review Officer is available to handle a matter due to conflict of interest or other good cause, the Supreme Court, on the recommendation of the Board of Governors, shall appoint a Conflicts Review Officer pro tempore for the matter.

(3) To be eligible for appointment as Conflicts Review Officer or Conflicts Review Officer pro tempore, a lawyer must have prior experience as a Disciplinary Board member, disciplinary counsel, or special disciplinary counsel. Conflicts Review Officers and Conflicts Review Officers pro tempore may have no other active role in the discipline system during the term of appointment.

~~(4)~~

(c) Counsel and Clerk; Assignment of Cases. The Association shall assign matters to the Conflicts Review Officers in such a manner as to balance their caseloads insofar as it is practicable to do so. The Executive Director of the Association may appoint a suitable person or persons to act as counsel and clerk to the Conflicts Review Officers, to assist them in carrying out their functions under these rules.

(ed) Access to Disciplinary Information. Conflicts Review Officers and Conflicts Review Officers pro tempore have access to any otherwise confidential disciplinary information necessary to perform the duties required by these rules. Conflicts Review Officers and Conflicts Review Officers pro tempore shall return original files to the Association promptly upon completion of the duties required by these rules and shall not retain copies.

(~~d~~e) Compensation and Expenses. The Association reimburses Conflicts Review Officers and Conflicts Review Officers pro tempore for all necessary and reasonable

expenses, and may provide compensation at a level established by the Board of Governors.

(f) Restriction on Representing or Advising Respondents or Grievants. Current Conflicts Review Officers are subject to the restrictions set forth in rule 2.14. Members serving as Conflicts Review Officer pro tempore are subject to the same restriction while serving in that capacity.

RULE 2.8 DISCIPLINARY COUNSEL; SPECIAL DISCIPLINARY COUNSEL

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

(b) Appointment. The Executive Director of the Association, under the direction of the Board of Governors, employs a suitable member ~~or members~~ of the Association as ~~disciplinary counsel~~ Chief Disciplinary Counsel, and in consultation with the Chief Disciplinary Counsel, selects and employs suitable members of the Association as disciplinary counsel, in a number to be determined by the Executive Director. Special disciplinary counsel may be appointed by the Executive Director whenever necessary to conduct an individual investigation or proceeding.

RULE 2.9 ADJUNCT ~~INVESTIGATIVE~~ DISCIPLINARY COUNSEL

(a) Function. Adjunct ~~investigative~~ disciplinary counsel performs the functions set forth in these rules as directed by disciplinary counsel.

(b) Appointment and Term of Office. The Board of Governors, ~~in consultation with~~ upon the recommendation of the Chief Disciplinary Counsel, appoints adjunct ~~investigative~~ disciplinary counsel from among the active members of the Association, who have been active or judicial Association members for at least seven years, and have no record of disciplinary ~~misconduct, and are in good standing~~ action as defined in these rules. ~~In appointing adjunct investigative counsel, the Board of Governors should consider diversity in gender, ethnicity, geography, and practice experience.~~ Each adjunct ~~investigative~~ disciplinary counsel is appointed for a five year term on a staggered basis and may be reappointed.

(c) Restriction on Representation. Adjunct disciplinary counsel are subject to the restrictions of rule 2.14.

RULE 2.10 REMOVAL OF APPOINTEES

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

RULE 2.11 COMPENSATION AND EXPENSES

(a) Compensation. The Association compensates the chief hearing officer to the extent authorized by the Board of Governors. The Association may compensate hearing officers and ~~hearing panel members~~ special disciplinary counsel to the extent authorized by the Board of Governors. Board members and adjunct ~~investigative~~ disciplinary counsel receive no compensation for their services.

(b) Expenses. The Association pays expenses incurred by hearing officers, ~~hearing panel members~~ special disciplinary counsel, the chief hearing officer, Board members, and adjunct ~~investigative~~ disciplinary counsel in connection with their duties, subject to any limitation established by resolution of the Board of Governors.

(c) Special Appointments. The Association pays the fees for counsel appointed under rules 7.7, 8.2 (c)(2), or 8.3 (d)(3) and costs or expenses reasonably incurred by these counsel.

RULE 2.12 COMMUNICATIONS TO THE ASSOCIATION PRIVILEGED

Communications to the Association, Board of Governors, Disciplinary Board, review committee, hearing officer ~~or panel~~, disciplinary counsel, adjunct investigative counsel, Association staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness, or other person providing information.

RULE 2.13 RESPONDENT LAWYER

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

~~**(b) Restrictions on Representation of Respondent**. A former Association president, a former Board of Governors member, or a former Disciplinary Board member cannot represent a respondent lawyer in any proceeding under these rules until three years after leaving office. Service as an Adjunct Review Committee Member or as a Member Pro Tempore of the Board does not invoke this rule.~~

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

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

RULE 2.14 RESTRICTIONS ON REPRESENTING OR ADVISING RESPONDENTS OR GRIEVANTS

(a) Current Officeholders. Association officers and Executive Director, Board of Governors members, Disciplinary Board members, and hearing officers, while serving in that capacity, cannot knowingly advise or represent individuals regarding pending or likely disciplinary grievances or proceedings, other than advising a person of the availability of grievance procedures.

(b) Former Officeholders. After leaving office, Association officers and Executive Director, Board of Governors members, Disciplinary Board members, and hearing officers cannot represent individuals in pending disciplinary grievances or proceedings until three years have expired after departure from office.

(c) Other Volunteers. Conflicts Review Officers, Conflicts Review Officers pro tempore, adjunct disciplinary counsel, adjunct review committee members and members pro tempore of the Board are subject to the restrictions on advising and representing individuals set forth in this rule only while serving in that capacity.

(d) Appointed Disability Counsel. The prohibition in subsection (b) of this rule on representing individuals after leaving office does not prevent a lawyer from serving as appointed counsel under rule 8.3 (d)(3).

TITLE 3 – ACCESS AND NOTICE

RULE 3.1 OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION

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

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

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

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

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

(4) a statement of concern to the extent provided under rule 3.4(f);

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

(6) the record before a hearing officer ~~or panel~~;

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

(8) the bar file and any exhibits and any Board or review committee order in any matter ~~that the Board or a review committee has~~ ordered to public hearing, or that is deemed ordered to hearing under rule 13.5 (a)(2), or any matter in which disciplinary action has been taken, or any proceeding under rules 7.1-7.6;

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

(10) a lawyer's resignation in lieu of ~~disbarment~~ discipline under rule 9.3; and

(11) any sanction or admonition imposed on a respondent

(12) a stipulation to dismissal upon institution of proceedings for failure to comply with the terms of the stipulation.

(c) Regulations. Public access to file materials and proceedings permitted by this rule may be subject to reasonable regulation as to time, place, and manner of access. Certified copies of public bar file documents will be made available at the same rate as certified copies of superior court records. Uncertified copies of public bar file documents will be made available at a rate to be set by the Executive Director of the Association.

RULE 3.2 CONFIDENTIAL DISCIPLINARY INFORMATION

(a) Scope of Confidentiality. All disciplinary ~~materials~~ information that ~~are~~ is not public information as defined in rule 3.1(b) ~~are~~ is confidential, and ~~are~~ is held by the Association under the authority of the Supreme Court, including but not limited to materials submitted to a review committee under rule 8.9 or information protected by rule 3.3(b), rule 5.4(b), rule 5.1 (c)(3), a protective order under rule 3.2(e), rule 3.2(b), court order, or other applicable law (e.g., medical records, police reports, etc.).

(b) Restriction on Release of Client Information. Notwithstanding any other provision of this title, no information identified or known to the Association to constitute client information that a lawyer would be required to keep confidential under RPC 1.6 may be released under rule 3.4 (c) – (i) unless the client consents, including implied consent under rule 5.1(b).

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

(d) Discipline Under Prior Rules. Discipline imposed under prior rules of this state that was confidential when imposed remains confidential. A record of confidential discipline may be kept confidential during proceedings under these rules, or in connection with a stipulation under rule 9.1, through a protective order under section (e).

(e) Protective Orders.

(1) *Authorization*. To protect a compelling interest of a grievant, witness, third party, respondent lawyer, the Association, or other participant in ~~an investigation~~ any matter under these rules, on motion and for good cause shown, ~~the Board Chair, the chair of a review committee to which a matter is assigned, or a hearing officer to whom a matter is assigned, may issue~~ a protective order may be entered prohibiting ~~the disclosure or release of~~ any participant in the disciplinary process from disclosing or releasing specific information, documents, or pleadings obtained in the course of any matter under these rules, and direct that the proceedings be conducted so as to implement the order.

(2) *Pending Relief*. Upon ~~F~~filing a motion for a protective order ~~stays the provision of this title as to any matter sought to be kept confidential until five days after a ruling is served on the parties.~~, any participant in the disciplinary matter may move for a temporary protective order prohibiting any participant in the disciplinary matter who has actual notice of the motion for temporary protective order from taking any action which would violate the requested protective order if granted. A motion for temporary protective order may only be granted upon notice and an opportunity to be heard to all affected participants in the matter unless the participant seeking the order demonstrates that immediate and irreparable harm will result to the applicant before the affected participants can be heard in opposition and the participant seeking the order certifies the efforts, if any, which have been made to give notice and the reasons supporting the claim that notice should not be required. Any temporary protective order granted without notice must set forth the irreparable harm warranting issuance of the order without notice. Any temporary protective order expires upon the filing of a

decision regarding the requested protective order, or thirty days following issuance of the temporary protective order, whichever is sooner. Upon two day's notice to the party who obtained a temporary protective order, any participant in the matter may move for the dissolution or modification of a temporary protective order, which motion must be heard as expeditiously as the ends of justice require.

(3) *Entry*. A protective order under this rule may be entered by the following:

(A) A hearing officer when a matter is pending before that hearing officer;

(B) The Chair when a matter is pending before the Board;

(C) The chair of a review committee when the matter is pending before a review committee; or

(D) The chief hearing officer when not otherwise authorized above.

(4) *Service*. The Clerk serves copies of decisions and protective orders entered under this rule on all affected participants in the disciplinary process.

(5) *Review*. The Board reviews decisions granting or denying a protective order if ~~either the respondent lawyer or disciplinary counsel requests~~ any party subject to the decision seeks relief from the decision by requesting a review within five days of service of the decision. The Clerk serves a copy of the request for review on all parties to the disciplinary matter. The Board considers the review under such procedure as it determines, but must allow comment from any person or party affected by the decision under review. Any participant in the disciplinary matter who has actual notice of the request for review is prohibited from taking any action which would violate the relief requested by the party seeking review if granted. On review, the Board may affirm, reverse, or modify the protective order. The Board's decision is not subject to further review. ~~A request for review by the Board stays the provisions of this title as to any matter sought to be kept confidential in that request, and the request itself is confidential until a ruling is issued.~~

(6) *Relief from Protective Order*. Any person may apply to the authority that issued a protective order for specific relief from the order upon good cause shown, provided that notice and an opportunity to respond to the requested relief must be afforded any person affected by the order.

(f) Wrongful Disclosure or Release. Disclosure or release of information made confidential by these rules, except as permitted by rule 3.4(a) or otherwise by these rules~~, by any person involved with an investigation or proceeding, either as the Association's officer or agent (including, but not limited to, its staff, members of the Board of Governors, the Disciplinary Board, a review committee, hearing panels, hearing officers, disciplinary counsel, adjunct investigative counsel, a lawyer appointed under rule 7.7, or any other individual acting under authority of these rules) of any information about a pending or completed investigation or proceeding, except as permitted by these rules,~~ may subject ~~that~~ a person to an action for contempt of the Supreme Court. If the person is a lawyer, wrongful disclosure or release may also be grounds for discipline.

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.

RULE 3.3 APPLICATION TO STIPULATIONS, DISABILITY PROCEEDINGS, CUSTODIANSHIPS, AND DIVERSION CONTRACTS

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

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

(~~2~~1) it provides for dismissal of a grievance without a disciplinary sanction or admonition; and

(~~3~~2) proceedings have not been instituted for failure to comply with the terms of the stipulation.

(b) Application to Disability Proceedings. Disability proceedings under title 8 or rule 9.2 are confidential. However, the following are public information: the fact that a lawyer has been transferred to disability inactive status, the fact that a lawyer has been reinstated to active status from disability inactive status, and the fact that a disciplinary proceeding is stayed pending supplemental proceedings under title 8. ~~a grievant may be advised that a lawyer against whom the grievant has complained is subject to disability proceedings. The following information is public:~~

~~(1) that a lawyer has been transferred to disability inactive status, or has been reinstated to active status; and~~

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

(c) Custodianships. The fact that a custodian has been appointed under rule 7.7, together with the custodian's name and contact information and orders appointing and discharging such custodians, are public information and the notices required by rule 3.5(d) will be given. Client files and records under the control of such custodians will be held confidential absent authorization to release from the client.

(e~~d~~) Diversion Contracts. Except as provided by rule 6.6, ~~D~~diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, despite rule 3.1 (b)(1), ~~unless admitted into evidence in a disciplinary proceeding following termination of the diversion contract for material breach~~. When a matter that has previously become public under rule 3.1(b) is diverted by a diversion contract, that contract and the supporting documents are confidential but the fact that the matter was diverted from discipline is public information and a notice of diversion will be placed in the public file. Upon the conclusion of the diversion, whether by successful completion of diversion and dismissal of the grievance, or by breach of the diversion contract, a notice of that result will be placed in the public file.

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.

RULE 3.4 RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

(a) Disclosure of Information. Except as ~~provided in~~ prohibited by rule 3.2(e), court order, or other law, the grievant, respondent lawyer, or any witness may disclose ~~the existence of proceedings under these rules or any documents or~~

~~correspondence the person received~~ any information in their possession regarding a disciplinary matter.

(b) Investigative Disclosure. The Association may disclose otherwise confidential information as necessary to conduct the investigation, recruit counsel, or to keep a grievant advised of the status of a matter except as prohibited by rule ~~3.3(b),~~ 5.4(b)~~,~~ or 5.1 (c)(3), a protective order under rule 3.2(e), other court order, or other applicable law.

(c) Release Based upon Lawyer's Waiver. Upon a written waiver by a lawyer, except as prohibited by rule 3.2(e), the Association may release the status of otherwise confidential disciplinary or disability proceedings and provide ~~copies of nonpublic~~ otherwise confidential information to~~:~~

~~(1) the Washington State Bar Association Committee of Law Examiners, the Washington State Bar Association Character and Fitness Committee, the National Conference of Bar Examiners, or the comparable body in other jurisdictions to evaluate the character and fitness of an applicant for admission to the practice of law in that jurisdiction;~~

~~(2) the Washington State Bar Association Judicial Recommendation Committee, or the comparable body in other jurisdictions, to evaluate the character and fitness of a candidate for judicial office;~~

~~(3) the Governor of the State of Washington, or of any other state, or his or her delegate, to evaluate the character and fitness of a potential nominee to judicial office; and~~

~~(4) any other agency that a lawyer authorizes to investigate the lawyer's disciplinary record.~~ any person or entity authorized by the lawyer to receive the information.

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

(1) ~~Subject to~~ Except as prohibited by rule 3.2(e), ~~the President, the Board of Governors,~~ the Executive Director~~,~~ or Chief Disciplinary Counsel, or a designee of ~~any~~ either of them, may release otherwise confidential information:

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

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

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

(3) A decision regarding release of information is final and is not subject to further review.

(e) Discretionary Release. The Executive Director or the Chief Disciplinary Counsel may authorize the general or limited release of any confidential information ~~obtained during an investigation~~ when it appears necessary to protect the interests of clients or other persons, the public, or the integrity of the disciplinary process, except as prohibited by rule 3.2(e). A respondent must be given notice of a decision to release information under this section before its release unless the Executive Director or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public, or that the delay caused by giving the respondent notice would be detrimental to the integrity of the disciplinary process. A decision regarding release of information is final and is not subject to further review.

(f) Statement of Concern.

(1) *Authority*. The Chief Disciplinary Counsel has discretion to file a statement of concern with the Clerk when deemed necessary to protect members of the public from a substantial threat, based on information from a pending investigation into a lawyer's apparent ongoing serious misconduct not otherwise made public by these rules. The statement may not disclose information protected by rule 3.2(e).

(2) *Procedure*.

(A) On or before the date it is filed, a copy of the statement of concern must be served under rule 4.1 on the lawyer about whom the statement of concern has been made. The statement of concern is not public information until 14 days after service.

(B) The lawyer may at any time appeal to the Chair to have the statement of concern withdrawn.

(C) If an appeal to the Chair is filed with the Clerk under rule 4.2(a) within 14 days of service of the statement of concern, the statement of concern is not public information unless the Chair so orders and becomes public information upon issuance of the Chair's order.

(D) The Chair's decision is not subject to further review.

(E) The Chief Disciplinary Counsel may withdraw a statement of concern at any time.

(g) Release to Judicial Officers. Any state or federal judicial officer may be advised of the status of a confidential disciplinary grievance about a lawyer appearing before the judicial officer in a representational capacity and, except as prohibited by rule 3.2(e), may be provided with requested confidential information if the grievance is relevant to the lawyer's conduct in a matter before that judicial officer. The judicial officer must maintain the confidentiality of the matter.

(h) Cooperation with ~~Criminal~~ Law Enforcement and Disciplinary Authorities. Except as ~~provided in~~ prohibited by rule 3.2(e), information or testimony may be released to authorities in any jurisdiction authorized to investigate alleged criminal or unlawful activity, ~~or~~ judicial or lawyer misconduct, or disability.

(i) Release to Lawyers' Fund for Client Protection. Information ~~obtained in an investigation and about~~ relating to applications pending before the Lawyers' Fund for Client Protection Board may, except as prohibited by rule 3.2(e), be released to the ~~Fund~~ LFCP Board. The ~~Fund~~ LFCP Board must treat such information as confidential unless the Executive Director or the Chief Disciplinary Counsel authorizes release.

(j) ~~Conflicts Review Officer~~ Other Counsel. Conflicts review officers, special disciplinary counsel, adjunct disciplinary counsel, Association counsel, counsel for a petitioner under rule 8.9(d), counsel appointed under rule 8.10, and any lawyer representing the Association in any matter have access to any otherwise confidential disciplinary information necessary to perform their duties.

(k) Chief Hearing Officer and Disciplinary Selection Panel. The chief hearing officer and the Disciplinary Selection Panel shall have access to any otherwise confidential disciplinary information necessary to perform their duties. The

chief hearing officer shall be given notice when any grievance is filed against a hearing officer and of the disposition of that grievance. Confidential information provided under the terms of this rule shall not be further disseminated except as may be otherwise allowed under these rules.

(~~k~~*l*) Release to Board of Governors ~~Access~~ or Officers. ~~In furtherance of its supervisory function, and not in derogation of the foregoing,~~ The Chief Disciplinary Counsel may authorize release of otherwise confidential information to the Board of Governors or officers of the Association as necessary to carry out their duties under these rules, except as prohibited by rule 3.2(e), ~~has access to all confidential disciplinary information~~ but the Board of Governors or officers of the Association must maintain its confidentiality.

(~~l~~m) Release to Practice of Law Board. Information obtained in an investigation relating to possible unauthorized practice of law may, except as prohibited by rule 3.2(e), be released to the Practice of Law Board. ~~Such information shall remain under the control of the Office of Disciplinary Counsel and t~~The Practice of Law Board must ~~treat it as~~ maintain the confidentiality of the information unless ~~this title or~~ the Executive Director or the Chief Disciplinary Counsel authorizes release.

RULE 3.5 NOTICE OF ~~DISCIPLINE~~ DISCIPLINARY ACTION, INTERIM SUSPENSION, OR TRANSFER TO DISABILITY INACTIVE STATUS

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

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

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

(3) a copy of any transfer to disability inactive status; and

(~~3~~4) a copy of any resignation in lieu of ~~disbarment~~ discipline.

(b) Other Notices. The counsel to the Board must also notify the following entities of the imposition of a disciplinary sanction or admonition, a transfer to disability inactive status, a resignation in lieu of ~~disbarment~~ discipline, or the filing of a statement of concern under rule 3.4(f) as follows, in such form as may appear appropriate:

(1) the lawyer discipline authority or highest court in any jurisdiction where the lawyer is believed to be admitted to practice;

(2) the chief judge of each federal district court in Washington State and the chief judge of the United States Court of Appeals for the Ninth Circuit; and

(3) the National ~~Discipline Data Bank~~ Lawyer Regulatory Data Bank~~; and~~

~~(4) the Washington State Bar News~~.

(c) ~~Preparation of~~ Bar News and Website Notice.

(1) Preparation and content. Notice of the imposition of any disciplinary sanction, admonition, resignation in lieu of discipline, interim suspension, or transfer to disability inactive status, or the filing of a statement of concern under rule 3.4(f) must be published in the Washington State *Bar News* or other official publication of the Washington State Bar Association and on any electronic or other index or site maintained by the Association for public information. ~~The~~ Association counsel ~~to the Board~~ has discretion in drafting notices for publication in the Washington State *Bar News* or other official publication of the Washington State Bar Association and on the Website, and should include sufficient information to adequately inform the public and the members of the Association about the misconduct found, the rules violated and the disciplinary action imposed. For a transfer to disability inactive status, reference will be made to the disability inactive status, but no reference will be made to the specific disability. For an interim suspension, the basis of the interim suspension will be stated. All notices under this subsection should include the respondent lawyer's name, bar number, date of admission, the time frame of the misconduct, the rules violated, and the disciplinary action. ~~The~~ Association counsel ~~to the Board~~ must serve a copy of the draft notice under this subsection on respondent and disciplinary counsel under rule 4.1 and review any comments filed with ~~the~~ Association counsel ~~to the Board~~ within five days of service, but Association counsel's ~~to the Board's~~ decision about the content of the notice is not subject to further review.

(2) Finality. Except as specified in section (c)(3), discipline notices published in the Bar News or other official publication of the Washington State Bar Association and posted on the WSBA website are final and may not be modified following publication.

(3) Modification. A respondent lawyer who is the subject of a discipline notice may file a written request with Association counsel seeking modification of a discipline notice posted on the WSBA website. A notice may be modified only in the following circumstances:

(A) a criminal conviction, court judgment, or order relating directly to the disciplinary action imposed and referenced in the discipline notice has been subsequently expunged, vacated, or otherwise conclusively nullified;

(B) the expungement, vacation, or nullification occurred after the notice was published;

(C) there are no ongoing or pending proceedings relating to the conviction, judgment or order; and

(D) the fact of the expungement, vacation, or nullification is undisputed and can be conclusively established without any investigation.

The respondent seeking modification bears the burden of establishing each of the above factors. If Association counsel determines each factor has been established, a supplemental note may be added regarding the expungement, vacation, or nullification, but the original discipline notice must otherwise remain unchanged. The supplemental note is not published in Bar News. The decision whether or not to add a supplemental note, and the content of a supplemental note, is solely within the discretion of Association counsel and is not subject to review.

(d) Notices to News Media of Suspension, Disbarment, Resignation in Lieu of ~~Disbarment~~ Discipline, Interim Suspension, or Disability Inactive Status. ~~The Association must publish a~~ In addition to the notices published under sections (b) and (c) of this rule, notice in such form as may be appropriate of the disbarment, suspension, resignation in lieu of ~~disbarment~~ discipline, interim suspension, or transfer to disability inactive status of a lawyer ~~in the~~

~~Washington State Bar News and electronic or other index or site maintained by the Association for public information. The Association must provide copies of these notices~~ must be provided to the news media in a manner designed to notify the public in the county or region where the lawyer has maintained a practice. For a transfer to disability inactive status, reference will be made to the disability inactive status, but no reference may be made to the specific disability. For an interim suspension, the basis of the interim suspension will be stated.

(e) Notice to Judges. The Association must promptly notify the presiding judge of the superior court of the county in which the lawyer maintained a practice of the lawyer's disbarment, suspension, resignation in lieu of ~~disbarment~~ discipline, interim suspension, or transfer to disability inactive status, and may similarly notify the presiding judge of any district court located in the county where the lawyer practiced, or the judge of any other court in which the lawyer may have practiced or is known to have practiced.

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.

RULE 3.6 MAINTENANCE OF RECORDS

(a) Permanent Records. In any matter in which a disciplinary sanction or admonition has been imposed or the lawyer has resigned in lieu of discipline under rule 9.3, the bar file and transcripts of the proceeding are permanent records. Related file materials, including investigative files, may be maintained in disciplinary counsel's discretion. Exhibits may be returned to the party supplying them, but copies should be retained where possible.

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

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

(d) Deceased Lawyers. Records and files relating to a deceased lawyer, including permanent records, may be destroyed at any time in disciplinary counsel's discretion.

TITLE 4 – GENERAL PROCEDURAL RULES

RULE 4.1 SERVICE OF PAPERS

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

(b) Methods of Service.

(1) *Service by Mail*.

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

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

~~(i) the parties so agree;~~

~~(ii) the document is a notice of dismissal by disciplinary counsel or by a review committee under rule 5.6, a notice regarding deferral under rule 5.3(c), or a request for review of any of these notices;~~

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

~~(iv) service is on a hearing officer or panel.~~

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

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

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

(iii) for a hearing officer assigned to a matter, at the address of the hearing officer set forth on the notice of assignment of the hearing officer, or such other address as the hearing officer directs; and

(iv) for the chief hearing officer, the Chair, the Board, a review committee, Association counsel, or any other person or entity acting under the authority of these rules, addressed to that person or entity in care of the Clerk at the address of the Association.

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

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

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

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

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

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at his or her last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Association, or to the respondent's resident agent whose

name and address are on file with the Association under APR 5(f).

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

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

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

RULE 4.2 FILING; ORDERS

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

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

(c) Electronic Filing. Filing of documents with the Clerk under subsections (a) and (b) of this rule may be accomplished by e-mail or by facsimile, provided that a document so filed with the Clerk after 5:00 p.m. or on weekends or legal holidays shall be deemed to have been filed on the next business day. A paper original of documents filed under this subsection (c) should thereafter be filed as well.

RULE 4.3 PAPERS

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

RULE 4.4 COMPUTATION OF TIME

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

RULE 4.5 STIPULATION TO EXTENSION OR REDUCTION OF TIME

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

RULE 4.6 SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION

Disciplinary counsel, the chief hearing officer, or the Chair may issue a subpoena for use in lawyer discipline or disability proceedings in another jurisdiction if the issuance of the subpoena has been authorized under the law of that jurisdiction and upon a showing of good cause. The subpoena may compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. These rules apply to service, enforcement, and challenges to subpoenas issued under this rule.

RULE 4.7 ENFORCEMENT OF SUBPOENAS

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

(b) Procedure.

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

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

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

(C) request an order compelling compliance.

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

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

RULE 4.8 DECLARATIONS IN LIEU OF AFFIDAVITS

Whenever an affidavit is required by these rules, a declaration in the form authorized by GR 13 may be used.

RULE 4.9 SERVICE AND FILING BY AN INMATE CONFINED IN AN INSTITUTION

Service and filing of papers under these rules by an inmate confined in an institution will conform to the requirements of GR 3.1.

RULE 4.10 REDACTION OR OMISSION OF CONFIDENTIAL IDENTIFIERS

In all matters filed with a review committee, a hearing officer or the chief hearing officer, the clerk, the Board, or the Supreme Court, both disciplinary counsel and respondents must redact or omit from all exhibits, documents, and pleadings all personal identifiers as are required to be redacted or omitted by the General Rules applicable to the Superior Court, including GR 15, 22, and 31. When it is not feasible to redact or omit a personal identifier, the filing party must seek

a protective order under rule 3.2(e) to have the document filed under seal.

TITLE 5 – GRIEVANCE INVESTIGATIONS AND DISPOSITION

RULE 5.1 GRIEVANTS

(a) Filing of Grievance. Any person or entity may file a grievance against a lawyer ~~admitted to practice law in this state, or against a lawyer specially admitted by a court of this state for a particular case~~ who is subject to the disciplinary authority of this jurisdiction.

(b) Consent to Disclosure.

(1) Subject to paragraph (2), ~~B~~by filing a grievance, the grievant consents to disclosure of ~~the content of the grievance to the respondent lawyer, or to any other person contacted during the investigation of the grievance, or~~ all information submitted. This includes disclosure to the respondent lawyer or to any person under rules 3.1-3.4~~, unless~~.

(2) Disclosure may be specifically restricted, such as:

(A) when a protective order is issued under rule 3.2(e); or

(B) when the grievance was filed under rule 5.2~~.~~; or

(C) when necessary to protect a compelling privacy or safety interest of a grievant or other individual.

(3) By filing a grievance, the grievant also agrees that the respondent or any other lawyer contacted by the grievant may disclose to disciplinary counsel any information relevant to the investigation, unless a protective order is issued under rule 3.2(e).

(4) Consent to disclosure under this rule by submitting information to disciplinary counsel does not constitute a waiver of any privilege or restriction against disclosure in any other forum.

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

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

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

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

(A) Withholding Response. Disciplinary counsel may withhold all or a portion of the response from the grievant when:

(i) ~~if~~ the response refers to ~~a client's confidences or secrets~~ information protected by RPC 1.6 or RPC 1.9 to which the grievant is not privy; or

~~(B) if~~

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

(iii) ~~(C) if a review committee determines that~~ the interests of justice would be better served by not releasing the response.

(B) Challenge to Disclosure Decision. Either the grievant or the respondent may file a challenge to disciplinary counsel's decision to withhold or not withhold all or a portion of a grievance or response within 20 days of the date of mailing of the decision. The challenge shall be resolved by a review committee, unless the matter has previously been dismissed under rule 5.6.

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

(5) to attend any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e), except that if the grievant is also a witness, the hearing officer may order the grievant excluded during the testimony of any other witness whose testimony might affect the grievant's testimony;

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

(7) to be notified of any proposed decision to refer the respondent to diversion and to be given a reasonable opportunity to submit to disciplinary counsel a written comment thereon;

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

(9) to request reconsideration of a dismissal of the grievance as provided in rule 5.~~6~~7(b).

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

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

(2) assist in securing relevant evidence; and

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

(e) Vexatious grievants.

(1) The Chair of the Disciplinary Board may enter an order declaring an individual or entity a vexatious grievant and restraining that individual from filing grievances or pursuing other rights under this rule, pursuant to the procedures set out in this subsection. A "vexatious grievant" is a person or entity who has engaged in a frivolous or harassing course of conduct that so departs from a reasonable standard of conduct as to render the grievant's conduct abusive to the disciplinary system or participants in the disciplinary system.

(2) Either disciplinary counsel or a lawyer who has been the subject of a grievance may file a motion to declare the grievant vexatious.

(3) The motion must set forth with particularity (A) the facts establishing that the grievant's conduct is vexatious and (B) the restrictions on the grievant's conduct that are sought.

(4) The moving party must serve a copy of the motion on the grievant. If the motion is filed by a respondent lawyer, the motion must also be served on disciplinary counsel. Service may be made by first class mail.

(5) The grievant, disciplinary counsel, and the respondent lawyer shall have 20 days to file a written response.

(6) If the Chair finds that the person is a vexatious grievant, the Chair shall enter an order setting out with particularity (A) the factual basis for such finding, (B) the restrictions imposed on the grievant's conduct, and (C) the basis for imposing such restrictions. The restrictions must be no broader than necessary to prevent the harassment and abuse found.

(7) The moving party, the grievant, and disciplinary counsel may seek review of the Chair's order by a petition for

discretionary review under rule 12.4. No other appeal of the order shall be allowed.

(8) The fact that a person or entity has been determined to be a vexatious grievant and the scope of any restrictions imposed shall be public information. All other proceedings and documents related to a motion under this subsection are confidential.

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.

RULE 5.2 CONFIDENTIAL SOURCES

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

RULE 5.3 INVESTIGATION OF GRIEVANCE

(a) Review and Investigation. Disciplinary counsel must review and may investigate any alleged or apparent misconduct by a lawyer and any alleged or apparent incapacity of a lawyer to practice law, whether disciplinary counsel learns of the misconduct by grievance or otherwise. If there is no grievant, ~~the Association~~ disciplinary counsel may open a grievance in the ~~Association's~~ name of the Office of Disciplinary Counsel.

(b) Preliminary Request for Response. Following review of a matter under section (a), disciplinary counsel may request a preliminary written response from a respondent lawyer. If a request for information (1) requests only the respondent lawyer's preliminary written response, and (2) neither includes any other request for specific information nor requests that the respondent lawyer furnish or permit inspection of specific records, files, and accounts, the request is not subject to objection under section (i).

(~~b~~c) Adjunct ~~Investigative~~ Disciplinary Counsel. Disciplinary counsel may assign a case to adjunct ~~investigative~~ disciplinary counsel for investigation. Disciplinary counsel assists in those investigations and monitors the performance of adjunct ~~investigative~~ disciplinary counsel. On receiving a report of an investigation by an adjunct ~~investigative~~ disciplinary counsel, disciplinary counsel may, as appears appropriate, request or conduct additional investigation or take any action under these rules.

(~~e~~d) Deferral by Disciplinary Counsel.

(1) Disciplinary counsel may defer an investigation into alleged acts of misconduct by a lawyer:

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

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

(C) if a hearing has been ordered under Rule 8.2(a) or supplemental proceedings have been ordered under rule 8.3(a); or

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

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

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

(~~e~~f) Duty To Furnish Prompt Response. Any lawyer must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation.

(g) Investigative Inquiries. Upon inquiry or request, any lawyer must:

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

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

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

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

(5) comply with ~~discovery conducted~~ investigatory subpoenas under rule 5.5.

(~~f~~h) Failure To Cooperate.

(1) *Noncooperation Deposition.* If a lawyer has not complied with any request made under ~~section (e)~~ this rule or rule 2.13(~~d~~c) for more than 30 days, disciplinary counsel may notify the lawyer that failure to comply within ten days may result in the lawyer's deposition or subject the lawyer to interim suspension under rule 7.2. Ten days after this notice, disciplinary counsel may serve the lawyer with a subpoena for a deposition. Any deposition conducted after the ten-day period and necessitated by the lawyer's continued failure to cooperate may be conducted at any place in Washington State.

(2) *Costs and Expenses*.

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

has been served with a subpoena for a deposition under this rule is liable for a reasonable attorney fee of $500.

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

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

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

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

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

(3) *Grounds for Discipline.* A lawyer's failure to cooperate fully and promptly with an investigation as required by ~~section (e)~~ this rule or rule 2.13(~~d~~c) is also grounds for discipline.

(i) Objections. A lawyer who receives an investigative inquiry under section (g) of this rule may object as provided in rule 5.6.

RULE 5.4 PRIVILEGES

(a) Privilege Against Self-Incrimination. A lawyer's duty to cooperate is subject to the lawyer's privilege against self-incrimination, where applicable.

(b) Attorney-Client Privilege.

(1) *Assertion In Response to Investigative Inquiries.* In response to an investigative inquiry made under rule 5.3(g), or an investigatory subpoena under ELC 5.5, unless a lawyer makes an objection under rule 5.6, ~~A~~ a lawyer may not assert the attorney-client privilege or other prohibitions on revealing ~~client confidences or secrets~~ information relating to the representation of a client as a basis for refusing to provide information ~~during the course of an investigation, but information obtained during an investigation involving client confidences or secrets must be kept confidential to the extent possible under these rules unless the client otherwise consents~~.

(2) *Duties of Disciplinary Counsel.* Disciplinary counsel receives, reviews and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court's authority to regulate the practice of law. Disclosure of information to disciplinary counsel is not prohibited by RPC 1.6 or RPC 1.9, and such disclosure does not waive any attorney-client privilege. If the lawyer identifies the specific information that is privileged or confidential and requests that it be treated as confidential, the Association must, absent authorization under rule 5.6, maintain the confidentiality of information provided by a lawyer in response to an inquiry or request under these rules.

(3) *Non-Disclosure.* No information identified as confidential under this rule may be disclosed or released under Title 3 of these rules unless the client or former client consents, which includes consent under rule 5.1(b). Nothing in these rules waives or requires waiver of any lawyer's own privilege or other protection as a client against the disclosure of confidences or secrets.

RULE 5.5 ~~DISCOVERY BEFORE FORMAL COMPLAINT~~ INVESTIGATORY SUBPOENAS

(a) Procedure. Before filing a formal complaint, disciplinary counsel may ~~depose either a respondent lawyer or a witness, or issue requests for admission to the respondent~~ issue a subpoena for a deposition or to obtain documents without a deposition. To the extent possible, CR 30 or 31 applies to depositions under this rule, however the respondent need not be given notice of a subpoena. ~~CR 36 governs requests for admission.~~

(b) Subpoenas ~~for Depositions~~. Disciplinary counsel may issue subpoenas to compel the respondent's or a witness's attendance, and/or the production of books, documents, or other evidence, at a deposition or without a deposition. CR 45 governs subpoenas under this rule, but the notice required by CR 45 (b)(2) need not be given. Subpoenas ~~must be served as in civil cases in the superior court and~~ may be enforced under rule 4.7.

(c) Challenges. Challenges by non-lawyers to subpoenas under this rule may be made to the chief hearing officer, who may issue a protective order under rule 3.2(e).

(~~e~~d) Cooperation. Every lawyer must promptly respond to subpoenas ~~discovery~~ and requests and inquiries from disciplinary counsel, subject to the provisions of rule 5.3 and rule 5.4.

(e) Objections By Lawyers.

(1) To protect confidential client information, or for other good cause shown, a respondent lawyer may object under rule 5.6 to an investigative subpoena issued pursuant to this rule.

(2) A timely objection suspends any duty to respond as to the subpoena until a ruling has been made.

RULE 5.6 REVIEW OF OBJECTIONS TO INQUIRIES AND MOTIONS TO DISCLOSE

(a) Review Authorized. The chief hearing officer, or a hearing officer designated by the chief hearing officer, may hear the following matters:

(1) When a lawyer has objected under rule 5.3(i) to an investigative inquiry;

(2) When a lawyer has objected under rule 5.5(e) to an investigatory subpoena; and

(3) When disciplinary counsel seeks authorization under rule 5.4(b) to disclose confidential information.

(b) Procedure.

(1) An objection must clearly and specifically set out the challenged inquiry or request and the basis for the objection.

(2) A motion to authorize use in an investigation of confidential information must clearly state the information which has been identified as confidential and the investigatory use for which disciplinary counsel seeks authorization.

(3) When deemed necessary by the chief or other hearing officer considering the matter, that hearing officer may conduct an in camera review of confidential client information.

(4) In considering an objection under this rule, the chief or other hearing officer should consider factors including:

(A) the relevance and necessity of the information to the investigation;

(B) whether the information requested by the inquiry is likely to lead to information relevant to the investigation;

(C) the availability of the information from other sources;

(D) the sensitivity of the information and potential impact on the client, including the client's right to effective assistance of counsel;

(E) the expressed desires of the client;

(F) whether the objection was made before the due date of the request or inquiry; and

(G) whether the burden of producing the requested information outweighs the likely utility of the information to the investigation.

(5) In considering a motion to authorize disciplinary counsel to disclose information identified as confidential client information under this rule, the chief or other hearing officer should consider factors including:

(A) the relevance and necessity of the disclosure of the information to the investigation;

(B) whether the investigative disclosure is likely to lead to information relevant to the investigation;

(C) the sensitivity of the information and potential impact on the client of the investigative disclosure, including the client's right to effective assistance of counsel;

(D) the expressed desires of the client; and

(E) whether the above factors outweigh the likely utility of the information to the investigation.

(c) Ruling. In ruling on an objection, the chief or other hearing officer may deny the objection, or sustain the objection in whole or in part, and may establish terms or conditions under which specific information may be withheld, provided, maintained, or used. In ruling on a motion to authorize disclosure, the chief or other hearing officer may grant or deny the motion in whole or in part, and may establish terms or conditions for the investigative use of specific information. When appropriate, a ruling may take the form of, or may accompany a protective order under rule 3.2(e).

(d) Review. Any ruling by the chief or other hearing officer under this rule shall be subject to review as an interim ruling under rule 10.9.

RULE 5.67 DISPOSITION OF GRIEVANCE

(a) Dismissal by Disciplinary Counsel. Disciplinary counsel may dismiss grievances with or without investigation. On dismissal, disciplinary counsel must notify the grievant of the procedure for review in this rule.

(b) Review of Dismissal. A grievant may request review of dismissal of the grievance by delivering or depositing in the mail a request for review to ~~the Association~~ disciplinary counsel no later than 45 days after ~~the Association~~ disciplinary counsel mails the notice of dismissal. Mailing requires postage prepaid first class mail. If review is requested, disciplinary counsel may either reopen the matter for investigation or refer it to a review committee. If no timely request for review is made, the dismissal is final and may not be reviewed. Disputes regarding timeliness may be submitted to a review committee. A grievant may withdraw in writing a request for review, but thereafter the request may not be revived.

(**c) Report in Other Cases.** Disciplinary counsel must report to a review committee the results of investigations except those dismissed or diverted. The report may include a recommendation that the committee order a hearing or issue an advisory letter or admonition.

(d) Authority on Review. In reviewing grievances under this rule, a review committee may:

(1) dismiss the grievance;

(~~1~~2) affirm the dismissal;

(~~2~~3) dismiss the grievance and issue an advisory letter under rule 5.~~7~~8;

(~~3~~4) issue an admonition under rule 13.5;

(~~4~~5) order a hearing on the alleged misconduct; or

(~~5~~6) order further investigation as may appear appropriate.

(e) Issuing Admonition or Ordering Hearing without Recommendation from Disciplinary Counsel. When the review committee decides to issue an admonition or order a matter to hearing, and such action has not been recommended by disciplinary counsel, the committee shall issue notice of its intended action and state the reasons therefor. The matter shall be set for reconsideration by a review committee. The grievant, the respondent lawyer, and disciplinary counsel may submit additional materials. On reconsideration, the committee may take any action authorized by subsection (d) of this rule.

(f) Action Final. Except as provided in subsection (e), a review committee's action under this rule is final and not subject to further review.

RULE 5.78 ADVISORY LETTER

(a) Grounds. An advisory letter may be issued by a review committee when ~~a hearing does not appear warranted~~:

(1) a respondent lawyer's conduct constitutes a violation, but does not warrant an admonition or sanction, but it appears appropriate to caution a respondent lawyer concerning his or her conduct; or

(2) a respondent lawyer's conduct does not constitute a violation but the lawyer should be cautioned.

(b) Review Committee. An advisory letter may only be issued by a review committee ~~but~~. An advisory letter may not be issued when a grievance is dismissed following a hearing.

(c) Effect. An advisory letter ~~does not constitute a finding of misconduct,~~ is not a sanction~~,~~ and is not disciplinary action~~, and~~. An advisory letter is not public information, and may not be introduced into evidence in any subsequent disciplinary hearing.

TITLE 6 — DIVERSION

RULE 6.1 REFERRAL TO DIVERSION

In a matter involving less serious misconduct as defined in rule 6.2, ~~before filing a formal complaint~~ within 60 days of service of a formal complaint, disciplinary counsel may refer a respondent lawyer to diversion. Diversion may include

- fee arbitration;
- arbitration;
- mediation;
- law office management assistance;
- lawyer assistance programs;
- psychological and behavioral counseling;
- monitoring;
- restitution;
- continuing legal education programs; or
- any other program or corrective course of action agreed to by disciplinary counsel and respondent to address respondent's misconduct.

Disciplinary counsel may negotiate and execute diversion contracts, monitor and determine compliance with the

terms of diversion contracts, and determine fulfillment or any material breach of diversion contracts, subject to review under rule 6.9.

RULE 6.2 LESS SERIOUS MISCONDUCT

Less serious misconduct is conduct not warranting a sanction restricting the respondent lawyer's license to practice law. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

(A) the misconduct involves the misappropriation of funds;

(B) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;

(C) the respondent has been sanctioned in the last three years;

(D) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned or admonished in the last five years;

(E) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

(F) the misconduct constitutes a "~~serious crime~~ felony" as defined in rule 7.1(a); or

(G) the misconduct is part of a pattern of similar misconduct.

RULE 6.3 FACTORS FOR DIVERSION

Disciplinary counsel considers the following factors in determining whether to refer a respondent lawyer to diversion:

(A) whether the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions for the violations raised by the grievance or grievances is likely to be no more severe than reprimand or admonition;

(B) whether participation in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of lawyer discipline;

(C) whether aggravating or mitigating factors exist; and

(D) whether diversion was already tried.

RULE 6.4 NOTICE TO GRIEVANT

As provided in rule 5.1 (c)(7), disciplinary counsel must notify the grievant, if any, of the proposed decision to refer the respondent lawyer to diversion, and must give the grievant a reasonable opportunity to submit written comments. The grievant must be notified when the grievance is diverted and when the grievance is dismissed on completion of diversion. Such decisions to divert or dismiss are not appealable.

RULE 6.5 DIVERSION CONTRACT

(a) Negotiation. Disciplinary counsel and the respondent lawyer negotiate a diversion contract, the terms of which are tailored to the individual circumstances.

(b) Required Terms. A diversion contract must:

(1) be signed by the respondent and disciplinary counsel;

(2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a practice monitor and/or a recovery monitor and the monitor's responsibilities. If a recovery monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the recovery monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;

(3) include a statement in substantially the following form: "This diversion contract is a compromise and settlement of one or more disputes. Except as specifically authorized by the Rules for Enforcement of Lawyer Conduct, it is not admissible in any court, administrative, or other proceedings. It may not be used as a basis for establishing liability to any person who is not a party to this contract";

(~~3~~4) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel;

(~~4~~5) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the grievances to be deferred; and

(~~5~~6) include a specific acknowledgment that a material violation of a term of the contract renders the respondent's participation in diversion voidable by disciplinary counsel.

(c) Limitations. A diversion contract does not create any enforceable rights, duties, or liabilities in any person not a party to the diversion contract or create any such rights, duties or liabilities outside of those stated in the diversion contract or provided by Title 6 of these rules.

(e~~d~~) Amendment. The contract may be amended on agreement of the respondent and disciplinary counsel.

RULE 6.6 AFFIDAVIT SUPPORTING DIVERSION

A diversion contract must be supported by the respondent lawyer's affidavit or declaration as approved by disciplinary counsel setting forth the respondent's misconduct related to the grievance or grievances to be deferred under this title. If the diversion contract is terminated due to a material breach, the affidavit or declaration is admissible into evidence in any ensuing disciplinary proceeding. Unless so admitted, the affidavit or declaration is confidential and must not be provided to the grievant or any other individual outside the Office of Disciplinary Counsel, but may be provided to a review committee or the Board considering the grievance.

RULE 6.7 EFFECT OF NON-PARTICIPATION IN DIVERSION

The respondent lawyer has the right to decline disciplinary counsel's offer to participate in diversion. If the respondent chooses not to participate, the matter proceeds as though no referral to diversion had been made.

RULE 6.8 STATUS OF GRIEVANCE

After a diversion contract is executed by the respondent lawyer and disciplinary counsel, the disciplinary grievance is deferred pending successful completion of the contract.

RULE 6.9 TERMINATION OF DIVERSION

(a) ~~Fulfillment of the Contract~~ Termination. ~~The contract terminates when the respondent lawyer has fulfilled the terms of the contract and gives~~ Respondent may provide disciplinary counsel an affidavit or declaration demonstrating fulfillment of the terms of the contract. Upon receipt of ~~this~~ such an affidavit or declaration, or upon expiration of the diversion period, disciplinary counsel ~~must acknowledge receipt and either~~ may take any of the following actions:

(1) Upon disciplinary counsel's determination that the contract has been completed, dismiss any grievances that were deferred pending ~~successful~~ the completion of the diversion. ~~contract or notifies the respondent that fulfillment of the contract is disputed. The grievant cannot appeal the~~

dismissal. Successful completion of the contract is a bar to any further disciplinary proceedings based on the same allegations.

(2) Amend the diversion contract under rule 6.5(d).

(3) Declare a material breach of the diversion contract under the provisions of subsection (b) of this rule.

(b) Material Breach. A material breach of the contract is cause for termination of the diversion. After a material breach, disciplinary counsel must notify the respondent of termination from diversion and disciplinary proceedings may be instituted, resumed, or reinstated.

(c) Review by the Chair. The Chair may review disputes about fulfillment or material breach of the terms of the contract on the request of the respondent or disciplinary counsel. The request must be filed with the Board within 15 days of notice to the respondent of the determination for which review is sought. Determinations by the Chair under this section are not subject to further review and are not reviewable in any proceeding.

(d) Effect of Completion. The grievant cannot appeal a dismissal under this rule. Completion of the diversion is a bar to any further disciplinary proceedings based on the same allegations.

TITLE 7 – INTERIM PROCEDURES

RULE 7.1 INTERIM SUSPENSION FOR CONVICTION OF A CRIME

(a) Definitions.

(1) "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(2) "Serious crime" includes any:

(A) felony;

(B) crime a necessary element of which, as determined by its statutory or common law definition, includes any of the following:

- interference with the administration of justice;
- false swearing;
- misrepresentation;
- fraud;
- deceit;
- bribery;
- extortion;
- misappropriation; or
- theft; or

(C) attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".

"Felony" includes any crime denominated as a felony in the jurisdiction in which it is committed.

(b) Court Clerk To Advise Association Reporting of Conviction. When a lawyer is convicted of a crime felony, the clerk of the court must advise the Association of the conviction, and on request provide the Association with certified copies of any order or other document showing the conviction lawyer must report the conviction to disciplinary counsel within 30 days of the conviction as defined by this rule.

(c) Disciplinary Procedure upon Conviction.

(1) If a lawyer is convicted of a felony, disciplinary counsel must file a formal complaint regarding the conviction. Disciplinary counsel must also petition the Supreme Court for an order suspending the respondent lawyer during the pendency of disciplinary proceedings. The petition for suspension may be filed before the formal complaint.

(2) If a lawyer is convicted of a crime that is not a felony, disciplinary counsel may refer the matter to a review committee to determine whether the crime is a serious crime. If so, disciplinary counsel proceeds in the same manner as for a felony.

(3) If a lawyer is convicted of a crime that is neither not a felony nor a serious crime, the review committee may considers a report of the conviction in the same manner as any other report of possible misconduct by a lawyer.

(d) Petition. A petition to the Supreme Court for suspension under this rule must include a copy of any available document establishing the fact of conviction. If the crime is not a felony, the petition must also include a copy of the review committee order finding that the crime is a serious crime. Disciplinary counsel may also include additional facts, statements, arguments, affidavits, and documents in the petition. A copy of the petition must be personally served on the respondent, and proof of service filed with the Court.

(e) Immediate Interim Suspension. Upon the filing of a petition for suspension under this rule,; the Court determines whether the crime constitutes a serious crime as defined in section (a).

(1) If the crime is a felony, tThe Court must enter an order immediately suspending the respondent from the practice of law.

(2) If the crime is not a felony, the Court conducts a show cause proceeding under rule 7.2(b) to determine if the crime is a serious crime. If the Court determines the crime is a serious crime, the Court must enter an order immediately suspending the respondent from the practice of law. If the Court determines that the crime is not a serious crime, upon being so advised, the Association processes the matter as it would any other grievance.

(3) If Upon suspendedsion, the respondent must comply with title 14.

(43) Suspension under this rule occurs:

(A) whether the conviction was under a law of this state, any other state, or the United States;

(B) whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and

(C) regardless of the pendency of an appeal.

(4) On or before the date established for the entry of the order of interim suspension the respondent may assert to the Court any jurisdictional deficiency that establishes that the suspension may not properly be ordered, such as that the crime did not constitute a felony or that the respondent is not the individual convicted.

(f) Duration of Suspension. A suspension under this rule must terminate when the disciplinary proceeding is fully completed, after appeal or otherwise. A copy of the final decision, stipulation or order terminating the disciplinary proceeding will be provided to the Court.

(g) Termination of Suspension.

(1) *Petition and Response.* A respondent may at any time petition the ~~Board~~ Court to ~~recommend~~ termination~~e~~ ~~of~~ an interim suspension. Disciplinary counsel may file a response to the petition. ~~The Chair may direct disciplinary counsel to investigate as appears appropriate.~~

(2) ~~*Board Recommendation.* If either party requests, the Board must hear oral argument on the petition at a time and place and under terms as the Chair directs. The Board may recommend termination of a suspension only if the Board makes an affirmative finding of good cause to do so. There is no right of appeal from a Board decision declining to recommend termination of a suspension.~~

~~(3)~~ *Court Action.* The Court determines the procedure for its consideration of a ~~recommendation~~ petition to terminate a suspension.

~~**(h) Notice of Dismissal to Supreme Court.** If disciplinary counsel has filed a petition for suspension under this rule, and the disciplinary proceedings based on the criminal conviction are dismissed, the Supreme Court must be provided a copy of the decision granting dismissal whether or not the respondent is suspended at the time of dismissal.~~

RULE 7.2 INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

(a) Types of Interim Suspension.

(1) ~~*Review Committee Finding of*~~ *Risk to Public.* Disciplinary counsel may petition the Supreme Court for an order suspending the respondent lawyer during the pendency of any proceeding under these rules if:

(A) it appears that a respondent's continued practice of law poses a substantial threat of serious harm to the public and a review committee recommends an interim suspension; ~~and~~ or

(B) a review committee ~~recommends an interim suspension.~~ orders a hearing on the capacity of a lawyer to practice law under rule 8.2 (d)(1); or

(C) when a hearing officer or the chief hearing officer orders supplemental proceedings on a respondent lawyer's capacity to defend a disciplinary proceeding under rule 8.3.

(2) *Board Recommendation for Disbarment.* When the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. The respondent must be suspended absent an affirmative showing that the respondent's continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest. If the Board's decision is not appealed and becomes final, the petition need not be filed, or if filed may be withdrawn.

(3) *Failure To Cooperate with Investigation*. When any lawyer fails without good cause to comply with a request under rule 5.3(~~f~~g) for information or documents, or with a subpoena issued under rule 5.3(~~f~~h), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the lawyer pending compliance with the request or subpoena. A petition may not be filed if the request or subpoena is the subject of a timely objection under rule 5.5(e) and the hearing officer has not yet ruled on that objection. If ~~the~~ a lawyer has been suspended for failure to cooperate and thereafter complies with the request or subpoena, the lawyer may petition the Court to terminate the suspension on terms the Court deems appropriate.

(b) Procedure.

(1) *Petition.* A petition to the Court under this rule must set forth the acts of the lawyer constituting grounds for suspension, and if filed under subsection (a)(2) must include a copy of the Board's decision. The petition may be supported by documents or affidavits. The Association must serve the petition by mail on the day of filing. In addition, a copy of the petition must be personally served on the lawyer no later than the date of service of the show cause order.

(2) *Show Cause Order.* Upon filing of the petition, the Chief Justice orders the lawyer to appear before the Court on a date set by the Chief Justice, and to show cause why the petition for suspension should not be granted. Disciplinary counsel must have a copy of the order to show cause personally served on the lawyer at least ten days before the scheduled show cause hearing. Subsection (b)(5) notification requirements must be included in the show cause order.

(3) *Answer to Petition*. The lawyer may answer the petition. An answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the show cause hearing.

(4) *Filing of Answer.* A copy of any answer must be filed with both the Court and disciplinary counsel by the date specified in the show cause order, which will be at least five days before the scheduled show cause hearing.

(5) *Notification.* The lawyer must inform the court no less than 7 days prior to the show cause hearing, or the hearing will be stricken and the Court will decide the matter without oral argument.

(6) *Application of Other Rules*. If the Court enters an order suspending the lawyer, the rules relating to suspended lawyers, including title 14, apply.

RULE 7.3 AUTOMATIC SUSPENSION WHEN RESPONDENT ASSERTING INCAPACITY

When a respondent lawyer asserts incapacity to conduct a proper defense to disciplinary proceedings, upon receipt of appropriate documentation of the assertion, the respondent must be suspended on an interim basis by the Supreme Court pending the conclusion of the disability proceedings. However, if the hearing officer in the supplemental proceeding files a decision that the respondent is not incapacitated, on petition of either party, the Court may terminate the interim suspension.

RULE 7.4 STIPULATION TO INTERIM SUSPENSION

At any time a respondent lawyer and disciplinary counsel may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a serious crime, a substantial threat of serious harm to the public, or incapacity to practice law. A stipulation must state the factual basis for the stipulation and be submitted directly to the Supreme Court for expedited consideration. When the stipulation is based on the lawyer's mental incapacity to practice law, the lawyer must be represented by counsel, and if counsel does not otherwise appear, the Association will appoint counsel. Stipulations under this rule are public upon filing with the Court, but the Court may order that supporting materials are confidential. Either party may petition the Court to terminate the interim suspension, and on a show-

ing that the cause for the interim suspension no longer exists, the Court may terminate the suspension.

RULE 7.5 INTERIM SUSPENSIONS EXPEDITED

(a) Expedited Review. Petitions seeking interim suspension under this title receive an expedited hearing, ordinarily no later than 14 days from issuance of an order to show cause.

(b) Procedure During Court Recess. When a petition seeking interim suspension under this title is filed during a recess of the Supreme Court, the Chief Justice, the Acting Chief Justice, or the senior Justice under SAR 10, subject to review by the full Court on motion for reconsideration, may rule on the motion for interim suspension.

RULE 7.6 EFFECTIVE DATE OF INTERIM SUSPENSIONS

Interim suspensions become effective on the date of the Supreme Court's order unless the order provides otherwise.

RULE 7.7 APPOINTMENT OF CUSTODIAN TO PROTECT CLIENTS' INTERESTS

(a) Custodians Allowed. The Chair, on motion by disciplinary counsel or any other interested person, may appoint one or more lawyers or Association counsel as a custodian to act as counsel for the limited purpose of protecting clients' interests. A custodian may be appointed whenever a lawyer (1) has been transferred to disability inactive status, suspended, or disbarred, and fails to carry out the obligations of title 14 or fails to protect the clients' interests, or ~~whenever a lawyer~~ (2) disappears ~~or,~~ dies, abandons practice, or is otherwise incapable of meeting the lawyer's obligations to clients. A custodian should not be appointed if ~~unless~~ a partner, personal representative, or other responsible person appears to be properly protecting the clients' interests. The Chair may enter orders to carry out the provisions and purposes of this rule.

(b) Duties. The custodian takes possession of the necessary files and records and takes action as seems indicated to protect the clients' interests or required by the Chair's orders or these rules. Such action may include but is not limited to assuming control of trust accounts or other financial affairs. Any bank or other person honoring the authority of the custodian is exonerated from any resulting liability. In determining ownership of funds in the trust account, including by subrogation or indemnification, the custodian should act as a reasonably prudent lawyer maintaining a client trust account. The custodian may rely on a certification of ownership issued by a person who conducts audits for the Association under rule 15.1. If the client trust account does not contain sufficient funds to meet known client balances, the custodian may disburse funds on a pro rata basis.

(c) Discharge. On motion by disciplinary counsel or any interested person, the Chair may discharge the custodian from further duties. The Chair may also order destruction of files and records as appropriate.

(d) Fees and Costs. Payment of any fees and costs incurred by the Association under this rule may be a condition of reinstatement of a disbarred or suspended lawyer or a lawyer transferred to disability inactive status, ~~or may be~~ ordered as restitution in a disciplinary proceeding for failure to comply with rule 14.1, or claimed against the estate of a deceased or adjudicated incapacitated lawyer.

(e) Records. The Bar Association maintains record of the custodianship permanently. The custodian maintains files and papers obtained as custodian until otherwise ordered by the Chair.

TITLE 8 – DISABILITY PROCEEDINGS

RULE 8.1 ACTION ON ADJUDICATION OF INCOMPETENCY OR INCAPACITY

(a) Grounds. The Association must automatically transfer a lawyer from active to disability inactive membership status upon receipt of a certified copy of the judgment, order, or other appropriate document demonstrating that the lawyer:

(1) was found to be incapable of assisting in his or her own defense in a criminal action;

(2) was acquitted of a crime based on insanity;

(3) had a guardian (but not a limited guardian) appointed for his or her person or estate on a judicial finding of ~~incompetency~~ incapacity;

(4) was involuntarily committed to a mental health facility for more than 14 days under Ch. 71.05 RCW; or

(~~4~~5) was found to be mentally incapable of conducting the practice of law in any other jurisdiction.

(b) Notice to Lawyer. The Association must forthwith notify the disabled lawyer and his or her guardian or guardian ad litem, if ~~one has been appointed~~ any, of the transfer to disability inactive status. The Association must also notify the Supreme Court of the transfer and provide a copy of the judgment, order, or other appropriate document on which the transfer was based.

RULE 8.2 DETERMINATION OF INCAPACITY TO PRACTICE LAW

(a) Review Committee May Order Hearing. Disciplinary counsel reports to a review committee on investigations into an active, suspended, or inactive respondent lawyer's mental or physical capacity to practice law. Subject to rule 5.2, the respondent lawyer and his or her guardian or guardian ad litem, if any, shall be provided with a complete copy of disciplinary counsel's report and shall be afforded a reasonable opportunity to respond prior to the review committee taking action on the report. The committee orders a hearing if it appears there is reasonable cause to believe that the respondent does not have the mental or physical capacity to practice law. In other cases, the committee may direct further investigation as appears appropriate or dismiss the matter.

(b) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(c) Procedure.

(1) *Applicable Rules and Case Caption.* Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings except that the respondent lawyer's initials are to be used in the case caption rather than the lawyer's full name.

(2) *Appointment of Counsel.* If counsel for the respondent does not appear within the time for filing an answer, the Chair must appoint an active member of the Association as counsel for the respondent under rule 8.10.

(3) *Health Records.* After a review committee orders a hearing under this rule, disciplinary counsel may require the respondent to furnish written releases and authorizations for

medical, psychological, or psychiatric records as may be relevant to the inquiry, subject to a motion to the hearing officer, or if no hearing officer has been appointed, to the chief hearing officer, to limit the scope of the requested releases or authorizations for good cause.

(4) *Examination*. Upon motion, the hearing officer, or if no hearing officer has been appointed, the chief hearing officer, may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in determining the respondent's capacity to practice law. Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(5) *Hearing Officer Recommendation.* If the hearing officer ~~or panel~~ finds that the respondent does not have the mental or physical capacity to practice law, the hearing officer ~~or panel~~ must recommend that the respondent be transferred to disability inactive status.

(6) *Appeal Procedure.* Either respondent or disciplinary counsel may appeal from a final determination of the hearing officer as to the respondent's capacity to practice law. The procedures for appeal and review of suspension recommendations apply to ~~recommendations for transfer to disability inactive status~~ such appeals.

(7) *Transfer Following Board Review.* If, after review of the decision of the hearing officer ~~or panel~~, the Board finds that the respondent does not have the mental or physical capacity to practice law, it must enter an order immediately transferring the respondent to disability inactive status. The transfer is effective upon service of the order under rule 4.1.

(d) Interim Suspension.

(1) When a review committee orders a hearing on the capacity of a respondent to practice law, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a) unless the respondent is already suspended on an interim basis.

(2) Even if the Court previously denied a petition for interim suspension under subsection (d)(1), disciplinary counsel may petition the Court for the interim suspension of a respondent under rule 7.2 (a)(3) if the respondent fails:

(A) to appear for an independent examination under this rule;

(B) to waive health care provider-patient privilege as required by this rule; or

(C) to appear at a hearing under this rule.

(e) Termination of Interim Suspension. If the hearing officer ~~or panel~~ files a decision recommending that a respondent placed on interim suspension under this rule not be transferred to disability inactive status, upon either party's petition~~,~~ the Court may terminate the interim suspension.

RULE 8.3 DISABILITY PROCEEDINGS DURING COURSE OF DISCIPLINARY PROCEEDINGS

(**a) Supplemental Proceedings on Capacity To Defend.** A hearing officer ~~or hearing panel~~, or chief hearing officer if no hearing officer has been appointed, must order a supplemental proceeding on the respondent lawyer's capacity to defend the disciplinary proceedings if the respondent asserts, or there is reasonable cause to believe, that the respondent is incapable of properly defending the disciplinary proceeding because of mental or physical incapacity. A different hearing officer shall be appointed for the supplemental proceeding.

(b) Purpose of Supplemental Proceedings. In a supplemental proceeding, the hearing officer ~~or panel~~ determines if the respondent:

(1) is incapable of defending himself or herself in the disciplinary proceedings because of mental or physical incapacity;

(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or

(3) is currently unable to practice law because of mental or physical incapacity.

(c) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(d) Procedure for Supplemental Proceedings.

(1) *Applicable Rules and Case Caption.* Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings except that the respondent lawyer's initials are to be used in the case caption rather than the lawyer's full name.

(2) *~~Deferral of~~ Effect on Pending Disciplinary ~~Proceedings~~ Matters*. ~~The disciplinary proceedings are deferred pending the outcome of the supplemental proceeding~~ Pending the outcome of the supplemental proceedings, the hearing officer, or the chief hearing officer if no hearing officer has been appointed, must order any disciplinary proceedings pending against the respondent stayed. Disciplinary counsel may defer any pending disciplinary investigation in accordance with the provisions of rule 5.3(d).

(3) *Appointment of Counsel.* If counsel for the respondent does not appear within 20 days of notice to the respondent of the issues to be considered in a supplemental proceeding under this rule, or within the time for filing an answer, the Chair must appoint an active member of the Association as counsel for the respondent in the supplemental proceedings under rule 8.10.

(4) *Health Records.* Disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the determination under section (b), subject to a motion to the hearing officer to limit the scope of the requested releases or authorizations for good cause. If the respondent asserted incapacity, there is a rebuttable presumption that good cause does not exist.

(5) *Examination.* Upon motion, the hearing officer may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in the determinations to be made under section (b). Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(6) *Failure To Appear or Cooperate.* If the respondent fails to appear for an independent examination, fails to waive health care provider-patient privilege as required in these rules, or fails to appear at the hearing, unless the procedure

under rule 8.10(d) is followed the following procedures apply:

(A) If the Association has the burden of proof, the hearing officer must hold a hearing and, if presented with sufficient evidence to determine incapacity, order the respondent transferred to disability inactive status. If there is insufficient evidence to determine incapacity, the hearing officer must enter an order terminating the supplemental proceedings and reinstating the disciplinary proceedings. A respondent who does not appear at the hearing may move to vacate the order of transfer under rule 10.6(c).

(B) If the respondent has the burden of proof, the hearing officer must enter an order terminating the supplemental proceedings and resuming the disciplinary proceedings.

(7) *Hearing Officer Decision*.

(A) Capacity To Defend and Practice Law. If the hearing officer ~~or panel~~ finds that the respondent is capable of defending himself or herself and has the mental and physical capacity to practice law, the disciplinary proceedings resume.

(B) Capacity To Defend with Counsel. Regardless of the hearing officer's determination as to mental or physical capacity to practice law, ~~I~~ if the hearing officer ~~or panel~~ finds that the respondent is not capable of defending himself or herself in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint an active member of the Association as counsel for the respondent in the disciplinary proceeding.

(C) Finding of Incapacity. If the hearing officer ~~or panel~~ finds that the respondent either does not have the mental or physical capacity to practice law, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer ~~or panel~~ must recommend that the respondent be transferred to disability inactive status.

(D) Review and Appeals. Either respondent or disciplinary counsel may appeal from a final determination of the hearing officer as to the respondent's capacity to practice law or respondent's capacity to defend a disciplinary proceeding. The procedures for appeal and review of suspension recommendations shall apply ~~to recommendations for transfer to disability inactive status~~.

(8) *Transfer Following Board Review*.

(A) The Board must enter an order immediately transferring the respondent to disability inactive status if after review of a hearing officer's ~~or panel's~~ recommendation of transfer to disability inactive status, the Board finds that the respondent:

(i) does not have the mental or physical capacity to practice law; or

(ii) is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity.

(B) The transfer is effective upon service of the order on the respondent under rule 4.1.

(e) Interim Suspension. When supplemental proceedings have been ordered, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2 (a)(1) or seek automatic suspension under rule 7.3 unless the respondent is already suspended on an interim basis.

RULE 8.4 APPEAL OF ~~TRANSFER TO~~ DISABILITY ~~INACTIVE STATUS~~ DETERMINATIONS

The respondent lawyer and disciplinary counsel may appeal a~~n order of transfer to disability inactive status under rule 12.3~~ Board decision under rules 8.2 or 8.3. The procedures of title 12 apply to such appeals. The Board's order as to transfer to disability inactive status remains in effect, regardless of the pendency of an appeal, unless and until reversed by the Supreme Court.

RULE 8.5 STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS

(a) Requirements. At any time a respondent lawyer, respondent's counsel, and disciplinary counsel may stipulate to the transfer of the respondent to disability inactive status under this title. The respondent, respondent's counsel, and disciplinary counsel must all sign the stipulation.

(b) Form. The stipulation must:

(1) state with particularity the nature of the respondent's incapacity to practice law and the nature of any pending disciplinary proceedings that will be stayed and any disciplinary investigation that will be deferred as a result of the respondent's transfer to disability inactive status;

(2) state that it is not binding on the Association as a statement of all existing facts relating to the professional conduct of the respondent and that any additional existing facts may be proved in a subsequent disciplinary proceeding; and

(3) fix the amount of costs and expenses to be paid by the respondent.

(c) Respondent Must be Represented by Counsel. Respondent must be represented by counsel at the time of entering into the stipulation. If the respondent has not retained counsel, the Chair must appoint an active member of the Association as counsel for the respondent pursuant to rule 8.10. Any counsel appointed for purposes of entering into a stipulation shall be deemed automatically discharged when the Board approves or rejects the stipulation.

(e~~d~~) Approval. The stipulation must be presented to the Board. The Board reviews the stipulation based solely on the record agreed to by the respondent, respondent's counsel, and disciplinary counsel. The Board may either approve the stipulation or reject it. Upon approval, the transfer to disability inactive status is not subject to further review.

(~~d~~e) Stipulation Not Approved. If the stipulation is rejected by the Board, the stipulation has no force or effect and neither it nor the fact of its execution is admissible in any pending or subsequent disciplinary proceeding or in any civil or criminal action.

RULE 8.6 COSTS IN DISABILITY PROCEEDINGS

When reviewing a matter under this title, the Board may authorize disciplinary counsel to seek assessment of the costs and expenses against the respondent lawyer. If the Board authorizes, disciplinary counsel may file a statement of costs within 20 days of service of the Board's order. Rule 13.9 governs assessment of these costs and expenses. The respondent is not required to pay the costs and expenses until 90 days after reinstatement to active status.

RULE 8.7 BURDEN AND STANDARD OF PROOF

In proceedings under rules 8.2 or 8.3, the party asserting or alleging the incapacity has the burden of ~~establishing it by a preponderance of the evidence~~ proof. If the issue of incapacity is raised by a hearing officer ~~or panel~~, the Association has the burden of proof. A respondent lawyer establishes incapacity by a preponderance of the evidence. The Association establishes incapacity by a clear preponderance of the evidence.

RULE 8.8 REINSTATEMENT TO ACTIVE STATUS

(a) Right of Petition and Burden. A respondent lawyer transferred to disability inactive status may resume active status only by Board or Supreme Court order. Any respondent transferred to disability inactive status may petition the Board for transfer to active status. The respondent has the burden of showing that the disability has been removed.

(b) Petition. The petition for reinstatement must:

(1) state facts demonstrating that the disability has been removed;

(2) include the name and address of each psychiatrist, psychologist, physician, or other person and each hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status; and

(3) be filed with the Clerk and served on disciplinary counsel.

(c) Waiver of Privilege. The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status waives any privilege as to treatment of any medical, psychological, or psychiatric condition during the period of disability. The respondent must furnish, if requested by the Board or disciplinary counsel, written consent to each treatment provider to divulge information and records relating to the disability.

(d) Initial Review by Chair. The Chair reviews the petition and any response by disciplinary counsel and directs appropriate action to determine whether the disability has been removed, including investigation by disciplinary counsel or any other person or an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition.

(e) Board Review.

(1) The respondent must have a reasonable opportunity to review any reports of investigations or examinations ordered by the Chair and submit additional materials before the matter is submitted to the Board.

(2) On submission, the Board reviews the petition and any reports as expeditiously as possible and takes one or more of the following actions:

(A) grants the petition;

(B) directs additional action as the Board deems necessary to determine whether the disability has been removed;

(C) orders that a hearing be held before a hearing officer ~~or panel~~ under the procedural rules for disciplinary proceedings;

(D) directs the respondent to establish proof of competence and learning in the law, which may include certification by the bar examiners of successful completion of an examination for admission to practice;

(E) denies the petition;

(F) directs the respondent to pay the costs of the reinstatement proceedings; or

(G) approves or rejects a stipulation to reinstatement between the respondent and the Association.

(3) The petition may be denied without the respondent having an opportunity for a hearing before a hearing officer ~~or panel~~ only if the Board determines that a hearing is not necessary because:

(A) the respondent fails to state a prima facie case for reinstatement in the petition; or

(B) the petition does not indicate a material change of circumstance since a previous denial of a petition for reinstatement.

(f) Petition Granted. If the petition for reinstatement is granted, the Association ~~immediately~~ restores the respondent to the respondent's prior status and notifies the Supreme Court of the transfer, unless disciplinary counsel files a notice of appeal under subsection (g) of this rule, in which case respondent will not be returned to the respondent's prior status until that appeal is final. If a disciplinary proceeding has been stayed, or a disciplinary investigation has been deferred because of the disability transfer, the proceeding or investigation resumes upon reinstatement.

(g) Review by Supreme Court. ~~If the petition for reinstatement is not granted,~~ Either the respondent or disciplinary counsel may appeal the Board's decision to the Supreme Court, by filing a notice of appeal with the Clerk within ~~15~~ 30 days of service of the Board's decision on the respondent. Title 12 applies to review under this section.

RULE 8.9 PETITION FOR LIMITED GUARDIANSHIP

~~**(a) Guardian Powers and Qualifications.** A guardian may be appointed under this rule to take any action deemed advisable related to the respondent lawyer's license to practice law and any disciplinary or disability investigation or proceeding.~~

(a) Request for Authorization to Initiate Guardianship Proceedings. ~~**(b) Referral to Review Committee.**~~ A hearing officer ~~or panel~~, the Chair, ~~the~~ Association counsel, the respondent, or respondent's counsel may request that a review committee authorize the filing of a petition for a limited guardianship of a respondent ~~as described in section (a)~~.

(b) Notice. The person requesting authority to file the guardianship petition must give notice to the parties at the time of the request. The party not making the request shall be given a reasonable opportunity, under the facts and circumstances of the case, to respond before the Review Committee renders its decision. The Association and the respondent may submit declarations or affidavits relevant to the Review Committee's decision.

(c) Review Committee Determination. The review committee may authorize the ~~Association to~~ filing of a petition for the appointment of a limited guardian ~~as described in section (a)~~ when the review committee reasonably believes that grounds for such an appointment exist under RCW 11.88.010(2). The review committee may require the respondent to submit to any necessary examinations or evaluations and may retain independent counsel to assist in the investigation and the filing of any petition.

(d) Action for Limited Guardianship.

(1) Upon authorization of a review committee, the ~~Association~~ petitioning party may file a petition in any Superior Court seeking a limited guardian to act regarding the respondent's license or any disciplinary or disability investigation or proceeding.

(2) Notwithstanding any other ~~provisions regarding the~~ statutory qualifications ~~of a guardian ad litem~~, any guardian or guardian ad litem appointed pursuant to a petition filed under this rule must be a lawyer qualified to maintain and protect the ~~confidences and secrets~~ information protected by RPC 1.6 or RPC 1.9 of the respondent's clients.

(3) Upon application to the Superior Court, the respondent may have the matter moved to the county where the respondent is domiciled or maintains an office or another county as authorized by law.

(4) The guardianship proceedings must be sealed to the extent necessary to protect ~~confidences and secrets~~ information protected by RPC 1.6 or RPC 1.9 of the respondent's clients or on any other basis found by the Superior Court.

(5) The costs of any guardianship proceeding are paid out of the guardianship estate, except if the guardianship estate is indigent, the Association pays the costs.

RULE 8.10 APPOINTMENT OF COUNSEL FOR RESPONDENT

(a) Appointment of Counsel for Respondent. If counsel for the respondent does not appear within the time for filing an answer, or as may otherwise be required, under Title 8 of these rules, or upon an order of further proceedings or a hearing under rule 9.2 (e)(3), the Chair must appoint an active member of the Association as counsel for the respondent.

(b) Counsel's Role. Counsel appointed for respondent shall act as an advocate for their client and shall not substitute counsel's own judgment for that of the client.

(c) Withdrawal of Appointed Counsel. Counsel appointed under this rule may withdraw only upon authorization from the Chair, upon a showing of good cause.

(d) Action Upon Withdrawal of Appointed Counsel. Upon authorizing appointed counsel to withdraw, the Chair will determine whether to appoint other counsel to represent the respondent, or, upon a finding that there is no reasonable chance that other counsel will be able to represent the respondent and that appointment of counsel would be futile, may recommend to the Board that the respondent be transferred to disability inactive status. The Board will review any order of the Chair recommending transfer to disability inactive status because appointment of counsel would be futile and may either affirm such order or direct that substitute counsel be appointed for the respondent. An unrepresented respondent may not participate in this review by the Board unless specifically authorized by the Chair to participate. The respondent may seek review under rule 12.3 of an order of the Board recommending transfer to disability inactive status under this rule but must be represented by counsel for purposes of such motion unless specifically authorized to proceed without representation by the Chair.

TITLE 9 – RESOLUTIONS WITHOUT HEARING

RULE 9.1. STIPULATIONS

(a) Requirements. Any disciplinary matter or proceeding may be resolved by a stipulation at any time. The stipulation must be signed by the respondent lawyer and approved by disciplinary counsel. The stipulation may impose terms and conditions of probation and contain any other appropriate provisions.

(b) Form. A stipulation must:

(1) provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Board or hearing officer to form an opinion as to the propriety of the proposed resolution, and, if approved, to make the stipulation useful in any subsequent disciplinary proceeding against the respondent;

(2) set forth the respondent's prior disciplinary record or its absence;

(3) state that the stipulation is not binding on ~~the Association~~ disciplinary counsel as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding; and

(4) fix the amount of costs and expenses to be paid by the respondent.

(c) Stipulation to alleged facts. A respondent lawyer and disciplinary counsel may agree to stipulate to alleged facts in lieu of admissions to particular acts or omissions. The stipulation must also include an agreement that the facts and misconduct will be deemed proved in any subsequent disciplinary proceeding in any jurisdiction.

(e~~d~~) Approval.

(1) *Standards*. The chief hearing officer, a hearing officer, or the Board must approve a stipulation unless the stipulation results in a manifest injustice.

(2) *Approval By Chief Hearing Officer.* Subject to subsection (1), the chief hearing officer may approve of a stipulation disposing of any matter that is not then pending before an assigned hearing officer, the Board, or the Supreme Court. Approval may be granted at any point, during an investigation or otherwise, prior to entry of final decision under rule 10.16(d). The chief hearing officer may not approve of a stipulation that requires the respondent's suspension or disbarment.

(~~1~~3) *Approval By Hearing Officer.* Subject to subsection (1), a hearing officer ~~or panel~~ may approve of a stipulation disposing of a matter pending before the officer ~~or panel~~, unless the stipulation requires the respondent's suspension or disbarment. This approval constitutes a final decision and is not subject to further review.

(~~2~~4) *Approval By Board.* All other stipulations must be presented to the Board. The Board reviews a stipulation based solely on the record agreed to by the respondent lawyer and disciplinary counsel. The parties may jointly ask the Chair to permit them to address the Board regarding a stipulation. Such presentations are at the Chair's discretion. Subject to subsection (1), t~~T~~he Board may approve, conditionally approve, or reject a stipulation. Regardless of the provisions of rule 3.3(a), the Board may direct that information or documents considered in reviewing a stipulation be kept confidential.

(5) *Approval by Supreme Court.*

(A) *Suspension and Disbarment.* All stipulations agreeing to suspension or disbarment approved by the Board, together with all materials that were submitted to the Board,

must be submitted to the Court. Following review, the Court issues an order regarding the stipulation.

(B) *Matters Pending Before the Supreme Court.* At any time a matter is pending before the Court, the parties may submit to the Court for its consideration a stipulation of the parties to resolve the matter. The Court will resolve the matter under such procedure as the Court deems appropriate.

(~~d~~e) Conditional Approval.

(1) *By Hearing Officer.* Subject to subsection (d)(1), a hearing officer may condition the approval of a stipulation on the agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the hearing officer deems necessary to accomplish the purposes of lawyer discipline, provided the terms do not involve suspension or disbarment. If the hearing officer conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the hearing officer, both parties serve on the hearing officer written consent to the conditional terms in the order of the hearing officer or chief hearing officer. For purposes of this subsection, "hearing officer" includes the chief hearing officer.

(2) *By Board.* Subject to subsection (d)(1), t~~T~~he Board may condition its approval of a stipulation on the agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the Board deems necessary to accomplish the purposes of lawyer discipline. If the Board conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the Chair, both parties serve on the Clerk written consent to the conditional terms in the Board's order.

(e~~f~~) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, the parties may serve on the Clerk a joint motion for reconsideration ~~and may ask to address the Board on the motion~~. If the conditional approval was made by a hearing officer or chief hearing officer, the motion shall also be served on that officer. The parties may ask to address the Board or officer on the motion.

(~~f~~g) Stipulation Rejected. ~~The Board's~~ An order rejecting a stipulation must state the reasons for the rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any disciplinary, civil, or criminal proceeding.

(h) Review. When a hearing officer or chief hearing officer rejects a stipulation, by agreement the parties may present the stipulation to the Board for consideration.

(i) Costs. A final order approving a stipulation is deemed a final assessment of the costs and expenses agreed to in the stipulation for the purposes of rule 13.9, and is not subject to further review.

RULE 9.2 RECIPROCAL DISCIPLINE AND DISABILITY INACTIVE STATUS; DUTY TO SELF-REPORT

(a) Duty To Self-Report Discipline or Transfer to Disability Inactive Status. Within 30 days of being publicly disciplined, or being transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the discipline or transfer.

(b) Obtaining Order. Upon notification from any source that a lawyer admitted to practice in this state was publicly disciplined, or was transferred to disability inactive status in another jurisdiction, disciplinary counsel must obtain a ~~certified~~ copy of the order and file it with the Supreme Court, except in circumstances set forth in subsection (g).

(c) Supreme Court Action. Except in circumstances set forth in subsection (g), ~~U~~upon receipt of a ~~certified~~ copy of an order demonstrating that a lawyer admitted to practice in this state has been disciplined or transferred to disability inactive status in another jurisdiction, the Supreme Court orders the respondent lawyer to show cause within ~~30~~ 60 days of service why it should not impose the identical discipline or disability inactive status. ~~The Association~~ Disciplinary counsel must personally serve this order, and a copy of the order from the other jurisdiction, on the respondent under rule 4.1 (b)(3).

(d) Deferral. If the other jurisdiction has stayed the discipline or transfer, any reciprocal discipline or transfer in this state is deferred until the stay expires.

(e) Discipline or Transfer To Be Imposed.

(1) ~~Thirty~~ Sixty days after service of the order under section (c), the Supreme Court imposes the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or the Court finds, that it clearly appears on the face of the record on which the discipline or disability transfer is based, that:

(A) the procedure so lacked notice or opportunity to be heard that it denied due process;

(B) the proof of misconduct or disability was so infirm that the Court is clearly convinced that it cannot, consistent with its duty, accept the finding of misconduct or disability;

(C) the imposition of the same discipline would result in grave injustice;

(D) the established misconduct warrants substantially different discipline in this state;

(E) the reason for the original transfer to disability inactive status no longer exists; or

(F) appropriate discipline has already been imposed in this jurisdiction for the misconduct.

(2) If the Court determines that any of the factors in subsection (1) exist, it enters an appropriate order. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that imposing the same discipline is not appropriate.

(3) If the Court orders further proceedings or a hearing to determine if respondent should be transferred to disability inactive status, the provisions of rule 8.10 as to appointment of counsel will apply.

(f) Conclusive Effect. Except as this rule otherwise provides, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct or should be transferred to disability inactive status conclusively establishes the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

(g) Prior Matter In Washington. No action will be taken against a lawyer under this rule when the lawyer has already been the subject of discipline, disability transfer, or other final disposition of a grievance, disciplinary proceeding, or disability proceeding in Washington arising out of the

same circumstances that are the basis for discipline, resignation, or disability transfer in another jurisdiction.

RULE 9.3 RESIGNATION IN LIEU OF ~~DISBARMENT~~ DISCIPLINE

(a) Grounds. A respondent lawyer who desires not to contest or defend against allegations of misconduct may, at any time before the answer in any disciplinary proceeding is due, or thereafter with disciplinary counsel's consent, resign his or her membership in the Association in lieu of further disciplinary proceedings.

(b) Process. The respondent first notifies disciplinary counsel that the respondent intends to submit a resignation and asks disciplinary counsel to prepare a statement of alleged misconduct and to provide a declaration of costs and a proposed resignation form. After receiving the statement and the declaration of costs, if any, the respondent may resign by signing and submitting to disciplinary counsel ~~a signed resignation,~~ the resignation form prepared by disciplinary counsel, sworn to or affirmed under oath and notarized, ~~that~~ which must include the following:

(1) ~~includes~~ D~~d~~isciplinary counsel's statement of the misconduct alleged ~~misconduct~~ in the matters then pending. ~~and either an admission of that misconduct or a statement that while not admitting the misconduct the respondent agrees that the Association could prove by a clear preponderance of the evidence that the respondent committed violations sufficient to result in respondent's disbarment;~~

(2) Respondent's statement that he or she is aware of the alleged misconduct stated in disciplinary counsel's statement and that rather than defend against the allegations, he or she wishes to permanently resign from membership in the Association.

(~~2~~3) Respondent's affirmative~~ly~~ acknowledg~~es~~ment that the resignation is permanent including the statement:

"I understand that my resignation is permanent and that any future application by me for reinstatement as a member of the Washington State Bar Association is currently barred. If the Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by one who has been disbarred for ethical misconduct, and that, if I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this resignation was based."~~;~~

(~~3~~4) ~~assures that the respondent will~~ Respondent's agreement:

(A) to notify all other jurisdictions in which the respondent is or has been admitted to practice law of the resignation in lieu of ~~disbarment~~ discipline;

(B) to seek to resign permanently from the practice of law in any other jurisdiction in which the respondent is admitted; ~~and~~

(C) to provide disciplinary counsel with copies of any of these notifications and any responses; and

(D) acknowledging that the resignation could be treated as a disbarment by all other jurisdictions.

(~~4~~5) ~~assures that the respondent will~~ Respondent's agreement to:

(A) notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license that is predicated on the respondent's admission to practice law of the resignation in lieu of ~~disbarment~~ discipline;

(B) seek to resign permanently from any such license; and

(C) provide disciplinary counsel with copies of any of these notifications and any responses~~;~~.

(~~5~~6) ~~states~~ Respondent's agreement that when applying for any employment or license the respondent agrees to disclose the resignation in lieu of ~~disbarment~~ discipline in response to any question regarding disciplinary action or the status of the respondent's license to practice law~~;~~.

(~~6~~7) ~~states that the respondent agrees~~ Respondent's agreement to pay any restitution or additional costs and expenses ordered by ~~the~~ a review committee, and attaches payment for costs as described in section (f) below, or states that the respondents will execute a confession of judgment or deed of trust as described in section (f)~~; and~~.

(~~7~~8) ~~states~~ Respondent's agreement that when the resignation becomes effective, the respondent will be subject to all restrictions that apply to a disbarred lawyer.

(c) Public Filing. Upon receipt of a resignation meeting the requirements set forth above, and the costs and expenses and any executed confession of judgment or deed of trust required under section (f), disciplinary counsel will endorse the resignation and promptly cause~~s~~ it to be filed with the Clerk as a public and permanent record of the Association.

(d) Effect. A resignation under this rule is effective upon its filing with the Clerk. All disciplinary proceedings against the respondent terminate except disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances to create a record of the respondent's actions. The Association immediately notifies the Supreme Court of a resignation under this rule and the respondent's name is forthwith stricken from the roll of lawyers. Upon filing of the resignation, the resigned respondent must comply with the same duties as a disbarred lawyer under title 14 and comply with all restrictions that apply to a disbarred lawyer. Notice is given of the resignation in lieu of ~~disbarment~~ discipline under rule 3.5.

(e) Resignation is Permanent. Resignation under this rule is permanent. A respondent who has resigned under this rule will never be eligible to apply and will not be considered for admission or reinstatement to the practice of law nor will the respondent be eligible for admission for any limited practice of law.

(f) Costs and Expenses. ~~(A)~~ If a respondent resigns under this rule, the expenses under rule 13.9(c) are $1,000 ~~for any proceedings for which an answer was not due when the respondent notified disciplinary counsel of the respondent's intent to resign under section (b)~~. With the resignation, the respondent must pay this $1,000 expense, plus all actual costs ~~for which disciplinary counsel provides documentation, up to an additional $1,000~~ as defined by rule 13.9(b). If the respondent demonstrates inability to pay these costs and expenses, instead of paying this amount, the respondent must execute, in disciplinary counsel's discretion, a confession of judgment or a deed of trust for that amount. Disciplinary counsel may file a claim under section (g) for costs not covered by the payment, confession of judgment, or deed of trust.

~~(B) If at the time respondent serves the notice of intent to resign, an additional proceeding is pending against the respondent for which an answer has been filed or is due, disciplinary counsel may also file a claim under section (g) for costs and expenses for that proceeding.~~

(g) Review of Costs, Expenses, and Restitution. Any claims for restitution or for costs and expenses not resolved by agreement between disciplinary counsel and the respondent may be submitted at any time, including after the resignation, to a review committee in writing for the determination of appropriate restitution or costs and expenses. The Lawyers' Fund for Client Protection may request review including a determination by the review committee of whether any funds were obtained by the respondent by dishonesty of, or failure to account for money or property entrusted to, the respondent in connection with the respondent's practice of law or while acting as a fiduciary in a matter related to the respondent's practice of law. The review committee's order is not subject to further review and is the final assessment of restitution or costs and expenses for the purposes of rule 13.9 and may be enforced as any other order for restitution or costs and expenses. The record before the review committee and the review committee's order is public information under rule 3.1(b).

[Reporter's note: this amendment also requires a corresponding amendment to RPC 5.8]

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.

RULE 9.4 RECIPROCAL RESIGNATION IN LIEU OF DISCIPLINE

(a) Duty To Self-Report Resignation In Lieu of Discipline. Within 30 days of resigning in lieu of discipline from another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the resignation in lieu of discipline.

(b) Obtaining Order. Upon notification from any source that a lawyer admitted to practice in this state has resigned in lieu of discipline in another jurisdiction, disciplinary counsel must obtain a copy of the resignation in lieu of discipline and any order approving the resignation and file it with the Supreme Court, except in circumstances set forth in subsection (e).

(c) Supreme Court Action. Except in circumstances set forth in subsection (e), ~~U~~upon receipt of a copy of a resignation in lieu of discipline and any order approving the resignation, the Supreme Court orders the respondent lawyer to show cause within 60 days of service why the lawyer should not be disbarred in this jurisdiction. The Association must personally serve this order, and a copy of the resignation in lieu of discipline and any order from the other jurisdiction approving the resignation, on the respondent under rule 4.1 (b)(3).

(d) Discipline To Be Imposed.

(1) Sixty days after service of the order under section (c), the Supreme Court enters an order disbarring the respondent lawyer unless the lawyer demonstrates that disbarment would result in grave injustice.

(2) The burden is on the respondent to establish that continuing to remain admitted to practice in this jurisdiction will not place the public at risk.

(3) If the Supreme Court determines that disbarment would result in a grave injustice, the Court may enter an appropriate order.

(e) Prior Matter In Washington. No action will be taken against a lawyer under this rule when the lawyer has already been the subject of disciplinary action or other final disposition of a grievance or disciplinary proceeding in Washington arising out of the same circumstances that are the basis for discipline or a resignation in another jurisdiction.

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.

TITLE 10 – HEARING PROCEDURES

RULE 10.1 GENERAL PROCEDURE

(a) Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated, apply directly. A party may not move for summary judgment, but either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding. Motions for judgment on the pleadings and motions to dismiss based upon the pleadings are available only to the extent permitted in rule 10.10.

(b) Meaning of Terms in Civil Rules. In applying the civil rules to proceedings under these rules, terms have the following meanings:

(1) "Court" or "judge" means the hearing officer ~~or hearing panel or its chair, as appropriate~~; and

(2) "Parties" means the respondent lawyer and disciplinary counsel.

(c) Hearing Officer Authority. In addition to the powers specifically provided in these rules, the hearing officer may make any ruling that appears necessary and appropriate to insure a fair and orderly proceeding.

RULE 10.2 HEARING OFFICER ~~OR PANEL~~ ASSIGNMENT

(a) Assignment.

~~**(1) *Hearing Officer.***~~ The chief hearing officer ~~ordinarily~~ assigns a ~~single~~ hearing officer, from those eligible under rule 2.5.~~, to hear a matter ordered to hearing.~~

~~**(2) *Hearing Panel*.** On either party's motion, or when otherwise deemed advisable, the chief hearing officer may assign a hearing panel. In determining whether to assign a hearing panel, the chief hearing officer considers whether public interest in the proceeding makes a panel advisable and whether a nonlawyer on a hearing panel could contribute to the fairness, or the perception of fairness, in the process and the outcome. When a panel is assigned, the chief hearing officer designates one lawyer member as panel chair. The chief hearing officer's ruling on assigning a hearing panel is not subject to interim review. The chief hearing officer makes an assignment to fill any hearing officer or panel member vacancy.~~

(b) Disqualification and Removal.

(1) *Removal Without Cause.* Either party ~~may~~ is entitled to have an assigned hearing officer ~~or hearing panel member~~ removed, without establishing cause for the removal, by filing a written request with the ~~chief hearing officer~~ Clerk within ten days ~~of~~ after service on ~~the moving party~~ the respondent of that officer's ~~or panel member's~~ assignment. A party may only once request removal without cause in any proceeding.

(2) *Disqualification for Cause.* Either party may ~~seek~~ move to disqualify any assigned hearing officer ~~or hearing panel member~~ for good cause. A motion under this subsection must be filed promptly after the party knows, or in the exercise of due diligence should have known, of the basis for the disqualification.

(3) *Notice to Chief Hearing Officer*. The Clerk must promptly provide copies of requests or motions for removal or for disqualification to the chief hearing officer.

(~~3~~4) ~~*Removal*~~. *Decision.* The chief hearing officer decides all requests for removal and disqualification motions, except the Chair decides a request to remove or disqualify the chief hearing officer. The decision of the chief hearing officer or Chair on a request for removal or a motion to disqualify is not subject to interim review. ~~Upon~~ After removal or disqualification of ~~an~~ the assigned hearing officer ~~or hearing panel member~~, the chief hearing officer assigns a replacement.

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.

RULE 10.3 COMMENCEMENT OF PROCEEDINGS

(a) Formal Complaint.

(1) *Filing.* After a matter is ordered to hearing, disciplinary counsel files a formal complaint with the Clerk.

(2) *Service*. After the formal complaint is filed, it must be personally served on the respondent lawyer, with a notice to answer.

(3) *Content.* The formal complaint must state the respondent's acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct. Disciplinary counsel must sign the formal complaint, but it need not be verified.

(4) *Prior Discipline.* Prior disciplinary action against the respondent may be described in a separate count of the formal complaint if the respondent is charged with conduct demonstrating unfitness to practice law.

(b) Filing Commences Proceedings. A disciplinary proceeding commences when the formal complaint is filed.

(c) Consolidation and Joinder. ~~The body~~ A review committee ordering a hearing on alleged misconduct, or the chief hearing officer after consultation with any assigned hearing officer, ~~or panel may in its~~ has discretion to consolidate for hearing two or more ~~charges~~ matters against the same respondent, or ~~may~~ to join ~~charges~~ matters against two or more respondents ~~in one formal complaint~~. A consolidation or joinder ordered under this provision serves as authorization to combine multiple matters in one formal complaint or to amend the formal complaint to the extent necessary to implement the joinder or consolidation.

(d) Severance. On motion of a party, the hearing officer, in furtherance of convenience or to avoid prejudice, or when severance will promote a fair determination of the issues, may order a severance and separate hearing of any matter joined or consolidated for hearing under section (c) of this rule.

RULE 10.4 NOTICE TO ANSWER

(a) Content. The notice to answer must be substantially in the following form:

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION

In re	)	NOTICE TO ANSWER;
	)	NOTICE OF HEARING OFFICER
_____ ,	)	~~[OR PANEL]~~;
Lawyer	)	NOTICE OF DEFAULT PROCEDURE

To: The above named lawyer:

A formal complaint has been filed against you, a copy of which is served on you with this notice. You are notified that you *must* file your answer to the complaint *within 20 days of the date of service on you*, by filing the original of your answer with the Clerk to the Disciplinary Board of the Washington State Bar Association, [insert address] and by serving one copy ~~[~~on the hearing officer~~] [on each member of the hearing panel]~~ if one has been assigned and one copy on disciplinary counsel at the address[es] given below. Failure to file an answer may result in the imposition of a disciplinary sanction against you and the entry of an order of default under rule 10.6 of the Rules for Enforcement of Lawyer Conduct.

Notice of default procedure: Your default may be entered for failure to file a written answer to this formal complaint within 20 days of service as required by rule 10.6 of the Rules for Enforcement of Lawyer Conduct. THE ENTRY OF AN ORDER OF DEFAULT ~~may~~ WILL RESULT IN THE ALLEGATIONS AND VIOLATIONS ~~charges of misconduct~~ IN THE FORMAL COMPLAINT BEING ADMITTED AND ESTABLISHED AND discipline being imposed or recommended based on the admitted charges of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of default is vacated on motion timely made under rule 10.6(c) of the Rules for Enforcement of Lawyer Conduct. The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by rule 10.6 (b)(2).

The ~~[~~hearing officer~~] [hearing panel]~~ assigned to this proceeding is: [insert name, address, and telephone number of hearing officer~~, or name, address, and telephone number of each hearing panel member with an indication of the chair of the panel~~].

Dated this _____ day of _____ , 20____.

~~WASHINGTON STATE BAR ASSOCIATION~~

_____

~~By~~ Disciplinary Counsel, Bar No.

Address: _____

Telephone: _____

(b) Notice When Hearing Officer ~~or Panel~~ Not Assigned. If no hearing officer ~~or panel~~ has been assigned when a formal complaint is served, disciplinary counsel serves the formal complaint and a notice to answer as in section (a), but without reference to the hearing officer ~~or panel~~.

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.

RULE 10.5 ANSWER

(a) Time to Answer. Within 20 days of service of the formal complaint and notice to answer, the respondent lawyer must file and serve an answer. Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6. The filing of a motion to dismiss for failure to state a claim stays the time for filing an answer during the pendency of the motion.

(b) Content. The answer must contain:

(1) a specific denial or admission of each fact or claim asserted in the formal complaint in accordance with CR 8(b);

(2) a statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition; and

(3) an address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.

(c) Filing and Service. The answer must be filed and served under rules 4.1 and 4.2. If a hearing panel has been assigned to hear a matter, the respondent must serve each member with a copy of the answer.

RULE 10.6 DEFAULT PROCEEDINGS

(a) Entry of Default.

(1) *Timing*. If a respondent lawyer, after being served with a notice to answer as provided in rule 10.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, disciplinary counsel may serve the respondent with a written motion for an order of default.

(2) *Motion.* Disciplinary counsel must serve the respondent with a written motion for an order of default and a copy of this rule at least five days before entry of the order of default. The motion for an order of default must include the following:

(A) the dates of filing and service of the notice to answer, formal complaint, and any amendments to the complaint; and

(B) disciplinary counsel's statement that the respondent has not timely filed an answer as required by rule 10.5 and that disciplinary counsel seeks an order of default under this rule; and

(C) notice that a default will result in the allegations and violations in the formal complaint being admitted and established.

(3) *Entry of Order of Default*. If the respondent fails to file a written answer with the Clerk within five days of service of the motion for entry of an order of default, the hearing officer, or if no hearing officer ~~or panel~~ has been assigned, the chief hearing officer, on proof of proper service of the motion, enters an order finding the respondent in default.

(4) *Effect of Order of Default.* Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the respondent may not participate further in the proceedings unless the order of default is vacated under this rule.

(b) Proceedings After Entry of an Order of Default.

(1) *Service.* The Clerk serves the order of default and a copy of this rule under rule 4.2(b).

(2) *No Further Notices.* Notwithstanding any other provision of these rules, ~~A~~after entry of an order of default, no further notices, motions, documents, papers, or transcripts need ~~must~~ be served on the respondent except for copies of the decisions of the hearing officer ~~or hearing panel and~~, the Board, and the Court.

(3) *Disciplinary Proceeding.* Within 60 days of the filing of the order of default, the hearing officer must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer ~~or panel~~, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. Disciplinary counsel may present additional evidence including, but not limited to, requests for admission under rule 10.11(b), and depositions, affidavits, and declarations regardless of the witness's availability.

(c) Setting Aside Default.

(1) *Motion To Vacate Order of Default*. A respondent may move to vacate the order of default and any decision of the hearing officer ~~or panel~~ or Board arising from the default on the following grounds:

(A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;

(B) erroneous proceedings against a respondent who was, at the time of the default, incapable of conducting a defense;

(C) newly discovered evidence that by due diligence could not have been previously discovered;

(D) fraud, misrepresentation, or other misconduct of an adverse party;

(E) the order of default is void;

(F) unavoidable casualty or misfortune preventing the respondent from defending; or

(G) any other reason justifying relief from the operation of the default.

(2) *Time.* The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the respondent's motion is based on allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

(3) *Burden of Proof.* The respondent bears the burden of proving the grounds for setting aside the default. If the respondent proves that the default was entered as a result of a

disability which made the respondent incapable of conducting a defense, the default must be set aside.

(4) *Service and Contents of Motion*. The motion must be filed and served under rules 4.1 and 4.2 and be accompanied by a copy of respondent's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the respondent's asserted defenses and any facts that respondent asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

(A) the date on which the respondent first learned of the entry of the order of default;

(B) the grounds for setting aside the order of default; and

(C) an offer of proof of the facts that the respondent expects to establish if the order of default is vacated.

(5) *Response to Motion.* Within ten days of filing and service of the motion to vacate, disciplinary counsel may file and serve a written response.

(6) *Decision.* The hearing officer ~~or panel~~ decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chief hearing officer assigns a hearing officer ~~or panel~~ to decide the motion. Pending a ruling on the motion, the hearing officer ~~or panel~~ may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer ~~or panel~~ has discretion to order appropriate conditions.

(7) *Appeal of Denial of Motion*. A respondent may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer ~~or panel~~'s decision. The respondent must file the notice of appeal within ten days of service on the respondent of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

(8) *Decision To Vacate Is Not Subject to Interim Review.* An order setting aside an order of default is not subject to interim review.

(d) Order of Default Not Authorized in Certain Proceedings. The default procedure in this rule does not apply to a proceeding to inquire into a lawyer's capacity to practice law under title 8 except as provided in that title.

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.

RULE 10.7 AMENDMENT OF FORMAL COMPLAINT

(a) ~~Right To Amend~~ Amendments Adding Related Facts or Charges. Disciplinary counsel may~~, without review committee authorization,~~ amend a formal complaint at any time to add facts or charges that relate to matters in the formal complaint or to the respondent lawyer's conduct regarding the pending proceedings. The respondent may, within ten days of service of the amendment, object to the amendment by a motion to the hearing officer. The hearing officer will consider the motion under the procedure provided by rule 10.8.

(b) Other Amendments ~~with Authorization~~. Disciplinary counsel must obtain ~~seek review committee~~ authorization from the chief hearing officer for amendments other than those under section (a) or rule 10.3(c). Disciplinary counsel must give respondent notice of a request for authorization to amend. A request to amend will be considered under the procedure provided by rule 10.8. The ~~review committee~~ chief hearing officer, after consultation with any assigned hearing officer, may authorize the amendment, ~~or~~ may require that the additional facts or charges be the subject of a separate formal complaint, or may direct disciplinary counsel to report the matter to a review committee under rule 5.7(c). ~~The Chair, with the consent of the respondent, and after consultation with the hearing officer on the previously filed matter, may consolidate the hearing on the separate formal complaint with the hearing on the other pending formal complaint against the respondent.~~

(c) Decision. In ruling on a motion under section (a) or (b), a hearing officer or the chief hearing officer may grant or deny the motion in whole or part. Authorization to amend should be freely given when justice so requires.

(~~c~~d) Service and Answer. Disciplinary counsel serves an amendment to a formal complaint on the respondent as provided in rule 4.1 but need not serve a Notice to Answer with the amendment. Rule 10.5 governs the answer to an amendment except that any part of a previous answer may be incorporated by reference.

RULE 10.8 MOTIONS

(a) Filing and Service. Motions to the hearing officer, except motions which may be made ex parte or motions at hearing, must be in writing and filed and served as required by rules 4.1 and 4.2.

(b) Response. The opposing party has ~~five~~ ten days from service of a motion to respond, unless the time is ~~shortened~~ altered by the hearing officer for good cause. ~~A request to shorten time for response to a motion may be made ex parte.~~

(c) Reply. The moving party has seven days from service of the response to reply unless the time for reply is altered by the hearing officer for good cause.

(~~d~~e) Consideration of Motion. Upon expiration of the time for ~~response~~ reply, the hearing officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by conference telephone call.

(~~e~~d) Ruling. A ruling on a written motion must be in writing and filed with the Clerk.

(~~f~~e) Minor Matters. Alternatively, motions on minor matters may be made by letter to the hearing officer, with a copy to the opposing party and to the Clerk. The provisions of sections (b) and (c) apply to these motions. A ruling on such motion may also be by letter to each party with a copy to the Clerk.

(~~g~~f) Chief Hearing Officer Authority. Before the assignment of a hearing officer ~~or panel~~, the chief hearing officer may rule on any prehearing motion.

RULE 10.9 INTERIM REVIEW

Unless these rules provide otherwise, the Board may review any interim ruling on request for review by either party, if the Chair determines that review is necessary and appropriate and will serve the ends of justice.

RULE 10.10 PREHEARING DISPOSITIVE MOTIONS

(a) Respondent Motion. A respondent lawyer may move for dismissal of all or any portion of one or more counts of a formal complaint for failure to state a claim upon which relief can be granted.

(b) Disciplinary Counsel Motion. Disciplinary counsel may move for an order finding misconduct based on the pleadings. In ruling on this motion, the hearing officer ~~or panel~~ may find that all or some of the misconduct as alleged in the formal complaint is established, but will determine the sanction after a hearing.

(c) Time for Motion. A motion under section (a) of this rule must be filed within ~~30 days of~~ the time for filing of the answer to a formal complaint or amended formal complaint, and may be filed in lieu of filing an answer. ~~A respondent may, within the time provided for filing an answer, instead file a motion under this rule.~~ If the motion does not result in the dismissal of the entire formal complaint or amended formal complaint, the respondent must file and serve an answer to the remaining allegations within ten days of service of the ruling on the motion. A motion under section (b) of this rule must be filed within 30 days of the filing of the answer to a formal complaint or amended formal complaint.

(d) Procedure. Rule 10.8 and CR 12 apply to motions under this rule. No factual materials outside the answer and complaint may be presented. If the motion results in dismissal of part but not all of a formal complaint, the Board must hear an interlocutory appeal of the order by either party. The appeal must be filed within 15 days of service of the order.

RULE 10.11 DISCOVERY AND PREHEARING PROCEDURES

(a) General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.

(b) Requests for Admission. After a formal complaint is filed, the parties may request admissions under CR 36. Under appropriate circumstances, the hearing officer may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(c) Other Discovery. After a formal complaint is filed, the parties have the right to other discovery under the Superior Court Civil Rules, including under CR 27–31 and 33–35, only on motion and under terms and limitations the hearing officer deems just or on the parties' stipulation.

(d) Limitations on Discovery. The hearing officer may exercise discretion in imposing terms or limitations on the exercise of discovery to assure an expeditious, economical, and fair proceeding, considering all relevant factors including necessity and unavailability by other means, the nature and complexity of the case, seriousness of charges, the formal and informal discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise.

(e) ~~Deposition Procedure~~ Subpoenas. ~~(1)~~ Subpoenas ~~for depositions~~ may be issued under CR 45. Subpoenas may be enforced under rule 4.7.

~~(2) For a deposition outside Washington State, a commission need not issue, but a copy of the order of the chief hearing officer or hearing officer, certified by the officer, is sufficient to authorize the deposition.~~

(f) Commissions. For a deposition outside Washington State, a commission need not issue, but a copy of the order of the chief hearing officer or hearing officer, certified by the officer, is sufficient to authorize the deposition.

(~~f~~g) CR 16 Orders. The hearing officer may enter orders under CR 16.

(~~g~~h) Duty to Cooperate. A respondent lawyer who has been served with a formal complaint must respond to discovery requests and comply with all lawful orders made by the hearing officer. The hearing officer ~~or panel~~ may draw adverse inferences as appear warranted by the failure of either the Association or the respondent to respond to discovery.

RULE 10.12 SCHEDULING OF HEARING

(a) Where Held. Absent agreement of all parties, ~~A~~all disciplinary hearings must be held in Washington State~~, unless the respondent lawyer is not a resident of the state, or cannot be found in the state~~.

(b) Scheduling ~~of Hearing~~ Conference. ~~If possible, the parties should arrange a date, time, and place for the hearing by agreement among themselves and the hearing officer or panel members. Alternatively, at any time after the respondent has filed an answer to the formal complaint, or after the time to file the answer has expired, either party may move for an order setting a date, time, and place for the hearing. Rule 10.8 applies to this motion. The motion must state:~~

~~(1) the requested date or dates for the hearing;~~

~~(2) other dates that are available to the requesting party;~~

~~(3) the expected duration of the hearing;~~

~~(4) discovery and anything else that must be completed before the hearing; and~~

~~(5) the requested time and place for the hearing.~~

~~A response to the motion must contain the same information.~~

Following the filing of respondent's answer, the hearing officer must convene a scheduling conference of the parties, by conference call or in person.

(c) Scheduling Order. The hearing officer must enter an order setting the date and place of the hearing. This order may include any prehearing deadlines the hearing officer deems required by the complexity of the case, as well as a determination regarding a settlement conference under section (h). The Scheduling Order~~, and~~ may be in the following form with the following timelines:

SCHEDULING CONFERENCE DETERMINATION:

[ ] The hearing officer finds that this case may benefit from a settlement conference, and a settlement officer should be appointed.

IT IS ORDERED that the hearing is set and the parties must comply with prehearing deadlines as follows:

1. **Witnesses**. A preliminary list of intended witnesses, including addresses and phone numbers, and a designation of whether the witness is a fact witness, character witness, or expert witness, must be filed and served by [Hearing Date (H)~~-8~~ 12 weeks].

2. **Discovery**. Discovery cut-off is [H-6 weeks].

3. **Motions**. Prehearing motions, other than motions to bifurcate, must be served by [H-4 weeks]. An exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing officer unless the motion concerns the exhibit's admissibility. The hearing officer will advise counsel whether oral argument is necessary, and, if so, the date and time, and whether it will be heard by telephone. (Rule 10.15 provides the deadline for a motion to bifurcate.)

4. **Exhibits**. ~~A l~~Lists of proposed exhibits must be ~~filed and served~~ exchanged by [H-3 weeks].

5. **Service of Exhibits/~~Summary~~ Final Witness List**. Copies of proposed exhibits and a final witness list, including a summary of the expected testimony of each witness must be ~~served on the opposing counsel~~ exchanged by [H-2 weeks]. A copy of the final witness list, excluding the summary of expected testimony, must be filed and served by [H-2 weeks].

6. **Objections**. Objections to proposed exhibits, including grounds other than relevancy, must be exchanged by [H-1 week].

7. **Briefs**. Any hearing brief must be filed and served ~~and filed~~ by [H-1 week]. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the hearing officer before the hearing.

8. **Hearing**. The hearing is set for [H] and each day thereafter until recessed by the hearing officer, at [location].

(d) Failure to Comply With Scheduling Order. Upon a party failing to comply with a provision of the scheduling order, the hearing officer may exclude witnesses, testimony, exhibits or other evidence, and take such other action as may be appropriate.

(~~d~~e) Motion for Hearing Within 120 Days. A respondent's motion under section (b) for a hearing within 120 days must be granted, unless disciplinary counsel shows good cause for setting the hearing at a later date.

(e~~f~~) Notice. Service of a copy of an order or ruling of the hearing officer setting a date, time, and place for the hearing constitutes notice of the hearing. The respondent must be given at least ten days notice of the hearing absent consent.

(~~f~~g) Continuance. Either party may move for a continuance of the hearing date. The hearing officer has discretion to grant the motion for good cause shown.

(h) Settlement Conference.

(1) Procedure. The hearing officer determines whether a settlement conference should be ordered whenever:

(A) the hearing officer issues a scheduling order under section (c); or

(B) a party requests a settlement conference in writing.

(2) Timing. Unless agreed to by the parties, a settlement conference may not be scheduled later than 30 days prior to the hearing date specified in the scheduling order.

(3) Factors Considered. When making a determination about whether to order a settlement conference, the hearing officer shall consider whether such a conference would be helpful in light of the complexity of the issues, the extent to which the relevant facts or charged violations are disputed, or any other relevant factor.

(4) Appointment. The chief hearing officer will determine whether to appoint the assigned hearing officer or another hearing officer to conduct the settlement conference. Following a settlement conference, the hearing officer who conducted the settlement conference may not conduct the disciplinary hearing without the consent of all parties.

(5) Confidentiality. Settlement conference proceedings are confidential and not admissible in any discipline proceeding.

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.

RULE 10.13 DISCIPLINARY HEARING

(a) Representation. ~~The Association is represented at the hearing by disciplinary counsel.~~ The respondent lawyer may be represented by counsel.

(b) Respondent Must Attend. A respondent given notice of a hearing must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. If, after proper notice, the respondent fails to attend the hearing, the hearing may proceed, and the hearing officer ~~or panel~~:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and

(2) must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:

(A) the facts stated are within the witness's personal knowledge;

(B) the facts are set forth with particularity; and

(C) it shows affirmatively that the witness could testify competently to the stated facts.

(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things previously requested in accordance with these rules. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

(d) Witnesses. Except as provided in subsection (b)(2) ~~and rule 10.6~~, witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by CR 32. If ordered by the hearing officer, testimony may be taken by telephone, television, video connection, or other contemporaneous electronic means. Testimony must be recorded by a court reporter or, if allowed by the hearing officer, by tape or electronic recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(e) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this rule and with all lawful orders made by the hearing officer under this rule. Subpoenas may be enforced under rule 4.7. The hearing officer ~~or panel~~ may additionally draw adverse inferences as appear warranted by the respondent's failure to respond.

(f) Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hear-

ing record before the hearing officer ~~or panel~~ files a ~~decision~~ recommendation.

RULE 10.14 EVIDENCE AND BURDEN OF PROOF

(a) Proceedings Not Civil or Criminal. Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis hearings to determine if a lawyer's conduct should have an impact on his or her license to practice law.

(b) Burden of Proof. Disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a formal complaint charges a respondent lawyer with an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.

(d) Rules of Evidence. Consistent with section (a) of this rule, the following rules of evidence apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if in the hearing officer's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(2) if not inconsistent with subsection (1), the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings;

(3) documents may be admitted in the form of copies or excerpts, or by incorporation by reference;

(4) Official Notice.

(A) official notice may be taken of:

(i) any judicially cognizable facts;

(ii) technical or scientific facts within the hearing officer's ~~or panel's~~ specialized knowledge; and

(iii) codes or standards adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association.

(B) the parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material noticed and the sources thereof, including any staff memoranda and data, and they shall have an opportunity to contest the facts and material noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(e) APA as Guidance. The evidence standards in this rule are based on the evidence provisions of the Washington Administrative Procedures Act, which, when not inconsistent with these standards, should be looked to for guidance. "Shall" has the meaning in this rule ascribed to it in the APA.

RULE 10.15 BIFURCATED HEARINGS

(a) When Allowed. Upon written motion filed no later than 60 days before the scheduled hearing, either party may request that the disciplinary proceeding be bifurcated. The hearing officer ~~or panel~~ must weigh the reasons for bifurcation against any increased cost and delay, inconvenience to participants, duplication of evidence, and any other factors, and may grant the motion only if it appears necessary to insure a fair and orderly hearing because the respondent has a record of prior disciplinary sanction or because either party would suffer significant prejudice or harm.

(b) Procedure.

(1) *Violation Hearing*.

(A) A bifurcated proceeding begins with an initial hearing to make factual determinations and legal conclusions as to the violations charged, including the mental state necessary for the violations. During this stage of the proceedings, evidence of a prior disciplinary record is not admissible to prove the respondent's character or to impeach the respondent's credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) At the conclusion of that hearing, the hearing officer ~~or panel~~ files findings and conclusions.

(i) If no violation is found, the proceedings are concluded, the findings and conclusions are the decision of the hearing officer ~~or panel~~, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under rule 10.16(c), or after ruling on that motion, the findings and conclusions as to those violations are not subject to reconsideration by the hearing officer.

(2) *Sanction Hearing.* If any violation is found, a second hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings and conclusions as to the violations. At the conclusion of the sanction hearing, the hearing officer ~~or panel~~ files findings and conclusions as to a sanction recommendation, that, together with the previously filed findings and conclusions, is the decision of the hearing officer ~~or panel~~.

(3) *Timing***.** If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing officer must set a date and place for the sanction hearing. Absent extraordinary circumstances, the sanction hearing should be held no later than 45 days after the anticipated last day of the violation hearing.

RULE 10.16 DECISION OF HEARING OFFICER ~~OR PANEL~~

(a) Decision. Within ~~20~~ 30 days after the proceedings are concluded or (if applicable) the transcript of proceedings is served, ~~unless extended by agreement,~~ the hearing officer should file with the Clerk a decision in the form of findings of fact, conclusions of law, and recommendations. This deadline may be extended by agreement.

(b) Preparation of Findings. Either party may submit proposed findings of fact, conclusions of law, and recommendation as part of their argument of the case. The hearing officer ~~or hearing panel~~ either (1) writes ~~their own~~ findings of fact, conclusions of law, and recommendations without requiring submission of proposed findings, conclusions, or recommendations or (2) announces a tentative decisions then ~~At the~~ requests ~~of the hearing officer, or without a request, either~~ one or both party~~ies~~ ~~may submit~~ to prepare proposed

findings, conclusions, and recommendations. After notice and an opportunity to respond, the hearing officer considers the proposals and responses and enters findings, conclusions, and recommendations.

(c) Amendment.

(1) *Timing of Motion.* Either party may move to modify, amend, or correct the decision as follows:

(A) In a proceeding not bifurcated, within ~~ten~~ 15 days of service of the decision on the respondent lawyer;

(B) In a bifurcated proceeding, within ~~five~~ 15 days of service of:

(i) the violation findings of fact and conclusions of law; or

(ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings or conclusions.

~~(C) If a hearing panel member dissents from a decision of the majority, the five or ten day period does not begin until the written dissent is filed or the time to file a dissent has expired, whichever is sooner.~~

(2) *Procedure.* Rule 10.8 governs this motion~~, except that all members of a hearing panel must be served with the motion and any response and participate in a decision on the motion. A panel's deliberation may be conducted through telephone conference call~~. The hearing officer ~~or panel~~ should rule on the motion within 15 days after the filing of a timely ~~response~~ reply or after the period to file a ~~response~~ reply under rule 10.8(~~b~~c) has expired. The ruling may deny the motion or may amend, modify, or correct the decision.

(3) *Effect of Failure To Move.* Failure to move for modification, correction, or amendment does not affect any appeal to the Board or review by the Supreme Court.

~~**(d) Dissent of Panel Member.** Any member of a hearing panel who dissents from the decision of the majority of the panel should file a dissent, which may consist of alternative findings, conclusions, or recommendation. A dissent should be filed within ten days of the filing of the majority's decision and becomes part of the record of the proceedings.~~

~~**(e) Panel Members Unable To Agree.** If no two panel members are able to agree on a decision, each panel member files findings, conclusions, and a recommendation, and the Board reviews the matter whether or not an appeal is filed.~~

(~~f~~d) When Final. If a hearing officer ~~or panel~~ recommends reprimand or an admonition, or recommends dismissal of the charges, the recommendation becomes the final decision if neither party files an appeal. If a hearing officer recommends disbarment or suspension, the recommendation becomes the final decision only upon entry of an order by the Supreme Court under rule 11.12(g) or final action on an appeal or petition for discretionary review under Title 12 ~~and if the Chair does not refer the matter to the Board for consideration within the time permitted by rule 11.2 (b)(3). If the Chair refers the matter to the Board for consideration of a sua sponte review, the decision is final upon entry of an order dismissing sua sponte review under rule 11.3 or upon other Board decision under rule 11.12(g)~~.

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.

TITLE 11 – REVIEW BY BOARD

RULE 11.1 SCOPE OF TITLE

This title provides the procedure for Board review following a hearing officer ~~or panel~~'s findings of fact, conclusions of law, and recommendation, or dismissal of all claims under rule 10.10(a). It does not apply to Board review of interim rulings under rule 10.9.

RULE 11.2 DECISIONS SUBJECT TO BOARD REVIEW

(a) Decision. For purposes of this title, "Decision" means:

(1) the hearing officer ~~or panel~~'s findings of fact, conclusions of law, and recommendation, provided that if either party properly files a motion to amend under rule 10.16(c), the "Decision" includes the ruling on the motion, and becomes subject to Board review only upon the ruling on the motion; or

(2) the hearing officer ~~or panel's~~ decision under rule 10.10(a) dismissing all claims.

(b) Review of Decisions. The Board reviews ~~the following~~ a Decisions~~:~~ if within 30 days of service of the Decision on the respondent:

~~(1) those recommending suspension or disbarment;~~

~~(2) those in which no two members of a hearing panel are able to agree on a Decision; and~~

~~(3) all others if within 15 days of service of the Decision on the respondent.~~

(~~A~~1) either party files a notice of appeal; or

(~~B~~2) the Chair files a notice of referral for sua sponte consideration under rule 11.3(b) of ~~the~~ a ~~D~~decision not recommending suspension or disbarment.

(c) Cross Appeal. If a party files a timely notice of appeal under subsection (b)(1) of this rule and the other party wants relief from the Decision, the other party must file a notice of appeal with the Clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) within the time set forth in subsection (b) for filing a notice of appeal.

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.

RULE 11.3 SUA SPONTE REVIEW

(a) ~~Procedure~~. ~~Sua sponte review commences when the Chair files a notice of referral under rule 11.2 (b)(3)(B).~~ **Sua Sponte Review of Recommendations for Disbarment and Suspension.** If neither the Respondent nor Disciplinary Counsel files a timely notice of appeal from a Decision recommending suspension or disbarment, the Decision shall be distributed to the Board members for consideration of whether to order sua sponte review and the matter shall be scheduled for consideration by the Board. The Decision shall be distributed to the Board within 30 days after the last day to file a notice of appeal. An order for sua sponte review shall set forth the issues to be reviewed. If the Board declines to order sua sponte review, the Board shall issue an order declining sua sponte review and adopting the Decision of the hearing officer.

(b) Sua Sponte Review of Other Recommendations. The Chair may file a notice of referral for sua sponte consideration of a Decision other than one recommending disbar-

ment or suspension under rule 11.2 (b)(2). The notice shall be filed within 30 days after the last day to file a notice of appeal. Upon this filing, the Chair causes a copy to be served on the parties and schedules the matter for consideration by the Board. On consideration, the Board either issues an order for sua sponte review setting forth the issues to be reviewed ~~or dismisses the sua sponte review~~ or an order declining sua sponte review.

(c) Procedure. If the Board issues an order for sua sponte review, ~~the procedures of rule 11.9(e) apply unless otherwise modified by the order,~~ the Board's order must designate the appellant for purposes of rules 11.6 and 11.9, ~~except~~ but either party may raise any issue for Board review. Board review is conducted as described in rule 11.12.

(~~b~~d) Standards for Ordering Sua Sponte Review. ~~The Board uses sua sponte review only in extraordinary circumstances to prevent substantial injustice or to correct a clear error. Sua sponte review uses the same standards of review as other cases.~~ The Board should order sua sponte review only in extraordinary circumstances to prevent substantial injustice or to correct a clear error.

RULE 11.4 TRANSCRIPT OF HEARING

(a) Ordering Transcript. A hearing transcript or partial transcript may be ordered at any time by the hearing officer ~~or panel~~, respondent lawyer, disciplinary counsel, or the Board. ~~Disciplinary counsel must order the entire transcript if the hearing officer or panel recommends suspension or disbarment or if no two panel members can agree on a Decision.~~ If a notice of appeal is filed under rule 11.2(b)(~~3~~1)~~(A)~~, disciplinary counsel must order the entire transcript unless the parties agree that no transcript or only a partial transcript is necessary for review. For sua sponte review, the Chair determines ~~the procedure for ordering the transcript if not already ordered~~ the extent of the transcript necessary for review. If the Chair orders a partial transcript, either party may request additional portions of the transcript.

(b) Filing and Service. The original of the transcript is filed with the Clerk. Disciplinary counsel must cause a copy of the transcript to be served on the respondent except if the respondent ordered the transcript.

(c) Proposed Corrections. Within ten days of service of a copy of the transcript on the respondent, or within ten days of filing the transcript if the respondent ordered the transcript, each party may file any proposed corrections to the transcript. Each party has five days after service of the opposing party's proposed corrections to file objections to those proposed corrections.

(d) Settlement of Transcript. If either party files objections to any proposed correction under section (c), the hearing officer, upon review of the proposed corrections and objections, enters an order settling the transcript. Otherwise, the transcript is deemed settled and any proposed corrections deemed incorporated in the transcript.

RULE 11.5 RECORD ON REVIEW

(a) Generally. The record on review consists of:

(1) any hearing transcript or partial transcript; and

(2) bar file documents and exhibits designated by the parties.

(b) References to the Record. Briefs filed under rules ~~11.8 and~~ 11.9 must specifically refer to the record if available, using the designations TR for transcript of hearing, EX for exhibits, and BF for bar file documents.

(c) Avoid Duplication. Material appearing in one part of the record on review should not be duplicated in another part of the record on review.

(d) No Additional Evidence. Evidence not presented to the hearing officer ~~or panel~~ must not be presented to the Board.

RULE 11.6 DESIGNATION OF BAR FILE DOCUMENTS AND EXHIBITS

(a) RAP 9.6 Controls. The parties designate bar file documents and exhibits for Board consideration under the procedure of RAP 9.6 ~~with the following adaptations and modifications:~~, except as provided in this rule.

(~~a~~b) Bar File Documents. The bar file documents are considered the clerk's papers.

(~~b~~c) Disciplinary Board and Clerk. The Disciplinary Board is considered the appellate court and the Clerk to the Disciplinary Board is considered the trial court clerk.

(~~c~~d) Responsibility and Time for Designation.

~~(1) *Review of Suspension or Disbarment Recommendation.* When review is under rule 11.2 (b)(1), the respondent lawyer must file and serve the respondent's designation of bar file documents and exhibits within 30 days of service of the Decision.~~

~~(2) *Review Not Involving Suspension or Disbarment Recommendation.* When review is under rule 11.2 (b)(3)(A), the party seeking review~~ When a party appeals to the Board, that party must file and serve that party's designation of bar file documents and exhibits within 15 days of filing the notice of appeal. ~~When review is under rule 11.2 (b)(2) or 11.2 (b)(3)(B), the respondent is considered the party seeking review~~ In all other reviews, the party identified as appellant by the Board's order is responsible for designating bar file documents and exhibits.

(~~d~~c) Hearing Officer Recommendation. The bar file documents must include the hearing officer ~~or panel~~'s recommendation.

RULE 11.7 PREPARATION OF BAR FILE DOCUMENTS AND EXHIBITS

(a) Preparation. The Clerk prepares the bar file documents and exhibits in the format required by RAP 9.7 (a) & (b), and distributes them to the Board. The Clerk provides the parties with a copy of the index of the bar file documents and the cover sheet listing the exhibits.

(b) Costs. Costs for preparing bar file documents and exhibits may be assessed as costs under rule 13.9 (b)(9).

RULE 11.8 ~~BRIEFS FOR REVIEWS INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION~~ DELETED

~~**(a) Caption of Briefs.** Parties should caption their briefs as follows:~~

~~[Name of Party] Brief [in Support of/in Opposition to] Hearing [Officer's] [Panel's] Decision~~

~~[Name of Party] Reply Brief~~

~~**(b) Briefs in Support or Opposition.** In a matter before the Board under rule 11.2 (b)(1), each party may file a brief in support of or in opposition to the Decision, or any part of it.~~

~~**(c) Time for Filing Briefs.** Briefs, if any, must be filed as follows:~~

~~(1) The respondent lawyer must file a brief within 20 days of service on the respondent of the later of:~~

~~(A) a copy of the hearing transcript; or~~

~~(B) the Decision.~~

~~(2) Disciplinary counsel must file a brief within 15 days of service on disciplinary counsel of the respondent's brief, or, if no brief is filed by the respondent, within 15 days of the expiration of the period for the respondent to file a brief.~~

~~(3) The respondent may file a reply to disciplinary counsel's brief within ten days of service of that brief on the respondent.~~

RULE 11.9 BRIEFS ~~FOR REVIEWS NOT INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION~~

(a) Caption of Briefs. The parties should caption briefs as follows:

[Name of Party] Opening Brief ~~in Opposition to Hearing [Officer's] [Panel's] Decision~~

[Name of Party] Response

[Name of Party] Reply

(b) Opening Brief ~~in Opposition~~.

(1) The party seeking review must file an opening brief ~~in opposition to the Decision~~ within ~~20~~ 45 days of the later of:

(A) service on the respondent lawyer of a copy of the transcript, unless the parties have agreed that no transcript is necessary; or

(B) filing of the notice of appeal.

(2) Failure to file an opening brief within the required period constitutes an abandonment of the appeal.

(c) Response. The opposing party has ~~15~~ 30 days from service of the ~~statement of the party seeking review~~ opening brief to file a brief responding to the issues raised on appeal.

(d) Reply. The party seeking review may file a reply to the response within ~~ten~~ 30 days of service of the response.

(e) Procedure when Both Parties Seek Review or ~~When No Two Panel Members Can Agree~~ the Board Orders Sua Sponte Review. When both parties file notices of appeal ~~under rule 11.2 (b)(3)(A) or when no two panel members are able to agree on a Decision, the respondent~~ the party filing first is considered the party seeking review ~~and disciplinary counsel is considered the opposing party~~. When the Board initiates sua sponte review, the order must designate the party seeking review. In th~~at~~ese case~~s~~, ~~disciplinary counsel's response~~ the responding party may raise any issue for Board review, and the ~~respondent~~ designated party seeking review has an additional five days to file the reply permitted by section (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.

RULE 11.10 SUPPLEMENTING RECORD ON REVIEW

The record on review may be supplemented under the procedures of RAP 9.6 except that leave to supplement is freely granted. The Board may direct that the record be supplemented with any portion of the record before the hearing officer, including any bar file documents and exhibits.

RULE 11.11 REQUEST FOR ADDITIONAL PROCEEDINGS

In any brief permitted in rules ~~11.8 and~~ 11.9, either party may request that an additional hearing be held before the hearing officer or panel to take additional evidence based on newly discovered evidence. A request for an additional hearing must be supported by affidavit describing in detail the additional evidence sought to be admitted and any reasons why it was not presented at the previous hearing. The Board may grant or deny the request in its discretion.

RULE 11.12 DECISION OF BOARD

(a) Basis for Review. Board review is based on the hearing officer ~~or panel~~'s Decision, ~~any hearing panel member's dissent,~~ the parties' briefs filed under rule ~~11.8 or~~ 11.9, and the record on review.

(b) Standards of Review. The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer ~~or panel~~ cannot be considered by the Board.

(c) Oral Argument. The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to file his or her last brief, including a response or reply, under rule ~~11.8 or~~ 11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the time, place, and terms for oral argument.

(d) Action by Board. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer ~~or panel~~. The Board may also direct that the hearing officer ~~or panel~~ hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) Order or Opinion. The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer ~~or panel~~, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. Regardless of whether or not a dissenting member files a written dissent, the Board order or opinion must set forth the result favored by each dissenting member. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. A copy of the complete decision is served by the Clerk on the parties.

(f) Procedure to Amend, Modify, or Reverse if No Appeal.

(1) If the Board intends to amend, modify, or reverse the hearing officer ~~or panel~~'s recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.

(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.

(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The

Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.

(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request for reconsideration, the Board issues an order or opinion after reconsideration under section (e).

(g) Decision Final Unless Appealed. The Board's decision is final if neither party files a notice of appeal ~~n~~or a petition for review within the time permitted by title 12 or upon the Supreme Court's denial of a petition for discretionary review. When a Board decision recommending suspension or disbarment becomes final because neither party has filed a notice of appeal or petition for discretionary review, the Clerk transmits to the Supreme Court a copy of the Board's decision together with the findings, conclusions and recommendation of the hearing officer for entry of an appropriate order.

RULE 11.13 CHAIR MAY MODIFY REQUIREMENTS

Upon written motion filed with the Clerk by either party, for good cause shown, the Chair may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review. However, the time period for filing a notice of appeal in rule 11.2 (b)~~(3)(A)~~ may not be extended or altered.

RULE 11.14 MOTIONS

(a) Content of Motion. A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for the relief sought, with supporting argument.

(b) Filing and Service. Motions on matters pending before the Board must be in writing and filed with the Clerk. The motion and any response or reply must be served as required by rule 4.1.

(c) Response. The opposing party may submit a written response to the motion. A response must be served and filed within ten days of service of the motion, unless the time is shortened by the Chair for good cause.

(d) Reply. The moving party may submit a reply to a response. A reply must be served and filed within seven days of service of the response, unless the time for reply is shortened by the Chair for good cause.

(e) Length of Motion, Response, and Reply. A motion and response must not exceed ten pages, not including supporting papers. A reply must not exceed five pages, not including supporting papers. For good cause, the Chair may grant a motion to file an over-length motion, response, or reply.

(f) Consideration of Motion. Upon expiration of the time for reply, the Chair must promptly rule on the motion or refer the motion to the full Board for decision. A motion will be decided without oral argument, unless the Chair directs otherwise.

(g) Ruling. A motion is decided by written order filed with and served by the Clerk under rule 4.2(b).

(h) Minor Matters. Motions on minor matters may be made by letter to the Chair, with a copy served on the opposing party and filed with the Clerk. The provisions of sections (c), (d), and (f) of this rule apply to such motions. A ruling on such a motion is decided by written order filed with and served by the Clerk under rule 4.2(b).

TITLE 12 – REVIEW BY SUPREME COURT

RULE 12.1 APPLICABILITY OF RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure serve as guidance for review under this title except as to matters specifically dealt with in these rules.

RULE 12.2 METHODS OF SEEKING REVIEW

(a) Two Methods for Seeking Review of Board Decisions. The methods for seeking Supreme Court review of Board decisions entered under rule 11.12(e) are: review as a matter of right, called "appeal", and review with Court permission, called "discretionary review". Both "appeal" and "discretionary review" are called "review".

(b) Power of Court Not Affected. This rule does not affect the Court's power to review any Board decision recommending suspension or disbarment and to exercise its inherent and exclusive jurisdiction over the lawyer discipline and disability system. The Court notifies the respondent lawyer and disciplinary counsel of the Court's intent to exercise sua sponte review within 90 days of the Court receiving notice of the decision under rule 3.5(a)~~, rule 7.1(h),~~ or otherwise.

RULE 12.3 APPEAL

(a) ~~Respondent's~~ Right to Appeal. The respondent lawyer or disciplinary counsel has the right to appeal a Board decision recommending suspension or disbarment. There is no other right of appeal.

(b) Notice of Appeal. ~~To appeal, the respondent~~ The appealing party must file a notice of appeal with the Clerk within ~~15~~ 30 days of service of the board's decision on ~~the respondent~~ that party.

(c) Subsequent Notice By the Other Party. When a timely notice of appeal has been filed by a party, if the other party wants relief from the Board's decision, that party must file a notice of appeal with the Clerk within 14 days after service of the notice filed by the other party.

(d) Filing Fee. The first party to file a notice of appeal must, at the time the notice is filed, either pay the statutory filing fee to the Clerk of the Disciplinary Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(e) Service. A party filing any notice of appeal must serve the other party.

RULE 12.4 DISCRETIONARY REVIEW

(a) Decisions Subject to Discretionary Review. Respondent or disciplinary counsel may seek discretionary review of Board decisions under rule 11.12(e) not ~~recommending suspension or disbarment~~ subject to appeal under rule 12.3 ~~are subject to Supreme Court review only through discretionary review~~. The Court accepts discretionary review only if:

(1) the Board's decision is in conflict with a Supreme Court decision;

(2) a significant question of law is involved;

(3) there is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or

(4) the petition involves an issue of substantial public interest that the Court should determine.

(b) Petition for Review. ~~Either party~~ Respondent or disciplinary counsel may seek discretionary review by filing a petition for review with the ~~Court~~ Clerk within ~~25~~ 30 days of service of the Board's decision on respondent.

(c) Content of Petition; Answer; Service; Decision. A petition for review should be substantially in the form prescribed by RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in that rule to the Court of Appeals are considered references to the Board. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4 (d) – (h) governs answers and replies to petitions for review and related matters including service and decision by the Court.

(d) Subsequent Petition By Other Parties. If a timely petition for discretionary review is filed by the Respondent or disciplinary counsel, and the other party wants relief from the Board's decision, he or she must file a petition for discretionary review with the Clerk within the later of:

(1) 14 days after service of the petition filed by the other party, or

(2) the time for filing a petition under subsection (b) of this rule.

(e) Filing Fee. The first party to file a petition for discretionary review must, at the time the petition is filed, either pay the statutory filing fee to the Clerk of the Disciplinary Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(~~d~~f) Acceptance of Review. The Court accepts discretionary review of a Board decision by granting a petition for review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

RULE 12.5 RECORD TO SUPREME COURT

(a) Transmittal. The Clerk should transmit the record, including the filing fee, to the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the transcript of oral argument before the Board, if any. Notwithstanding these deadlines, the Clerk should not transmit the record to the Supreme Court prior to payment of the filing fee or receipt of proof that the Supreme Court has waived the filing fee.

(b) Content. The record transmitted to the Court consists of:

(1) the notice of appeal, if any;

(2) the Board's decision;

(3) the record before the Board;

(4) the transcript of any oral argument before the Board; and

(5) any other portions of the record before the hearing officer, including any bar file documents or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within ten days of entry of an order assessing costs under rule 13.9(e), the Clerk should transmit it to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under rule 13.9(d).

(e) Additions to Record. Either party may request that the Clerk transmit additional portions of the record to the Court prior to or with the filing of the party's last brief. Thereafter, either party may ~~at any time~~ move the Court for an order directing the transmittal of additional portions of the record to the Court.

RULE 12.6 BRIEFS

(a) Brief Required. The party seeking review must file a brief stating his or her objections to the Board's decision.

(b) Time for Filing. The brief of the party seeking review should be filed with the Supreme Court within 30 days of service under rule 12.5(c) of the list of portions of the record transmitted to the Court.

(c) Answering Brief. The answering brief of the other party should be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. A reply brief of a party seeking review should be filed with the Court within the sooner of 20 days after service of the answering brief or 14 days before oral argument. A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.

(e) Briefs When Both Parties Seek Review. When both the respondent lawyer and disciplinary counsel seek review of a Board decision, the respondent is deemed the party seeking review for the purposes of this rule. In that case, disciplinary counsel may file a brief in reply to any response the respondent has made to the issues presented by disciplinary counsel, to be filed with the Court the sooner of 20 days after service of the respondent's reply brief or 14 days before oral argument.

(f) Form of Briefs. Briefs filed under this rule must conform as nearly as possible to the requirements of RAP 10.3 and 10.4. Bar file documents should be abbreviated BF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Clerk. The Supreme Court clerk reproduces and distributes briefs as provided in RAP 10.5.

RULE 12.7 ARGUMENT

(a) Rules Applicable. Oral argument before the Supreme Court is conducted under title 11 of the Rules of Appellate Procedure, unless the Court directs otherwise.

(b) Priority. Disciplinary proceedings have priority and are set upon compliance with the above rules.

RULE 12.8 ~~EFFECTIVE DATE OF OPINION~~ MOTION FOR RECONSIDERATION

~~**(a) Effective when Filed.** An opinion in a disciplinary proceeding takes effect when filed unless the Court specifically provides otherwise.~~

~~(b) Motion for Reconsideration.~~ A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment or delay the effective date of a suspension or disbarment unless the Court enters a stay.

RULE 12.9 VIOLATION OF RULES

Sanctions for violation of these rules may be imposed on a party under RAP 18.9. Upon dismissal under that rule of a review sought by a respondent lawyer and expiration of the period to file objections under RAP 17.7, or upon dismissal of review by the Court if timely objections are filed, the Board's decision is final.

TITLE 13 – SANCTIONS AND REMEDIES

RULE 13.1 SANCTIONS AND REMEDIES

Upon a finding that a lawyer has committed an act of misconduct, one or more of the following may be imposed:

(a) Sanctions.

(1) Disbarment;

(2) Suspension under rule 13.3; or

(3) Reprimand.

(b) Admonition. An admonition under rule 13.5.

(c) Remedies.

(1) Restitution;

(2) Probation;

(3) Limitation on practice;

(4) Requirement that the lawyer attend continuing legal education courses;

(5) Assessment of costs; or

(6) Other requirements consistent with the purposes of lawyer discipline.

RULE 13.2 EFFECTIVE DATE OF SUSPENSIONS AND DISBARMENTS

Suspensions and disbarments are effective on the date set by the Supreme Court's order or opinion, which will ordinarily be seven days after the date of the order or opinion. If no date is set, the suspension or disbarment is effective ~~on the~~ seven days after the date of the Court's order or opinion.

RULE 13.3 SUSPENSION

(a) Term of Suspension. A suspension must be for a fixed period of time not exceeding three years.

(b) Reinstatement.

(1) After the period of suspension, the Association administratively returns the suspended respondent lawyer to the respondent's status before the suspension without further order by the Court upon:

(A) the respondent's compliance with all current licensing requirements; and

(B) disciplinary counsel's certification that the respondent has complied with any specific conditions ordered, and has paid any costs or restitution ordered or is current with any costs or restitution payment plan.

(2) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the Chair may modify the terms of the payment plan if warranted. The Chair determines the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

RULE 13.4 REPRIMAND

(a) ~~Administration.~~ ~~The Association administers a reprimand to a respondent lawyer by written statement signed by its President.~~

~~(b) Notice and Review of Contents.~~ ~~The Association must serve the respondent with a copy of the proposed reprimand. Within five days of service of the proposed reprimand, the respondent may file a request for review of the content of the proposed reprimand. This request stays the administration of the reprimand. When timely requested, the Disciplinary Board reviews the proposed reprimand in light of the decision or stipulation imposing the reprimand and may take any appropriate action. The Board's action is final and not subject to further review. If no request is received, the content of the reprimand is final, and the reprimand is administered.~~

Notice of Reprimand. When an order imposing a reprimand is final, Association Counsel prepares a notice of reprimand consisting of the order imposing the reprimand together with the hearing officer's findings, conclusions and recommendation, any opinion or order of the Board or the Court, stipulation to discipline, or other final document that forms the basis for the order imposing a reprimand, together with a cover notation. The notice of reprimand is filed with the Clerk and served on the respondent lawyer as an order under rule 4.2(b).

(b) Form of Notice. The notice of reprimand must be in substantially the following form:

Notice of Reprimand

Lawyer _____, WSBA No. _____, has been ordered Reprimanded by the following attached documents:
[Title and date of the attached documents.]

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.

RULE 13.5 ADMONITION

(a) By a Review Committee.

(1) A review committee may issue an admonition when investigation of a grievance shows misconduct.

(2) A respondent lawyer may protest ~~either~~ the review committee's ~~or the Board's~~ prehearing issuance of an admonition by filing a notice to that effect with the Clerk within 30 days of service of the admonition. Upon receipt of a timely protest, the admonition is rescinded, and the grievance is deemed ordered to hearing. A rescinded admonition is of no effect and may not be introduced into evidence in any disciplinary proceeding or appeal.

(b) Following a Hearing. A hearing officer ~~or panel~~ may recommend that a respondent receive an admonition following a hearing.

(c) By Stipulation. The parties may stipulate to an admonition under rule 9.1.

(d) Effect. An admonition is a permanent discipline record and is admissible in subsequent disciplinary or disability proceedings involving the respondent. ~~Rule 3.6(b) governs destruction of file materials relating to an investigation~~

~~or hearing concluded with an admonition, including the admonition.~~

(e) Action on Board Review. Upon review under title 11, the Board may dismiss, issue an admonition, or impose sanctions or other remedies under rule 13.1.

(f) Signing of Admonition. The review committee chair signs an admonition issued by a review committee. The Disciplinary Board Chair or the Chair's designee signs all other admonitions.

RULE 13.6 DISCIPLINE FOR CUMULATIVE ADMONITIONS

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

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

RULE 13.7 RESTITUTION

(a) Restitution May Be Required. A respondent lawyer who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be ordered to make restitution to persons financially injured by the respondent's conduct or the Lawyer's Fund for Client Protection.

(b) Payment of Restitution.

(1) A respondent ordered to make restitution must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) A respondent ordered to make restitution to the Lawyer's Fund for Client Protection must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with the Lawyer's Fund for Client Protection Board

(~~2~~3) Disciplinary counsel or the Lawyer's Fund for Client Protection Board may enter into an agreement with a respondent for a reasonable periodic payment plan if:

(A) the respondent demonstrates in writing present inability to pay restitution and

(B) disciplinary counsel consults with the persons owed restitution.

(~~3~~4) A respondent may ask the Chair to review an adverse determination by disciplinary counsel of the reasonableness of a proposed periodic payment plan for restitution. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

(c) Failure To Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

RULE 13.8 PROBATION

(a) Conditions of Probation. A respondent lawyer who has been sanctioned under rule 13.1 or admonished under rule 13.5 (b) or (c) may be placed on probation for a fixed period of two years or less.

(1) Conditions of probation may include, but are not limited to requiring:

(A) alcohol or drug treatment;

(B) medical care;

(C) psychological or psychiatric care;

(D) professional office practice or management counseling; or

(E) periodic audits or reports.

(2) Upon disciplinary counsel's request, the Chair may appoint a suitable person to supervise the probation. Cooperation with a person so appointed is a condition of the probation.

(b) Failure To Comply. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.

RULE 13.9 COSTS AND EXPENSES

(a) Assessment. The Association's costs and expenses may be assessed as provided in this rule against any respondent lawyer who is ordered sanctioned or admonished, or against whom reciprocal discipline is imposed after a contested reciprocal discipline proceeding.

(b) Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Association in the complete performance of its duties under these rules, whether incurred before or after the filing of a formal complaint. Costs include, by way of illustration and not limitation:

(1) court reporter charges for attending and transcribing depositions or hearings;

(2) process server charges;

(3) necessary travel expenses of hearing officers, ~~hearing panel members,~~ disciplinary counsel, adjunct investigative counsel, or witnesses;

(4) expert witness charges;

(5) costs of conducting an examination of books and records or an audit under title 15;

(6) costs incurred in supervising probation imposed under rule 13.8;

(7) telephone toll charges;

(8) fees, costs, and expenses of a lawyer appointed under rule 8.2 or rule 8.3;

(9) costs of copying materials for submission to a review committee, a hearing officer ~~or panel~~, or the Board; and

(10) compensation provided to hearing officers ~~or panel members~~ under rule 2.11.

(c) Expenses Defined. "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

(1) for an admonition that is accepted under rule 13.5(a), $750;

(2) for a matter that becomes final without review by the Board, $1,500;

(3) for a matter that becomes final upon a reciprocal discipline order under rule 9.2 or rule 9.3, in a matter requiring briefing at the Supreme Court, $1,500;

(~~3~~4) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of $2,000;

(~~4~~5) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of $2,500; and

(~~5~~6) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of $3,000.

(d) Statement of Costs and Expenses, Exceptions, and Reply.

(1) *Timing.* Disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:

(A) an admonition is accepted;

(B) the decision of a hearing officer ~~or panel~~ or the Board imposing an admonition or a sanction becomes final;

(C) a notice of appeal from a Board decision is filed and served; ~~or~~

(D) the Supreme Court accepts or denies discretionary review of a Board decision; or

(E) entry of a final decision imposing reciprocal discipline under rule 9.2 or rule 9.4 in a matter requiring briefing at the Supreme Court.

(2) *Content*. A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. Disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.

(3) *Service*. The Clerk serves a copy of the statement on the respondent.

(4) *Exceptions.* The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.

(5) *Reply.* Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

(e) Assessment. The Chair enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

(f) Review of Chair's Decision.

(1) *Matters Reviewed by Court.* In matters reviewed by the Supreme Court under title 12, the Chair's decision is subject to review only by the Court.

(2) *All Other Matters.* In all other matters, the following procedures apply:

(A) Request for Review by Board. Within 20 days of service on the respondent of the order assessing costs and expenses, either party may file a request for Board review of the order.

(B) Board Action. Upon the timely filing of a request, the Board reviews the order assessing costs and expenses, based on the Association's statement of costs and expenses and any exceptions or reply, the decision of the hearing officer ~~or panel~~ or of the Board, and any written statement submitted by either party within the time directed by the Chair. The Board may approve or modify the order assessing costs and expenses. The Board's decision is final when filed and not subject to further review.

(g) Assessment in Matters Reviewed by the Court. When a matter is reviewed by the Court as provided in title 12, any order assessing costs and expenses entered by the Chair under section (e) and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion by the Court imposing a sanction or admonition, costs and expenses may be assessed in favor of the Association under the procedures of RAP Title 14, except that "costs" as used in that title means any costs and expenses allowable under this rule.

(h) Assessment Discretionary. Assessment of any or all costs and expenses may be denied if it appears in the interests of justice to do so.

(i) Payment of Costs and Expenses.

(1) A respondent ordered to pay costs and expenses must do so within 30 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) The respondent must pay interest on any amount not paid within 30 days of the date the assessment is final at the maximum rate permitted under RCW 19.52.020.

(3) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(B) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review, and the Board's decision is not subject to further review.

(j) Failure To Comply. A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

(k) Costs in Other Cases. Rule 9.1 governs costs and expenses in cases resolved by stipulation. Rule 8.6 governs assessment of costs and expenses in disability proceedings. Rule 5.3(h) governs assessment of costs and expenses pursuant to a respondent's failure to cooperate.

(*l*) Money Judgment for Costs and Expenses. After the assessment of costs and expenses is final, upon application by the Association, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and expenses if the respondent has failed to pay the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the appli-

cation. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

TITLE 14 – DUTIES ON SUSPENSION OR DISBARMENT

RULE 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY

(a) Providing Client Property. A lawyer who has been suspended from the practice of law, disbarred, has resigned in lieu of discipline, or has been transferred to disability inactive status must provide each client or the client's substituted counsel upon request with the client's assets, files, and other documents in the lawyer's possession, regardless of any possible claim of lien under RCW 60.40.

(b) Notice if Suspended for 60 Days or Less. A lawyer who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client involved in litigation or administrative proceedings, and counsel for each adverse party (or the adverse party directly if not represented by counsel), of the suspension, ~~the reason therefor~~ that the suspension is a disciplinary suspension, and of the lawyer's consequent inability to act as a lawyer after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another lawyer. If the client does not substitute counsel within ten days of this notice, the lawyer must advise the court or agency of the lawyer's inability to act; and

(2) notify all other clients of the suspension~~, the reason therefor,~~ and consequent inability to act during the suspension. The notice must advise the client to seek legal advice elsewhere if needed during the suspension.

(c) Notice if Otherwise Suspended, ~~or~~ Disbarred, or Resigned in Lieu of Discipline. A lawyer who has been disbarred, has resigned in lieu of discipline, or has been suspended for more than 60 days, for nonpayment of dues, or under title 7 or APR 11, APR 17, or APR 26, must within ten days of the effective date of the disbarment, ~~or~~ suspension, or resignation:

(1) notify every client of the lawyer's suspension, disbarment, or resignation in lieu of discipline, whether a suspension is a disciplinary suspension, an interim suspension, or an administrative suspension, and of the lawyer's consequent inability to act as the client's lawyer ~~and the reason therefor,~~ and advise the client to seek legal advice elsewhere;

(2) advise every client involved in litigation or administrative proceedings to seek the prompt substitution of another lawyer. If the client does not substitute counsel within ten days of being notified of the lawyer's inability to act, the lawyer must advise the court or agency of the lawyer's inability to act; and

(3) notify counsel for each adverse party in pending litigation or administrative proceedings, or the adverse party directly if not represented by counsel, of the lawyer's suspension, disbarment, or resignation in lieu of discipline, and the lawyer's inability to act further on the client's behalf.

(d) Notice if Transferred to Disability Inactive Status. A lawyer transferred to disability inactive status, or his or her guardian if one has been appointed, must give all notices required by section (c), except that while the notices need not refer to the specifics of the disability, the notice must advise that the lawyer has been transferred to disability inactive status.

(e) Address of Client. All notices to lawyers, adverse parties, courts, or agencies as required by sections (b), (c), or (d) must contain the client's name and last known address, unless doing so would disclose a confidence or secret of the client. If the name and address are omitted, the client must be advised that so long as his or her address remains undisclosed and no new lawyer is substituted, the client may be served by leaving papers with the clerk of the court under CR 5 (b)(1) in pending superior court actions, and that comparable provisions may allow similar service in other court proceedings or administrative actions.

RULE 14.2 LAWYER TO DISCONTINUE PRACTICE

(a) Discontinue Practice. A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, resignation in lieu of disbarment or discipline, suspension, or transfer to disability inactive status, and also must take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on him or her as a lawyer authorized to practice law.

(b) Continuing Duties to Former Clients. This rule does not preclude a disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, from disbursing assets held by the lawyer to clients or other persons or from providing information on the facts and the lawyer's theory of a case and its status to a succeeding lawyer, provided that the ~~suspended or disbarred~~ lawyer not be involved in any discussion regarding matters occurring after the date of the suspension, resignation in lieu of disbarment or discipline, transfer to disability inactive, or disbarment. The lawyer must provide this information on request and without charge.

RULE 14.3 AFFIDAVIT OF COMPLIANCE

Within 25 days of the effective date of a lawyer's disbarment, suspension, or transfer to disability inactive status, the lawyer must serve on disciplinary counsel an affidavit stating that the lawyer has fully complied with the provisions of this title. The affidavit must also provide a mailing address where communications to the lawyer may thereafter be directed. The lawyer must attach to the affidavit copies of the form letters of notification sent to the lawyer's clients and opposing counsel or parties and copies of letters to any court, together with a list of names and addresses of all clients and opposing counsel or parties to whom notices were sent. The affidavit is a confidential document except the lawyer's mailing address is treated as a change of mailing address under APR 13(b).

RULE 14.4 LAWYER TO KEEP RECORDS OF COMPLIANCE

A lawyer who has been disbarred, suspended, or transferred to disability inactive status must maintain written records of the various steps taken by him or her under this title, so that proof of compliance will be available in any subsequent proceeding.

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

RULE 15.1 AUDIT AND INVESTIGATION OF BOOKS AND RECORDS

The ~~Board and its Chair have~~ Association has the following authority to examine, investigate, and audit the books and records of any lawyer to ascertain and obtain reports on whether the lawyer has been and is complying with RPC 1.15A:

(a) Random Examination. The Board may authorize examinations of the books and records of any lawyer or law firm selected at random. Only the lawyer or law firm's books and records may be examined in an examination under this section.

~~**(b) Particular Examination.** Upon receipt of information that a particular lawyer or law firm may not be in compliance with RPC 1.15A, the Chair may authorize an examination limited to the lawyer or law firm's books and records. Information may be presented to the Chair without notice to the lawyer or law firm. Disclosure of this information is subject to rules 3.1 – 3.4.~~

(e<u>b</u>) Audit. After an examination under section (a) or ~~(b), if the Chair determines that further examination is warranted, the Chair may order~~ <u>as part of an investigation under rule 5.3, the Association may conduct</u> an appropriate audit of the lawyer's or firm's books and records, including verification of the information in those records from available sources.

RULE 15.2 COOPERATION OF LAWYER

Any lawyer or firm who is subject to examination, investigation, or audit under <u>rule 5.3 or</u> rule 15.1 must cooperate with the person conducting the examination, investigation, or audit, subject only to the proper exercise of any privilege against self-incrimination, by:

(a) producing forthwith all evidence, books, records, and papers requested for the examination, investigation, or audit;

(b) furnishing forthwith any explanations required for the examination, investigation, or audit;

(c) producing written authorization, directed to any bank or depository, for the person to examine, investigate, or audit trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the lawyer in the bank or depository.

RULE 15.3 DISCLOSURE

The examination ~~and~~ <u>or</u> audit report ~~are~~ <u>is</u> only available to the Board, disciplinary counsel, and the lawyer or firm examined, investigated, or audited, ~~and to the Board of Governors on its request,~~ unless a disciplinary proceeding is commenced in which case the disclosure provisions of title 3 apply.

RULE 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) Overdraft Notification Agreement Required. To be authorized as a depository for lawyer trust accounts referred to in RPC 1.15A(i) or LPO trust accounts referred to in LPO RPC 1.12A(i), a financial institution, bank, credit union, savings bank, or savings and loan association must file with the Legal Foundation of Washington an agreement, in a form provided by the Washington State Bar Association, to report to the Washington State Bar Association if any properly payable instrument is presented against a lawyer, LPO or closing firm trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institution and cannot be canceled except on 30 days' notice in writing to the Legal Foundation of Washington. The Legal Foundation of Washington must provide copies of signed agreements and notices of cancellation to the Washington State Bar Association.

(b) Overdraft Reports.

(1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:

(A) the identity of the financial institution;

(B) the identity of the (1) the lawyer or law firm, or (2) the limited practice officer or closing firm;

(C) the account number; and

(D) either:

(i) the amount of overdraft and date created; or

(ii) the amount of the returned instrument(s) and the date returned.

(2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

(c) Costs. Nothing in these rules precludes a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule, but those charges may not be a transaction cost charged against funds payable to the Legal Foundation of Washington under RPC 1.15A (i)(1) and ELC 15.7(e).

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

RULE 15.5 DECLARATION ~~OR QUESTIONNAIRE~~

(a) ~~Questionnaire~~ <u>Declaration</u>. ~~The Association a~~<u>A</u>nnually ~~sends~~ each active lawyer <u>must provide the Association ~~a~~ with such</u> written declaration or ~~questionnaire designed to~~ <u>other information as the Association</u> determine<u>s</u> ~~whether~~ <u>is needed to assure that</u> the lawyer is complying with RPC 1.15A. Each active lawyer must complete, execute, and deliver <u>this</u> to the Association ~~this declaration or questionnaire~~ by the date specified ~~in the declaration or questionnaire~~ <u>by the Association</u>.

(b) Noncompliance. ~~Failure to file the declaration or questionnaire by the date specified in section (a) is grounds for discipline. This failure also subjects the lawyer who has failed to comply with this rule to a full audit of his or her~~

~~books and records as provided in rule 15.1(c), upon request of disciplinary counsel to a review committee. A copy of any request made under this section must be served on the lawyer. The request must be granted on a showing that the lawyer has failed to comply with section (a) of this rule. If the lawyer should later comply, disciplinary counsel has discretion to determine whether an audit should be conducted, and if so the scope of that audit. A lawyer audited under this section is liable for all actual costs of conducting such audit, and also a charge of $100 per day spent by the auditor in conducting the audit and preparing an audit report. Costs and charges are assessed in the same manner as costs under rule 5.3(f)~~ Any lawyer admitted to the active practice of law who fails to comply with this rule by the date specified in section (a) may be ordered suspended from the practice of law by the Supreme Court until such time as the lawyer complies.

RULE 15.6 REGULATIONS

The Disciplinary Board may adopt regulations regarding the powers in this title subject to the approval of the Board of Governors and the Supreme Court.

RULE 15.7 TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

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

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

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

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

(1) United States Government Securities. United States Government Securities are defined as direct obligations of the United States Government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States Government-Sponsored Enterprises.

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

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

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

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

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

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

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

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

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

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

(1) Interest Comparability. For accounts established pursuant to RPC 1.15A, authorized financial institutions must pay the highest interest rate generally available from the institutions to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available to its non-IOLTA customers, authorized financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. An authorized financial

institution may satisfy these comparability requirements by selecting one of the following options:

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

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

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

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

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

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

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

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

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

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

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

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

TITLE 16 – EFFECT OF THESE RULES ON PENDING PROCEEDINGS

RULE 16.1 EFFECT ON PENDING PROCEEDINGS

These rules and any subsequent amendments will apply in their entirety, on the effective date as ordered by the Supreme Court, to any pending matter or investigation that has not yet been ordered to hearing. They will apply to other pending matters except as would not be feasible or would work an injustice. The hearing officer ~~or panel chair~~ assigned to hear a matter, or the Chair in a matter pending before the Board, may rule on the appropriate procedure with a view to insuring a fair and orderly proceeding.

WSR 13-15-055

RULES OF COURT

STATE SUPREME COURT

[July 12, 2013]

IN THE MATTER OF THE ADOPTION OF AMENDMENTS TO NEW SET OF ADMISSION TO PRACTICE RULES APR TITLE, APR 1-9; APPENDIX APR 12, REGULATION 14, APR 13, APR 15, APR 15 PROCEDURAL RULES 6, 9, 13, APR 17, APR 18, APR 20, APR 20.1, APR 20.2, APR 20.3, APR 20.4, APR 20.5, APR 21, APR 22, APR 23, APR 24, APR 24.1, APR 24.2, APR 24.3, APR 24.4, APR 24.5, APR 25, APR 25.1, APR 25.2, APR 25.3, APR 25.4, APR 25.5, AND APR 25.6; RPC 5.5-UNATHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW; RPC 5.8-MISCONDUCT INVOLVING DISBARRED, SUSPENDED, RESIGNED AND INACTIVE LAWYERS AND LPORPC 1.12A-SAFEGUARDING PROPERTY	)	ORDER NO. 25700-A-1030

The Supreme Court Rules Committee having recommended the adoption of the Washington State Bar Association's proposed amendments to, New Set of Admission to Practice Rules APR Title, APR 1-9; Appendix APR 12, Regulation 14, APR 13, APR 15, APR 15 Procedural Rules 6, 9, 13, APR 17, APR 18, APR 20, APR 20.1, APR 20.2, APR 20.3, APR 20.4, APR 20.5, APR 21, APR 22, APR 23, APR 24, APR 24.1, APR 24.2, APR 24.3, APR 24.4, APR 24.5, APR 25, APR 25.1, APR 25.2, APR 25.3, APR 25.4, APR 25.5, and APR 25.6; RPC 5.5-Unauthorized Practice of Law; Multijurisdictional Practice of Law; RPC 5.8-Misconduct Involving Disbarred, Suspended, Resigned and Inactive Lawyers and LPORPC 1.12A-Safeguarding Property; 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 January 1, 2014.

DATED at Olympia, Washington this 10th day of July, 2013.

	Madsen, C.J.
C. Johnson, J.	Stephens, J.
Owens, J.	Wiggins, J.
Fairhurst, J.	Gonzalez, J.
J. M. Johnson, J.	

SUGGESTED AMENDMENTS TO ADMISSION TO PRACTICE RULES

TITLE

ADMISSION ~~TO~~ AND PRACTICE RULES (APR)

RULE 1. IN GENERAL; SUPREME COURT; PREREQUISITES TO THE PRACTICE OF LAW; COMMUNICATIONS TO THE ASSOCIATION; CONFIDENTIALITY

(a) Supreme Court. The Supreme Court of Washington has the exclusive responsibility and the inherent power to establish the qualifications for admission to practice law, and to admit persons to practice law in this state. Any person carrying out the functions set forth in these rules is acting under the authority and at the direction of the Supreme Court.

(b) Prerequisites to the Practice of Law. Except as may be otherwise provided in these rules, a person shall not appear as an attorney or counsel in any of the courts of the State of Washington, or practice law in this state, unless that person has passed the Washington State bar examination, has complied with the other requirements of these rules, and is an active member of the Washington State Bar Association (referred to in these rules as the Bar Association). A person shall be admitted to the practice of law and become an active member of the Bar Association only by order of the Supreme Court.

(c) Communications to the Association. Communications to the Association, the Board of Governors, the Board of Bar Examiners, the Character and Fitness Board, the Law Clerk Board, mediators, mediation staff, or any other individual person, board, committee or other entity acting under authority of these rules, are absolutely privileged, and no lawsuit may be predicated thereon.

(d) Confidentiality.

(1) Unless expressly authorized by the Supreme Court or by the applicant, all application records, including related investigation files, documents and proceedings, for the admission or limited admission to practice law and to the law clerk program are confidential and shall be privileged against disclosure, except as necessary to conduct an investigation, hearing, and appeal or review pursuant to these rules.

(2) Unless expressly authorized by the Supreme Court, all examination questions, scoring keys and other examination data used by the Association to administer the bar examination and other qualifying examinations for admission or licensing are not subject to public disclosure.

(3) Unless expressly authorized by the Supreme Court, the following records of the Board of Bar Examiners, Mandatory Continuing Legal Education Board, Limited Practice Board, Limited License Legal Technician Board, Law Clerk Board, Character and Fitness Board, and the Lawyers' Fund for Client Protection Board shall not be disclosed:

(i) Preliminary drafts, notes, recommendations, and intra-Board memorandums in which opinions are expressed or policies formulated or recommended;

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

(4) Motions for the limited admission to practice law under APR 8(b) are not confidential and may be disclosed pursuant to a proper request.

RULE 2. BOARD OF GOVERNORS

(a) Powers. In addition to any other power or authority in other rules, the Board of Governors of the Bar Association (referred to in these rules as the Board of Governors) shall have the power and authority to:

(1) Appoint a Board of Bar Examiners from among the active members of the Bar Association for the purposes of assisting the Board of Governors in conducting the bar examination;

(2) Appoint a Law Clerk Board from among the active members of the Bar Association for the purposes of assisting the Board of Governors in supervising the Law Clerk Program;

(3) Appoint a Character and Fitness Board pursuant to rule 20;

(4) Approve or deny applications for permission to take the bar examination, to enroll in the law clerk program, to be admitted to practice ~~pursuant to rule 18~~ by motion, or to engage in the limited practice of law under pertinent provisions of rules 8, 9, and 14;

(5) Investigate all aspects of an applicant's qualifications to take the bar examination, to be admitted to the practice of law, to engage in the limited practice of law under pertinent provisions of rules 8, 9, and 14, or to enroll in the law clerk program;

(6) Recommend to the Supreme Court the admission or rejection of each applicant who has passed the bar examination, who is applying to be admitted to practice ~~pursuant to rule 18~~ by motion, or who is applying to engage in the limited practice of law under pertinent provisions of rules 8, 9, and 14;

(7) Approve law schools for the purposes of these rules and maintain a list of such approved law schools on file with the Clerk of the Supreme Court;

(8) Prescribe, with the approval of the Supreme Court, the amount of any fees required by these rules;

(9) Prescribe the form and content of any application, certificate, or other document referred to in these rules; and

(10) Perform any other functions and take any other actions provided for in these rules, or as may be delegated by the Supreme Court, or as may be necessary and proper to carry out its duties.

(b) Written Request. Any request to the Board of Governors for action on any subject under these rules shall be in writing and shall be properly filed. For the purpose of these rules, filing shall occur at the headquarters office of the Bar Association.

RULE 3. APPLICANTS ~~TO TAKE THE BAR EXAMINATION~~ FOR ADMISSION TO PRACTICE LAW

(a) Prerequisite for Admission. Every person desiring to be admitted to the Bar of the State of Washington must be of good moral character, possess the requisite fitness to practice law, and must qualify for and pass a bar examination except as provided for in these rules.

(b) Qualification for Bar Examination. To qualify to sit for the bar examination, a person must present satisfactory proof of either:

(i) graduation from a law school approved by the Board of Governors~~,~~; or

(ii) completion of the law clerk program prescribed by these rules~~,~~; or

(iii) graduation from a United States law school not approved by the Board of Governors together with the completion of an LL.M. degree for the practice of law as defined by these rules; or

(iv) graduation from a university or law school outside the United States with a degree in law together with the completion of an LL.M. degree for the practice of law as defined by these rules; or

(~~iii~~v) admission to the practice of law ~~by examination~~, together with current good standing, in ~~any state or territory of the United States or the District of Columbia or~~ any jurisdiction where the common law of England is the basis of its jurisprudence, and active legal experience for at least 3 of the 5 years immediately preceding the filing of the application.

"Active legal experience" ~~shall~~ means experience either in the active practice of law, or as a teacher at an approved law school, or as a judge of a court of general or appellate jurisdiction, or any combination thereof, in a state or territory of the United States or in the District of Columbia or in any jurisdiction where the common law of England is the basis of its jurisprudence.

"LL.M. degree for the practice of law" means an LL.M. program at a law school approved by the Board of Governors that consists of a minimum of 18,200 minutes of total instruction to include at least 12,000 minutes of instruction on principles of domestic United States law, which must include:

(i) a minimum of 2080 minutes in United States Constitutional Law, including principles of separation of powers and federalism;

(ii) a minimum of 2080 minutes in the civil procedure of state and federal courts in the United States;

(iii) a minimum of 1400 minutes in the history, goals, structure, values, rules and responsibilities of the United States legal profession and its members; and

(iv) a minimum of 1400 minutes in legal analysis and reasoning, legal research, problem solving, and oral and written communication.

(c) Admission by Motion. Lawyers admitted to practice law in other states or territories of the United States or the District of Columbia are not required to sit for the bar examination if they:

(i) file a certificate from that jurisdiction certifying the lawyer's admission to practice, and the date thereof, and current good standing or the equivalent; and

(ii) present satisfactory proof of active legal experience for at least 3 of the 5 years immediately preceding the filing of the application.

(e~~d~~) Exceptions. The Board of Governors may, in its discretion, withhold approval of an application or permission to sit for the bar examination for an otherwise qualified ~~person to sit for the bar examination~~ applicant, until completion of an inquiry into the applicant's character and fitness, if the applicant (i) has ever been convicted of a "serious crime" as defined in ELC 7.1(a)(2), or (ii) has ever been disbarred or is presently suspended from the practice of law for disciplinary reasons in any jurisdiction, or (iii) has previously been denied admission to the Bar in this or any other jurisdiction for reasons other than failure to pass a bar examination. The Board of Governors may also withhold approval of an application or permission to sit for the bar examination where for any other reason there are serious and substantial questions regarding the present moral character or fitness of the applicant. The Board of Governors may refer such matters to the Character and Fitness Board for investigation and hearing pursuant to these rules.

(~~d~~e) Forms; Fees; Filing. Every applicant ~~to take the bar examination~~ for admission shall:

(1) Execute and file an application, in the form and manner and within the time limits that may be prescribed by the Board of Governors;

(2) Pay upon the filing of the application such fees as may be set by the Board of Governors with the approval of the Supreme Court; and

(3) Furnish whatever additional information or proof may be required in the course of investigating the applicant.

~~**(e) Disclosure of Records** Unless expressly authorized by the Supreme Court or by the bar applicant, bar application forms and related records, documents, and proceedings shall not be disclosed, except as necessary to conduct an investigation and hearing pursuant to rule 7.~~

RULE 4. BAR EXAMINATIONS; ~~CERTIFICATION~~ NOTIFICATION OF RESULTS

(a) Bar Examination. The examination for admission to the bar shall be conducted by and under the direction of the Board of Governors with the assistance of the Board of Bar Examiners. The bar examination shall be held in February and in July of each year, or at such other times as the Board of Governors may designate, commencing at the times and in the locations selected by the Board of Governors.

(b) ~~Certification~~ Notification of Results~~; Notice~~. As soon as practicable after the completion of the bar examination, the ~~Board of Bar Examiners shall certify to the Board of Governors the grades of all applicants who have taken the bar examination. The~~ Board of Governors shall cause each applicant to be notified of the results of the bar examination. The Board of Governors may disclose the results to the applicant's law school and the National Conference of Bar Examiners. No other information will be divulged to persons other than the applicants concerning the applicants who failed the bar examination.

(c) Repeating Bar Examination. Any applicant failing a bar examination may apply to take another bar examination.

RULE 5. RECOMMENDATION FOR ADMISSION; ORDER ADMITTING TO PRACTICE; PAYMENT OF MEMBERSHIP FEE; OATH OF ATTORNEY; RESIDENT AGENT

(a) Recommendation for Admission. The Board of Governors shall recommend to the Supreme Court the admission or rejection of each applicant who has passed the bar examination or been approved for admission by motion, and, who has complied with the preadmission ~~education~~ requirements set forth in this rule. A recommendation for admission shall be based upon the Board of Governors determination, after investigation, that the applicant appears to be of good moral character and in all respects qualified to engage in the practice of law. All recommendations of the Board of Governors shall be accompanied by the applicant's application for ~~examination~~ admission and any other documents deemed pertinent by the Board of Governors or requested by the Supreme Court. The recommendation and all accompanying documents and papers shall be kept by the Clerk of the Supreme Court in a separate file which shall not be a public record.

(b) Preadmission ~~Education~~ Requirements. Before an applicant who has passed the bar examination, or who qualifies for admission without passing the bar examination, may be admitted, the applicant must:

(1) take and pass the Washington Law Component;

(2) complete a minimum of 4 hours education in a curriculum and under circumstances approved by the Board of Governors; ~~. These courses will be offered at no cost to the applicant.~~

(3) pay to the Bar Association the annual license fee and any assessments for the current year;

(4) file any and all licensing forms required of active members;

(5) take the Oath of Attorney; and

(6) designate a resident agent if required to do so by section (f).

For applicants who take and pass the bar examination, the preadmission requirements must be completed within 40 months from the date of the administration of the bar examination in which the score was earned. For applicants who apply by motion, the preadmission requirements must be completed within one year from the date of filing the application, except for good cause shown.

(~~d~~c) Oath of Attorney. The Oath of Attorney must be taken before an elected or appointed judge ~~elected or appointed to an elected position~~, excluding judges pro tempore, sitting in open court~~,~~ in the state of Washington. In the event a successful applicant is outside the state of Washington and the Chief Justice is satisfied that it is impossible or impractical for the applicant to take the oath before an elected or appointed judge ~~elected or appointed to an elected position~~ in this state, the Chief Justice may, upon proper application setting forth all the circumstances, designate a person authorized by law to administer oaths, before whom the applicant may appear and take said oath.

(e~~d~~) Contents of Oath. The oath which all applicants shall take is as follows:

OATH OF ATTORNEY

State of Washington, County of _____ ss.

I, _____, do solemnly declare:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.

2. I will support the constitution of the State of Washington and the constitution of the United States.

3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.

4. I will maintain the respect due to the courts of justice and judicial officers.

5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.

6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.

7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.

8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

_____

(signature)

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 20 ___.

_____

Judge

(e~~c~~) Order Admitting to Practice. After examining the recommendation and accompanying papers transmitted by the Board of Governors, the Supreme Court may enter such order in each case as it deems advisable. For those applicants it deems qualified, the Supreme Court shall enter an order admitting them to the practice of law, ~~, conditioned upon such applicants:~~

~~(1) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney within 1 year from the date the bar examination results are made public, except for good cause shown; and~~

~~(2) Paying to the Bar Association its membership fee for the current year; and~~

~~(3) Designating a resident agent if required to do so by section (e).~~

(f) Nonresident Lawyers; Resident Agent. There shall be no requirement that an applicant or a member of the Bar Association be a resident ~~or a bona fide resident~~ in the state of Washington. Every ~~active~~ member, except a judicial member, of the Bar Association who does not live or maintain an office in the state of Washington shall file with the Bar Association the name and address of an agent within this state for

the purpose of receiving service of process or of any other document required or permitted by statute or court rule to be served or delivered to a resident lawyer. Service or delivery to such agent shall be deemed service upon or delivery to the lawyer.

RULE 6. LAW CLERK PROGRAM

(a) **Purpose**. The Law Clerk Program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, experiential, and clinical components. Successful completion of the Law Clerk Program provides a way to meet the education requirement to apply for the Washington State bar exam; it is not a special admission or limited license to practice law.

(b) ~~(a) **Applicants**.~~ **Application.** Every applicant for enrollment in the law clerk program shall:

(1) Be of good moral character and fitness;

(2) Present satisfactory proof of having been granted a bachelor's degree by a college or university with approved accreditation ~~other than a bachelor of laws, by a college or university offering such a degree on the basis of a four year course of study~~; if the degree was earned in a non-US jurisdiction, the applicant shall provide supporting documentation as to its equivalency;

(3) ~~Obtain regular, full-time employment in the State of Washington as a law clerk with (i) a judge of a court of general, limited, or appellate jurisdiction, or (ii) a lawyer or firm of lawyers licensed to practice in this state and actively engaged in the practice of law;~~ Be engaged in regular, full-time employment in Washington State for an average of 32 hours per week with the primary tutor or primary tutor's employer in a (i) law office, (ii) legal department or (iii) a court of general, limited, or appellate jurisdiction in Washington State. The employment must include tasks and duties which contribute to the practical aspects of engaging in the practice of law;

(4) Submit~~,~~ on forms provided by the Bar Association (i) an application for ~~admission to the law clerk~~ enrollment in the program, (ii) the tutor's ~~statement required by section (b)(3) of this rule~~ application, and, (iii) the application fee;

(5) Appear for an interview, provide any additional information or proof, and cooperate in any investigation, as may be deemed relevant by the Board of Governors; and

~~(6) Pay such fees as may be set by the Board of Governors with the approval of the Supreme Court.~~

(6) If applicable, present a petition for Advanced Standing based on law school courses completed or courses completed in this program during a previous enrollment. The Board of Governors may grant Advanced Standing to an applicant approved for enrollment for courses deemed recently and successfully passed and equivalent to courses in the program.

(7) Where the Board of Governors is satisfied that a primary tutor has arranged a relationship with the applicant's full-time employer consistent with the purposes of the Program, the requirement that the primary tutor, or the primary tutor's employer, be the law clerk's employer may be waived.

(c) **Tutors**. ~~A lawyer or judge may act as tutor for only one law clerk at a time.~~ To be eligible to act as a tutor in the law clerk program, a lawyer or judge shall:

(1) Act as a tutor for only one law clerk at a time;

~~(1)~~(2) Be an active member in good standing of the Bar Association, or be a judicial member who is currently elected or appointed to an elected position, who has not received a disciplinary sanction in the last 5 years, provided that if there is discipline pending or a disciplinary sanction has been imposed upon the ~~lawyer or judge within the 5 years immediately preceding approval of~~ member more than 5 years preceding the law clerk's application for enrollment, the Board of Governors shall have the discretion to accept or reject the member as tutor;

~~(2)~~(3) ~~Have been actively and continuously engaged~~ active legal experience in the practice of law or have held the required judicial position for at least 10 of the last 12 years immediately preceding the filing of the law clerk's application for enrollment.; ~~this~~ The 10 years of practice must include at least 2 years in Washington state and may be a combination of active practice and judicial experience but may not include periods of suspension for any reason;

~~(3)~~(4) ~~Provide a tutor's statement certifying to the law clerk's employment and to the tutor's eligibility, and agreeing to instruct and examine the law clerk in the curriculum prescribed by the Law Clerk Board with the approval of the Board of Governors.~~ Certify to the applicant's employment as required above and to the tutor's eligibility, and to agree to instruct and examine the applicant as prescribed under this rule; and

(5) Act as a tutor only upon the approval of the Board of Governors which may be withheld or withdrawn for any reason.

~~**(c) Length of Study**. A law clerk, whose application for enrollment has been accepted by the Board of Governors, shall study for 4 calendar years. Each calendar year shall consist of 12 months, with a minimum of 120 hours of study each month, including the time spent in performing the duties of a law clerk. The tutor shall give personal supervision to the law clerk averaging at least 3 hours each week. "Personal supervision" is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.~~

(d) Enrollment. When an application for enrollment has been approved by the Board of Governors, an enrolled law clerk shall:

(1) Pay an annual fee as set by the Board of Governors.

(2) Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. "Personal supervision" is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.

(3) Complete the prescribed course of study which shall be the equivalent of four years of study. Each year of study shall consist of 6 courses completed in 12 months. Months of leave, failed courses, and months in which the enrollee does not meet the minimum number of hours of work and study may not be counted toward the completion of a course and may extend the length of a year of study. Advanced Standing granted may reduce the months of program study. The course

of study must be completed within 6 years from the initial date of enrollment.

(4) Abide by APR 6 and the Law Clerk Program Regulations approved by the Board of Governors which provide the course of study, program requirements and other guidelines to successfully complete the program.

~~(d)~~**(c) Course of Study**. The subjects to be studied, the sequence in which they are to be studied, and any other ~~matters pertaining there to~~ requirement to successfully complete the program shall be prescribed ~~by the Law Clerk Board with the approval of the Board of Governors~~ in the Law Clerk Program Regulations. Progress toward completion of the program shall be evaluated by submission of exams, certificates, reports and evaluations as follows:

~~(c) **Examinations**. All law clerks shall:~~

~~(1) Each month, complete a written examination prepared, administered, and graded by the tutor. The examination shall be answered without research, assistance, or reference to source materials during the examination;~~

~~(2) Annually, or at such other intervals as may be established by the Law Clerk Board, appear with the tutor before the Law Clerk Board for an oral evaluation of the law clerk's progress.~~

~~(f) **Certificates**. In addition to the tutor's statement required by section (b)(3) of this rule, the tutor shall submit, on forms provided by the Bar Association:~~

~~(1) A monthly certificate, accompanying the written examination, stating the number of hours the law clerk studied each week, the number of hours spent by the tutor in personal supervision each week, that the written examination was administered as required, and that, in the opinion of the tutor, the law clerk is progressing satisfactorily; and~~

~~(2) At the conclusion of the law clerk's course of study, a certificate stating that the law clerk has completed the prescribed length and course of study, and, in the tutor's opinion, is qualified to take the bar examination and is competent to practice law.~~

(1) **Exams.** At the end of each month, the law clerk shall complete a written examination prepared, administered, and graded by the tutor. The examination shall be answered without research, assistance, or reference to source materials during the examination. The exam shall be graded pass/fail.

(2) **Certificates.** The tutor shall submit the exam, including the grade given for the examination and comments to the law clerk, and a monthly certificate, stating law clerk's hours engaged in employment, study and the tutor's personal supervision within 10 business days following the month of study. If an exam is not given, the monthly certificate shall be submitted stating the reason.

(3) **Book Reports**. The law clerk shall submit three book reports for the Jurisprudence course requirement corresponding to each year of study.

(4) **Evaluations.** Annually, or at other intervals deemed necessary, participate with the tutor in an evaluation of the law clerk's progress.

(f) Completion of the program. A law clerk shall be deemed to have successfully completed the program when:

(1) All required courses have been completed and passed as certified each month by the tutor, and all book reports have been submitted;

(2) The tutor has certified that the law clerk, in the tutor's opinion, is qualified to take the bar examination and is competent to practice law; and

(3) The Board has certified that all program requirements are completed.

(g) Termination. The Board of Governors may direct a law clerk to change tutors if approval of a tutor is withdrawn. ~~, and~~ The Board of Governors may terminate ~~the enrollment of law clerks or remove tutors from the program. The Law Clerk Board may recommend to the Board of Governors that the enrollment of the~~ a law clerk's enrollment in the program ~~be terminated~~ for:

(1) Failure to complete the prescribed ~~length and~~ course of study within 6 years from the date ~~the law clerk's application for admission was accepted~~ of enrollment;

(2) Failure of the tutor to submit the monthly examinations and certificates at the end of each month in which they are due;

(3) Failure to comply with any of the requirements of the law clerk program; and

(4) Any other grounds deemed pertinent ~~by the Law Clerk Board~~.

~~(h) **Advanced Standing**. The Board of Governors may grant advanced standing to an enrolled law clerk who has attended either an approved or a non-approved law school.~~

~~(i)~~**(h) Effective Date**. ~~The r~~Revision of this rule shall not apply retroactively. ~~to any law clerk whose enrollment has been approved and accepted by the Board of Governors prior to the effective date of this revision. Each law clerk may complete the course of study under the version of the rule in effect on the date the application for enrollment to the law clerk program was accepted.~~ A law clerk may complete the program under the version of the rule in effect at the start of enrollment.

(i) Confidentiality. Unless expressly authorized by the Supreme Court, the program applicant, or by a current or former law clerk, enrollment and related records, documents, and proceedings are confidential and shall be privileged against disclosure, except that the fact of successful completion of the program shall be subject to disclosure.

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.

RULE 7. INVESTIGATIONS; DUTY OF APPLICANT

(a) Investigations. The Board of Governors may refer any application for permission to take the bar examination, to be admitted to the practice of law or to be admitted to the limited practice of law under pertinent provisions of rules 8, 9, and ~~9~~ 14, or to enroll in the law clerk program to state bar counsel or to the Character and Fitness Board for investigation pursuant to these rules.

(b) Duty of Applicant. It shall be the duty of every applicant to cooperate with any investigation required by the Board of Governors, by promptly furnishing written or oral explanations, documents, releases, authorizations, or anything else reasonably required by the investigator. Failure to appear as directed or to furnish additional proof or answers as required or to cooperate fully shall be sufficient reason for the

Board of Governors to reject or to recommend the rejection of an application.

(c) Subpoenas: The chairperson of the Character and Fitness Board or Bar Counsel may issue subpoenas to compel attendance of an applicant or witness, or the production of books, documents, or other evidence, at a deposition or hearing. Subpoenas shall be served in the same manner as in civil cases in the superior court.

RULE 8. ~~SPECIAL~~ LIMITED ADMISSIONS

(a) In General. Lawyers admitted to the practice of law in any state or territory of the United States or the District of Columbia or in any foreign jurisdiction, who do not meet the requirements of rule 1(b) or 3(c), may engage in the limited practice of law in this state as provided in this rule.

(b) Exception for Particular Action or Proceeding. A member in good standing of, and permitted to practice law in, the Bar of any other state or territory of the United States or of the District of Columbia, ~~who is a resident of and maintains a practice in such other state, territory, or District,~~ or a lawyer who is providing legal services for no fee through a qualified legal services provider pursuant to ~~RPC 5.5(c)~~ rule 8(f), may appear as a lawyer in any action or proceeding only (i) with the permission of the court or tribunal in which the action or proceeding is pending, and (ii) in association with an active member of the Washington State Bar Association, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal.

(1) An application to appear as such a lawyer shall be made by written motion to the court or tribunal before whom the action or proceeding is pending, in a form approved by the Board of Governors, which shall include certification by the lawyer seeking admission under this rule and the associated Washington lawyer that the requirements of this rule have been ~~compiled~~ complied with, and shall include an indication on which date the fee and assessment required in part (2) ~~was~~ were paid, or indicating that the fee and assessment ~~was~~ were waived pursuant to part (2). The motion shall be heard by the court or tribunal after such notice to the Washington State Bar Association as is required in part (2) below, together with the required fee and assessment, unless waived pursuant to part (2), and to adverse parties as the court or tribunal shall direct. Payment of the required fee and assessment shall only be necessary upon a lawyer's first application to any court or tribunal in the same case. The court or tribunal shall enter an order granting or refusing the motion, and, if the motion is refused, the court or tribunal shall state its reasons.

(2) The lawyer making the motion shall submit a copy of the motion to the Washington State Bar Association~~,~~ accompanied by, (i), a nonrefundable fee in each case in an amount set by the Board of Governors with the approval of the Supreme Court, and (ii), the Lawyers' Fund for Client Protection assessment as required of active members under these rules. Payment of the fee and assessment shall only be necessary upon a lawyer's first motion to any court or tribunal in the same case. The associated Washington counsel shall be jointly responsible for payment of the fee and assessment. The fee and assessment shall be waived for a lawyer providing legal services for no fee through a qualified legal services provider pursuant to ~~RPC 5.5(c)~~ rule 8(f). The Washington State Bar Association shall maintain a public record of all motions for admission pursuant to this rule.

(3) No member of the Bar Association shall lend his or her name for the purpose of, or in any way assist in, avoiding the effect of this rule.

(c) Exception for Indigent Representation. A member in good standing of the Bar of another state or territory of the United States or of the District of Columbia, who is eligible to ~~take the bar examination~~ apply for admission under rule 3 in this state, while rendering service in either a bar association or governmentally sponsored legal services organization or in a public defender's office or similar program providing legal services to indigents and only in that capacity, may, upon application and approval, practice law and appear as a lawyer before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations:

(1) Application to practice under this rule shall be made to the Board of Governors, and the applicant shall be subject to the Rules for Enforcement of Lawyer Conduct and to the Rules of Professional Conduct.

(2) In any such matter, litigation, or administrative proceeding, the applicant shall be associated with an active member of the Bar Association, who shall be the lawyer of record and responsible for the conduct of the matter, litigation, or administrative proceeding.

(3) The applicant shall either apply for and take the first available bar examination ~~which is given more than 90 days~~ after the date of the applicant's admission to practice under this rule, or, already have filed an application for admission by motion or Uniform Bar Exam transfer.

(4) The applicant's right to practice under this rule (i) may be terminated by the Supreme Court at any time with or without cause, or (ii) shall be terminated automatically for failure to take or pass the required bar examination, or (iii) shall be terminated for failure to become an active member of the Bar Association within 60 days of the date the bar examination results are made public, or (iv) shall be terminated automatically upon denial of the application for admission, or (~~i~~v) in any event, shall be terminated within 1 year from the original date of the applicant's admission to practice law in this state under this rule.

(d) Exception for Educational Purposes. A lawyer who is enrolled and in good standing as a postgraduate student or as a faculty member in a program of an approved law school in this state, involving clinical work in the courts or in the practice of law, may apply to the Board of Governors for admission to the limited practice of law by paying an investigation fee and by presenting satisfactory proof of (i) admission to the practice of law and current good standing in any state or territory of the United States or the District of Columbia, and (ii) ~~compliance with the requirements of rule 3(b)(i), and (iii)~~ good moral character.

(1) Upon approval of the application by the Board of Governors, the applicant shall take the Oath of Attorney, and the Board of Governors shall transmit its recommendation to the Supreme Court which shall enter an order admitting the applicant to the limited practice of law under this section.

(2) The practice of an applicant admitted under this section shall be (i) limited to the period of time the applicant actively participates in the program, (ii) limited to the clinical work of the particular course of study in which the applicant is enrolled or teaching, (iii) free of charge for the services so rendered, and (iv) subject to the Rules of Professional Conduct and the Rules for Enforcement of Lawyer Conduct.

(3) An applicant admitted under this section shall be deemed an active member of the Bar Association only for the purpose of serving as a supervising lawyer under rule 9, and for no other purpose.

(4) When the applicant ceases actively to participate in the program, the law school dean shall immediately notify the Bar Association and the Clerk of the Supreme Court so that the applicant's right to practice may be terminated of record.

(5) The right to practice under this rule shall terminate three years from the date of admission under this rule.

(e) Exception for Emeritus Pro Bono Membership. A lawyer admitted to the practice of law in a state or territory of the United States or the District of Columbia, including Washington State, may apply to the Board of Governors for a limited license to practice law as an emeritus pro bono member in this state when the lawyer is otherwise fully retired from the practice of law. An emeritus pro bono member shall provide legal services in Washington State for a qualified legal services provider as defined in part (2) below. The lawyer shall apply by (i) filing an application in the form and manner that may be prescribed by the Board of Governors; (ii) presenting satisfactory proof of admission by examination to the practice of law and current good standing in any state or territory of the United States or the District of Columbia, provided that if a disciplinary sanction has been imposed upon the lawyer within 15 years immediately preceding the filing of the application for emeritus status, the Board of Governors shall have the discretion to accept or reject the application; (iii) presenting satisfactory proof of active legal experience as defined in APR 3(b) for at least 5 of the 10 years immediately preceding the filing of the application for lawyers admitted in Washington and for at least 10 of the 15 years immediately preceding the filing of the application for lawyers only admitted to practice in jurisdictions other than Washington; (iv) filing certification from a qualified legal services provider as defined in part (2) below that the applicant's practice of law will comply with the terms of this rule; (v) paying such fee as may be set by the Board of Governors with approval of the Supreme Court; (vi) complying with training requirements as may be prescribed by the Board of Governors; and (vii) furnishing whatever additional information or proof that may be required in the course of investigating the applicant.

(1) Upon approval of the application by the Board of Governors, the lawyer shall take the Oath of Attorney, pay the current year's annual membership fee in the amount required of inactive members, and the Board of Governors shall transmit its recommendation to the Supreme Court which may enter an order admitting the lawyer to the limited practice of law under this section. Emeritus pro bono ~~status~~ membership shall be for one year subject to annual renewal as provided by the Board of Governors.

(2) The practice of a lawyer admitted under this section shall be limited to providing legal service for no fee through a qualified legal services provider; or serving as an unpaid governing or advisory board member or trustee of or providing legal counsel or service for no fee to a qualified legal services provider. A qualified legal services provider is a not for profit legal services organization in Washington state whose primary purpose is to provide legal services to low income clients. The prohibition against compensation for emeritus pro bono members shall not prevent a qualified legal services provider from reimbursing an emeritus pro bono member for actual expenses incurred while rendering legal services under this rule. A qualified legal services provider shall be entitled to receive all court awarded attorney's fees for any representation rendered by the emeritus pro bono member.

(3) A lawyer admitted under this section shall pay to the Washington State Bar Association an annual license fee in the amount required of inactive members.

(4) The practice of a lawyer admitted under this section shall be subject to the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, and to all other laws and rules governing lawyers admitted to the bar of this state. Jurisdiction shall continue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(5) Emeritus pro bono members shall be exempt from compliance with rule 11 concerning Continuing Legal Education. However, prior to engaging in practice as an emeritus pro bono member, the lawyer must complete a training course or courses as approved by the Board of Governors.

(6) An emeritus pro bono member shall promptly report to the Washington State Bar Association a change in membership status in a state or territory of the United States or District of Columbia where the applicant has been admitted to the practice of law or the commencement of any formal disciplinary proceeding in any jurisdiction where the lawyer has been admitted to the practice of law.

(7) The limited license granted under this section shall be automatically terminated when the lawyer's practice fails to comply with part (2) above, the lawyer fails to comply with the terms of this rule, or on suspension or disbarment in a state or territory of the United States or District of Columbia where the applicant has been admitted to the practice of law. If the lawyer whose limited license is terminated was previously admitted to practice in Washington, the lawyer shall be transferred to inactive membership status upon termination.

(f) Exception for ~~Foreign~~ House Counsel. A lawyer admitted to the practice of law in ~~a~~ any jurisdiction ~~other than a United States jurisdiction~~ may apply to the Board of Governors for a limited license to practice law as in-house counsel in this state when the lawyer is employed in Washington as a lawyer exclusively for a profit or not for profit corporation, including its subsidiaries and affiliates, association, or other business entity, that is not a government entity, and whose lawful business consists of activities other than the practice of law or the provision of legal services. The lawyer shall apply by:

(i) filing an application in the form and manner that may be prescribed by the Board of Governors;~~,~~

(ii) presenting satisfactory proof ~~or~~ of (I) admission ~~by examination~~ to the practice of law and current good standing in ~~a~~ any jurisdiction ~~other than a United States jurisdiction~~ and (II) good moral character and fitness to practice;~~,~~

(iii) filing an affidavit from an officer, director, or general counsel of the applicant's employer in this state attesting to the fact the applicant is employed as a lawyer for the employer, including its subsidiaries and affiliates, and the nature of the employment conforms to the requirements of this rule;~~,~~

(iv) paying the application fees required of ~~foreign~~ lawyer applicants for admission under APR 3;~~,~~ and

(v) furnishing whatever additional information or proof that may be required in the course of ~~investigation~~ investigating the applicant.

(1) Upon approval of the application by the Board of Governors, the lawyer shall take the Oath of Attorney, pay the current year's annual membership fee and the Board of Governors shall transmit its recommendation to the Supreme Court which may enter an order admitting the lawyer to the limited practice of law under this section.

(2) The practice of a lawyer admitted under this section shall be limited to practice exclusively for the employer, including its subsidiaries and affiliates, furnishing the affidavit required by the rule and shall not include (i) appearing before a court or tribunal as a person admitted to practice law in this state, and (ii) offering legal services or advice to the public; or (iii) holding oneself out to be so engaged or authorized.

(3) All business cards and employer letterhead used by a lawyer admitted under this section shall state clearly that the lawyer is admitted to practice in Washington as in-house counsel.

(4) A lawyer admitted under this section shall pay to the Washington State Bar Association an annual license fee in the maximum amount required of active members and the Lawyers' Fund for Client Protection assessment.

(5) The practice of a lawyer admitted under this section shall be subject to the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, and to all other laws and rules governing lawyers admitted to the active practice of law in this state. Jurisdiction shall continue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(6) The lawyer shall promptly report to the Washington State Bar Association a change in employment, a change in membership status in any jurisdiction where the applicant has been admitted to the practice of law or the commencement of any formal disciplinary proceeding in any jurisdiction where the applicant has been admitted to the practice of law.

(7) The limited license granted under this section shall be automatically terminated when employment by the employer furnishing the affidavit required by this rule is terminated, the lawyer has been admitted to the practice of law pursuant to any other provision of the APR, the lawyer fails to comply with the terms of this rule, the lawyer fails to maintain current good standing in at least one other jurisdiction where the lawyer has been admitted to the practice of law, or on suspension or disbarment for discipline in any jurisdiction where the lawyer has been admitted to the practice of law. If a lawyer's employment is terminated but the lawyer, within three months from the last day of employment is employed by an employer filing the affidavit required by (iii), the license shall be reinstated.

(8) A lawyer admitted in another United States jurisdiction and authorized to provide legal services under this Rule may provide legal services in this jurisdiction for no fee through a qualified legal services provider, as that term is defined in APR 8(e)(2). If such services involve representation before a court or tribunal, the lawyer shall seek admission under APR 8(b) and any fees for such admission shall be waived. The prohibition against compensation in this paragraph shall not prevent a qualified legal services provider from reimbursing a lawyer authorized to practice under this rule for actual expenses incurred while rendering legal services under this pro bono exception. In addition, a qualified legal services provider shall be entitled to receive all court awarded attorney's fees for pro bono representation rendered by the lawyer.

(g) Exception for Military Lawyers.
[no change]

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

RULE 9. LICENSED LEGAL INTERNS

~~**(a) Admission to Limited Practice.** Qualified law students, enrolled law clerks, and graduates of approved law schools may be admitted to the status of legal intern and be granted a limited license to engage in the practice of law only as provided in this rule. To qualify, an applicant must:~~

~~(1) Be a student duly enrolled and in good academic standing at an approved law school with legal studies completed amounting to not less than two-thirds of a prescribed 3-year course of study or five-eighths of a prescribed 4-year course of study, and have the written approval of the applicant's law school dean or a person designated by such dean; or~~

~~(2) Be an enrolled law clerk in compliance with the provisions of rule 6 with not less than five-eighths of the prescribed 4-year course of study completed, and have the written approval of the tutor; or~~

~~(3) Make the application before the expiration of 9 months following graduation from an approved law school, and submit satisfactory evidence thereof for the Bar Association; and~~

~~(4) Pay such fees as may be set by the Board of Governors with the approval of the Supreme Court; and~~

~~(5) Certify in writing under oath that the applicant has read, is familiar with, and will abide by, the Rules of Professional Conduct and this rule.~~

~~**(b) Procedure.** The applicant shall submit an application, for which no fee shall be required, on a form provided by the Bar Association, setting forth the applicant's qualifications.~~

~~(1) The application shall give the name of, and shall be signed by, the supervising lawyer who, in doing so, shall assume the responsibilities of supervising lawyer set forth in this rule if the applicant is granted a limited license as a legal intern. The supervising lawyer shall be relieved of such~~

responsibilities upon the termination of the limited license or at an earlier time if the supervising lawyer or the applicant gives written notice to the Bar Association and the Supreme Court requesting that the supervising lawyer be so relieved. In the latter event another active member of the Bar Association may be substituted as such supervising lawyer by giving written notice of such substitution, signed by the applicant and by such other active member, to the Bar Association and the Supreme Court.

(2) Upon receipt of the application, it shall be examined and evaluated by the Board of Governors which shall endorse thereon its approval or disapproval and forward the same to the Supreme Court.

(3) The Supreme Court shall issue or refuse the issuance of a limited license of a legal intern. The Supreme Court's decision shall be forwarded to the Bar Association, and the applicant shall be informed of the Supreme Court's decision.

(c) Scope of Practice. A legal intern shall be authorized to engage in the limited practice of law, in civil and criminal matters, only as authorized by the provisions of this rule. A legal intern shall be subject to the Rules of Professional Conduct and the Rules for Enforcement of Lawyer Conduct as adopted by the Supreme Court and to all other laws and rules governing lawyers admitted to the Bar of this state, and shall be personally responsible for all services performed as an intern. Upon recommendation of the Disciplinary Board, a legal intern may be precluded from sitting for the bar examination or from being admitted as a member of the Bar Association within the discretion of the Board of Governors. Any such intern barred from the bar examination or from recommendation for admission by the Board of Governors shall have the usual rights of appeal to the Supreme Court.

(1) A judge may exclude a legal intern from active participation in a case filed with the court in the interest of orderly administration of justice or for the protection of a litigant or witness, and shall thereupon grant a continuance to secure the attendance of the supervising lawyer.

(2) No legal intern may receive payment from a client for the intern's services. However, nothing contained herein shall prevent a legal intern from being paid for services by the intern's employer or to prevent the employer from making such charges for the service of the legal intern as may otherwise be proper. A legal intern and the intern's supervising lawyer or a lawyer from the same office shall, before the intern undertakes to perform any services for a client, inform the client of the legal intern's status.

(3) A legal intern may advise or negotiate on behalf of a person referred to the intern by the supervising lawyer. A legal intern may prepare necessary pleadings, motions, briefs or other documents. It is not necessary in such instances for the supervising lawyer to be present.

(4) A legal intern may participate in superior court and Court of Appeals proceedings, including depositions, provided the supervising lawyer or another lawyer from the same office is present. Ex parte and agreed orders may be presented to the court by a legal intern without the presence of the supervising lawyer or another lawyer from the same office. An intern may represent the State in juvenile court in misdemeanor and gross misdemeanor cases without in-court supervision after a reasonable period of in-court supervision, which shall not be less than one trial.

(5) Except as otherwise provided in subsection (c)(6), in courts of limited jurisdiction, a legal intern, only after participating with the supervising lawyer in at least one nonjury case, may try nonjury cases in such courts without the presence of a supervising lawyer and, only after participating with the supervising lawyer in at least one jury case, may try jury cases in such courts without the presence of a supervising lawyer.

(6) Either the supervising lawyer or a lawyer from the same office shall be present in the representation of a defendant in all preliminary criminal hearings.

(d) Supervising Lawyer. The supervising lawyer shall be an active member of the Bar Association in good standing, provided that if a disciplinary sanction has been imposed upon the lawyer within the 5 years immediately preceding approval of the application, the Board of Governors shall have the discretion to accept or reject the lawyer as a supervising lawyer. The supervising lawyer shall have been actively engaged in the practice of law in the State of Washington or elsewhere for at least 3 years at the time the application is filed.

(1) The supervising lawyer or another lawyer from the same office shall direct, supervise and review all of the work of the legal intern and both shall assume personal professional responsibility for any work undertaken by the legal intern while under the lawyer's supervision. All pleadings, motions, briefs, and other documents prepared by the legal intern shall be reviewed by the supervising lawyer or a lawyer from the same office as the supervising lawyer. When a legal intern signs any correspondence or legal documents, the intern's signature shall be followed by the title "legal intern" and, if the document is prepared for presentation to a court or for filing with the clerk thereof, the document shall also be signed by the supervising lawyer or lawyer from the same office as the supervising lawyer. In any proceeding in which a legal intern appears before the court, the legal intern must advise the court of the intern's status and the name of the intern's supervising lawyer.

(2) Supervision shall not require that the supervising lawyer be present in the room while the legal intern is advising or negotiating on behalf of a person referred to the intern by the supervising lawyer, or while the legal intern is preparing the necessary pleadings, motions, briefs, or other documents.

(3) As a general rule, no supervising lawyer shall have supervision over more than 1 legal intern at any one time. However, in the case of (i) recognized institutions of legal aid, legal assistance, public defender and similar programs furnishing legal assistance to indigents, or legal departments of a state, county or municipality, the supervising lawyer may have supervision over 2 legal interns at one time, or (ii) a clinical course offered by an approved law school where such course has been approved by its dean and is directed by a member of its faculty, and conducted within institutions or legal departments described in (i) or the law school, each full-time clinical supervising lawyer may have supervision over 10 legal interns at one time provided a supervising lawyer

~~attends all adversarial proceedings conducted by the legal interns.~~

~~(4) A lawyer currently acting as a supervising lawyer may be terminated as a supervising lawyer at the discretion of the Board of Governors. When an intern's supervisor is so terminated, the intern shall cease performing any services under this rule and shall cease holding himself or herself out as a legal intern until written notice of a substitute supervising lawyer, signed by the intern and by the new and qualified supervising lawyer, is given to the Bar Association and to the Supreme Court.~~

~~(5) The failure of a supervising lawyer, or lawyer acting as a supervising lawyer, to provide adequate supervision or to comply with the duties set forth in this rule shall be grounds for disciplinary action pursuant to the Rules for Enforcement of Lawyer Conduct.~~

~~(6) For purposes of the attorney-client privilege, an intern shall be considered a subordinate of the lawyer providing supervision for the intern.~~

~~(7) For purposes of the provisions of this rule which permit a lawyer from the same office as the supervising lawyer to sign documents or be present with a legal intern during court appearances, the lawyer so acting must be one who meets all of the qualifications for becoming a supervising lawyer under this rule.~~

~~**(c) Term of Limited License.** A limited license as a legal intern shall be valid, unless revoked, for a period of not more than 24 consecutive months, provided that a person shall not serve as a legal intern more than 12 months after graduation from law school.~~

~~(1) The approval given to a law student by the law school dean or the dean's designee or to a law clerk by the tutor may be withdrawn at any time by mailing notice to that effect to the Clerk of the Supreme Court and to the Bar Association, and shall be withdrawn if the student ceases to be duly enrolled as a student prior to graduation or ceases to be in good academic standing or if the law clerk ceases to comply with rule 6.~~

~~(2) A limited license is granted at the sufferance of the Supreme Court and may be revoked at any time upon the court's own motion, or upon the motion of the Board of Governors, in either case with or without cause.~~

~~(3) An intern shall immediately cease performing any services under this rule and shall cease holding himself or herself out as a legal intern (i) upon termination for any reason of the intern's limited license under this rule; or (ii) upon the resignation of the intern's supervising lawyer; or (iii) upon the suspension or termination by the Board of Governors of the supervising lawyer's status as supervising lawyer; or (iv) upon the withdrawal of approval of the intern pursuant to this rule.~~

(a) Purpose. Supervised professional practice plays an important role in the development of competent lawyers and expands the capacity of the Bar to provide quality legal services while protecting the interests of clients and the justice system. This rule authorizes supervised professional practice by qualified law students, enrolled law clerks, and recent graduates of approved law schools when they are licensed pursuant to this rule to engage in the limited practice of law as "Licensed Legal Interns". The license granted pursuant to this rule is a limited license, based in part on recognition of the role practice experience plays in developing the competence of aspiring lawyers and in part on the fact that the Licensed Legal Intern will be supervised by an experienced lawyer. Persons granted such a limited license and their supervising lawyers must comply with the obligations and limitations set forth in these rules.

(b) Eligibility. To be eligible to apply to be a Licensed Legal Intern, an applicant must have arranged to be supervised by a qualifying lawyer and:

(1) Be a student duly enrolled and in good academic standing at an approved law school who has:

(A) successfully completed not less than two-thirds of a prescribed 3-year course of study or five-eighths of a prescribed 4-year course of study, and

(B) obtained the written approval of the law school's dean or a person designated by such dean and a certification by the dean or designee that the applicant has met the educational requirements; or

(2) Be an enrolled law clerk who:

(A) is certified by WSBA staff to be in compliance with the provisions of APR 6 and to have successfully completed not less than five-eighths of the prescribed 4-year course of study; and

(B) has the written approval of the primary tutor; or

(3) Be a graduate of an approved law school who has not been admitted to the practice of law in any state or territory of the United States or the District of Columbia, provided that the application is made within nine months of graduation.

(c) Qualifications to Be a Supervising Lawyer. Except in the sections regarding the application for issuance of a limited license pursuant to this rule, references in this rule to "supervising lawyer" include both the supervising lawyer named in the application materials and on the Licensed Legal Intern identification card, and any other lawyer from the supervising lawyer's office who meets the qualifications of a supervising lawyer and who performs the duties of a supervising lawyer. A supervising lawyer must be either:

(1) a lawyer currently licensed pursuant to APR 8(d) Exception for Educational Purposes; or

(2) an active member in good standing of the Washington State Bar Association, who has been actively engaged in the practice of law in the State of Washington or in any state or territory of the United States or the District of Columbia for at least the 3 years immediately preceding the date of the application, who has not been disbarred or subject to a disciplinary suspension in any jurisdiction within the previous 10 years and does not have a disciplinary proceeding pending or imminent, and who has not received a disciplinary sanction of any kind within the previous three years.

(d) Application. The applicant must submit an application on a form provided by the Bar Association and signed by both the applicant and the supervising lawyer.

(1) The applicant and the supervising lawyer must fully and accurately complete the application, and they have a continuing duty to correct and update the information on the application while it is pending and during the term of the limited license. Every applicant and supervising lawyer must cooperate in good faith with any investigation by promptly furnishing written or oral explanations, documents, releases,

authorizations, or other information reasonably required by the Board of Governors or Bar Association staff, or Bar Counsel. Failure to cooperate fully or to appear as directed or to furnish additional information as required shall be sufficient reason for the Board to recommend denial or termination of the license.

(2) The application must include:

(A) all requested information about the applicant and the Supervising Lawyer;

(B) the required certification from the law school (or confirmation from the Bar Association, for APR 6 Law Clerks) that the applicant has the required educational qualifications; and

(C) certifications in writing under oath by the applicant and the supervising lawyer(s) that they have read, are familiar with, and will abide by this rule and the Rules of Professional Conduct.

(3) Full payment of any required fees must be submitted with the application. The fees shall be set by the Board of Governors subject to review by the Supreme Court.

(4) Bar Association staff shall review all applications to determine whether the applicant and the supervising lawyer have the necessary qualifications, and whether the applicant possesses the requisite good moral character and fitness to engage in the limited practice of law provided for in this rule. Bar Association staff may investigate any information contained in or issues raised by the application that reflect on the factors contained in APR 21-24, and any application that reflects one or more of the factors set forth in APR 24.2(a) shall be referred to Bar Counsel for review.

(5) Bar Counsel may conduct such further investigation as appears necessary, and may refer to the Character and Fitness Board for hearing any applicant about whom there is a substantial question whether the applicant possesses the requisite good moral character and fitness to practice law. Such hearing shall be conducted as provided in APR 20-24. Bar Counsel may require any disclosures and conditions of the applicant and supervising lawyer that appear reasonably necessary to safeguard against unethical conduct by the applicant during the term of the limited license. No decision regarding the good moral character and fitness to practice of an applicant made in connection with an application for licensing pursuant to this rule is binding on the Bar Association or Character and Fitness Board at the time an applicant applies for admission to practice law and membership in the WSBA, and such issues may be reinvestigated and reconsidered by Bar Association staff, Bar Counsel, and the Character and Fitness Board.

(6) The Supreme Court shall issue or refuse the issuance of a limited license for a Licensed Legal Intern. The Supreme Court's decision shall be forwarded to the Bar Association, which shall inform the applicant of the decision.

(7) Upon Supreme Court approval of an applicant, the Bar Association shall send to the applicant, in care of the supervising lawyer's mailing address on record with the Bar Association, a letter confirming approval by the Supreme Court and a Licensed Legal Intern identification card. An applicant must not perform the duties of a Licensed Legal Intern before receiving the confirming letter and identification card.

(8) Once an application is accepted and approved and a license is issued, a Licensed Legal Intern is subject to the Rules of Professional Conduct and the Rules for Enforcement of Lawyer Conduct and to all other laws and rules governing lawyers admitted to the Bar of this state, and is personally responsible for all services performed as a Licensed Legal Intern. Any offense that would subject a lawyer admitted to practice law in this state to suspension or disbarment may be punished by termination of the Licensed Legal Intern's license, or suspension or forfeiture of the Licensed Legal Intern's privilege of taking the bar examination and being licensed to practice law in this state.

(9) A Licensed Legal Intern may have up to two supervising attorneys in different offices at one time. A Licensed Legal Intern may submit an application for approval to add a supervising attorney in another office or to change supervising attorneys any time within the term of the limited license. When a Licensed Legal Intern applies to add a supervising attorney in another office, the Intern must notify both the current supervising attorney and the proposed new supervising attorney in writing about the application, and both the current and the new supervising attorney must approve the addition and certify that such concurrent supervision will not create a conflict of interest for the Licensed Legal Intern. The qualifications of the new supervising attorney will be reviewed by Bar Association staff who may approve or deny the supervisor. The Licensed Legal Intern will be notified of approval or denial of the new supervising attorney as described above and must not perform the duties of a licensed legal intern before receiving a new confirming letter containing notification of approval and a new identification card.

(e) Scope of Practice, Prohibitions and Limitations. In addition to generally being permitted to perform any duties that do not constitute the practice of law as defined in General Rule 24, a Licensed Legal Intern shall be authorized to engage in the limited practice of law only as authorized by the provisions of this rule.

(1) A Licensed Legal Intern may engage in the following activities without the presence of the supervising attorney:

(A) Advise or negotiate on behalf of a person referred to the Licensed Legal Intern by the supervising lawyer;

(B) Prepare correspondence containing legal advice to clients or negotiating on behalf of clients, pleadings, motions, briefs or other documents. All such correspondence, pleadings, motions, and briefs must be reviewed and signed by the supervising attorney, as well as any other documents requiring the signature of a lawyer. On any correspondence or legal document signed by the Licensed Legal Intern, the Licensed Legal Intern's signature shall be followed by the title "Licensed Legal Intern" and the Licensed Legal Intern's identification number;

(C) Present to the court ex parte and agreed orders signed by the supervising lawyer, except as otherwise provided in these rules;

(D) After a reasonable period of in-court supervision or supervision while practicing before an administrative agency, which shall include participating with the supervising lawyer in at least one proceeding of the type involved before the same tribunal and being observed by the supervising lawyer

while handling one additional proceeding of the same type before the same tribunal:

(i) Represent the State or the respondent in juvenile court in misdemeanor and gross misdemeanor cases;

(ii) Try hearings, non-jury trials, or jury trials, in courts of limited jurisdiction;

(iii) Represent a client in any administrative adjudicative proceeding for which non-lawyer representation is not otherwise permitted.

(2) In any proceeding in which a Licensed Legal Intern appears before the court, the Licensed Legal Intern must advise the court of the Intern's status and the name of the Intern's supervising lawyer.

(3) A Licensed Legal Intern may participate in Superior Court and Court of Appeals proceedings, including depositions, only in the presence of the supervising lawyer or another lawyer from the same office.

(4) A Licensed Legal Intern must not receive payment directly from a client for the Intern's services. A Licensed Legal Intern may be paid for services by the Intern's employer, and the employer may charge for the services provided by the Licensed Legal Intern as may be appropriate.

(5) A Licensed Legal Intern must not try any motion or case or negotiate for or on behalf of any client unless the client is notified in advance of the status as a Licensed Legal Intern and of the identity and contact information of the Licensed Legal Intern's supervising lawyer.

(6) A Licensed Legal Intern must not perform any of the actions permitted by this rule on behalf of or under the supervision of any lawyer other than the supervising lawyer or another lawyer employed in the same office who is qualified for such supervision under this rule.

(7) For purposes of the attorney-client privilege, a Licensed Legal Intern shall be considered a subordinate of the lawyer providing supervision for the Intern.

(f) Additional Obligations of Supervising Lawyer. Agreeing to serve as the supervising lawyer for a Licensed Legal Intern imposes certain additional obligations on the supervising lawyer. The failure of a supervising lawyer to comply with the duties set forth in this rule shall be grounds for disciplinary action pursuant to the Rules for Enforcement of Lawyer Conduct. In addition to the duties stated or implied above, the supervising lawyer:

(1) must provide training to all Licensed Legal Interns supervised by the supervising lawyer, regarding the Rules of Professional Conduct and how they relate to the limited practice of the Licensed Legal Intern. Such training may be waived if the supervising lawyer otherwise determines that the Licensed Legal Intern has previously received such training and the supervising lawyer deems such training sufficient for the limited practice that will be supervised;

(2) must direct, supervise and review all of the work of the Licensed Legal Intern and shall assume personal professional responsibility for any work undertaken by the Licensed Legal Intern while under the lawyer's supervision;

(3) must ensure that all clients to be represented by the Licensed Legal Intern are informed of the intern's status as a Licensed Legal Intern in advance of the representation;

(4) must review and sign all correspondence providing legal advice to clients and all pleadings, motions, briefs, and other documents prepared by the Licensed Legal Intern and ensure that they comply with the requirements of this rule, and must sign the document if it is prepared for presentation to a court;

(5) must take reasonable steps to ensure that the Licensed Legal Intern is adequately prepared and knowledgeable enough to be able to handle any assigned matters performed outside the supervising lawyer's presence, but need not be present in the room while the Licensed Legal Intern is performing such duties unless such presence is specifically required by this rule;

(6) must supervise no more than

(a) one Licensed Legal Intern at any one time if the supervising lawyer is in private practice not otherwise described below;

(b) four Licensed Legal Interns at any one time if the supervising lawyer is employed by a recognized institution of legal aid, legal assistance, public defense or similar programs furnishing legal assistance to indigents, or by the legal departments of a state, county or municipality; or

(c) 10 Licensed Legal Interns at any one time if the supervising lawyer is a full-time clinical supervising lawyer or a member of the faculty of an approved law school for a clinical course offered by the law school where such course has been approved by its dean and is directed by a member of its faculty and is conducted within institutions or legal departments described in the section above or within the law school, provided that a supervising lawyer attends all adversarial proceedings conducted by the legal interns;

(7) must meet with any Licensed Legal Intern he/she is supervising, in person or by telephone, a minimum of one time per week, to review cases being handled and to provide feedback on performance, additional guidance and instruction, and to answer questions or issues raised by the Licensed Legal Intern;

(8) must inform the Bar Association staff promptly if circumstances arise that cause the supervising lawyer to have concern about the good moral character or fitness to practice of a Licensed Legal Intern supervised by that lawyer, and cooperate in any investigation that may follow such a report;

(9) may terminate supervision of a Licensed Legal Intern under this rule at any time, with or without good cause, and must promptly notify the Bar Association staff of the effective date of the termination and the reasons for the termination;

(10) may be terminated as a supervising lawyer at the discretion of the Board of Governors, and when so terminated, must take steps to ensure that any Licensed Legal Intern previously supervised by the supervising lawyer ceases to perform duties or hold him/herself out as though supervised by the supervising lawyer.

(g) Additional Obligations and Limitations. The following additional general obligations and limitations apply:

(1) A judge or administrative hearing officer may exclude a Licensed Legal Intern from active participation in a case in the interest of orderly administration of justice or for the protection of a litigant or witness. In such case, a continuance shall be granted to secure the attendance of the supervising lawyer, who must assume personal responsibility for that matter.

(2) A Licensed Legal Intern or the supervising lawyer must notify the Bar Association staff promptly if the supervising lawyer named on a Licensed Legal Intern's identification card terminates supervision of the Licensed Legal Intern, and such Licensed Legal Intern is prohibited from performing any of the actions described in these rules unless and until a change of supervising lawyer has been approved and a new identification card issued.

(h) Term of Limited License. A limited license issued pursuant to this rule shall be valid, unless it is revoked or supervision is terminated, for a period of not more than 30 consecutive months, and in no case will it be valid if it has been more than 18 months since the Licensed Legal Intern graduated from law school or completed the APR 6 Law Clerk program.

(1) The approval given to a law student by the law school dean or the dean's designee or to a law clerk by the tutor may be withdrawn at any time by mailing notice to that effect to the Bar Association, and must be withdrawn if the student ceases to be duly enrolled as a student prior to graduation, takes a leave of absence from the law school or from the clinical program for which the limited license was issued, or ceases to be in good academic standing, or if the APR 6 law clerk ceases to comply with APR 6. When the approval is withdrawn, the Licensed Legal Intern's license must be terminated promptly.

(2) A limited license is granted at the sufferance of the Supreme Court and may be revoked at any time upon the court's own motion, or upon the motion of the Board of Governors, in either case with or without cause.

(3) A Licensed Legal Intern must immediately cease performing any services under this rule and must cease holding himself or herself out as a Licensed Legal Intern upon:

(A) the termination for any reason of the Intern's limited license under this rule;

(B) the termination of the supervision for any reason or the upon the resignation of the Intern's supervising lawyer;

(C) the suspension or termination by the Board of Governors of the supervising lawyer's status as a supervising lawyer;

(D) the withdrawal of approval of the Intern pursuant to this rule, or

(E) the failure of the supervising lawyer to maintain qualification to be a supervising lawyer under the terms of this rule.

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.

RULE 10. [RESERVED]

[no change]

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

RULE 11. CONTINUING LEGAL EDUCATION

[no change]

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

RULE 12. LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

[no change]

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

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

REGULATIONS 1 through 13

[no change]

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

REGULATION 14: VOLUNTARY CERTIFICATION CANCELLATION

Any Limited Practice Officer may request to voluntarily surrender the LPO certification by notifying the Limited Practice Board in writing of the desire to cancel and returning the LPO license with the request. The Limited Practice Board may deny requests for voluntary cancellation from any LPO who is the subject of a pending disciplinary investigation or proceeding. The Limited Practice Board will notify the LPO of the effective date of the cancellation if approved.

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

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

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

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

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

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

The Board will cause a notice of the cancellation to be published in the same manner as notices of discipline under ELPOC 3.5(b).

REGULATIONS 15 through 19

[no change]

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

RULE 13. SIGNING OF PLEADINGS AND OTHER PAPERS; ADDRESS OF RECORD; ELECTRONIC MAIL ADDRESS; NOTICE OF CHANGE OF ADDRESS, TELEPHONE NUMBER, OR NAME

(a) Signing of Pleadings and Other Papers. All pleadings and other papers signed by an attorney and filed with a court shall include the attorney's Washington State Bar Association membership number in the signature block. The law department of a municipality, county, or state, public

defender organization or law firm is authorized to make an application to the Administrative Office of the Courts for an office identification number. An office identification number may be assigned by the Administrative Office of the Courts upon a showing that it will facilitate the process of electronic notification. If an office identification number is granted, it shall appear with the attorney's Washington State Bar Association membership number in the signature block.

(b) Address of Record; Change of Address. An attorney must advise the Washington State Bar Association of a current mailing address and telephone number. The mailing address shall be the attorney's address of record. An attorney whose mailing address or telephone number changes shall, within 10 days after the change, notify the ~~Executive Director of the~~ Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. The notice shall be in a form acceptable to the Bar Association and shall include (1) the attorney's full name, (2) the attorney's Washington State Bar Association membership number, (3) the previous address and telephone number, clearly identified as such, (4) the new address and telephone number, clearly identified as such, and (5) the effective date of the change. The courts of this state may rely on the address information contained in the state computer system in issuing notices in pending actions.

(c) Electronic mail address: An attorney ~~should~~ shall advise the Washington State Bar Association of a current ~~business~~ electronic mail address ~~if one exists~~. An attorney whose ~~business~~ electronic mail address changes ~~should~~ shall, within 10 days after the change, notify the ~~Executive Director of the~~ Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. Use of electronic mail addresses for court notice, service and filing must comply with GR 30.

(d) Change of Name. An attorney whose name changes shall, within 10 days after the change, notify the ~~Executive Director of the~~ Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. The notice shall be in a form acceptable to the Bar Association and shall contain (1) the full previous name, clearly identified as such, (2) the full new name, clearly identified as such, (3) the attorneys Washington State Bar Association membership number, and (4) the effective date of the change.

(e) Requirements of Local and Other Court Rules Not Affected. The responsibility of a party or an attorney to keep the court and other parties and attorneys informed of the party's or attorney's correct name and current address, as may be required by local or other court rule, is not affected by this rule.

RULE 14. LIMITED PRACTICE RULE FOR FOREIGN LAW CONSULTANTS

[no change]

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

RULE 15. LAWYERS' FUND FOR CLIENT PROTECTION

(a) Purpose. The purpose of this rule is to create a Lawyers' Fund for Client Protection, to be maintained and administered as a trust by the Washington State Bar Association (WSBA), in order to promote public confidence in the administration of justice and the integrity of the legal profession.

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

(c) Funding. The Supreme Court may provide for funding by assessment of members of the WSBA in amounts determined by the court upon the recommendation of the Board of Governors of the WSBA.

(d) Enforcement. Failure to pay any fee assessed by the court on or before the date specified by the court shall be a cause for suspension from practice until payment has been made.

(e) Restitution. A lawyer whose conduct results in payment to an applicant shall be liable to the Fund for restitution.

(1) A lawyer on Active status must pay restitution to the Fund in full within 30 days of final payment by the Fund to an applicant unless the attorney enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(2) Lawyers on disciplinary or administrative suspension, disbarred lawyers, and lawyers on any status other than disability inactive must pay restitution to the Fund in full prior to returning to Active status, unless the attorney enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(3) An attorney who returns from disability inactive status as to whom an award has been made shall be required to pay restitution if and as provided in Procedural Rule 6(I).

(4) Restitution not paid within 30 days of final payment by the Fund to an applicant shall accrue interest at the maximum rate permitted under RCW 19.52.050.

(5) Bar counsel assigned to the Client Protection Board may, in his or her sole discretion, enter into an agreement with an attorney for a reasonable periodic payment plan if the attorney demonstrates in writing the present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.050.

(B) An attorney may ask the Fund Board to review an adverse determination by Bar counsel regarding specific conditions for a periodic payment plan. The Chair directs the procedure for Fund Board review, and the Fund Board's decision is not subject to further review.

(6) An attorney's failure to comply with an approved periodic payment plan or to otherwise pay restitution due under this Rule may be grounds for denial of status change or for discipline.

(f) Administration. The Fund shall be maintained and administered by the Board of Governors acting as trustees for the Fund. The Board shall appoint the Lawyers' Fund for Client Protection Board (Client Protection Board) to administer the Fund pursuant to rules adopted by the Board of Governors and approved by the Supreme Court. The Client Protection Board shall consist of 11 lawyers and 2 nonlawyers, who will be appointed to serve staggered 3-year terms.

(g) Subpoenas. A lawyer member of the Client Protection Board, or counsel for the Washington State Bar Association assigned to the Client Protection Board, shall have the power to issue subpoenas to compel the attendance of the lawyer being investigated or of a witness, or the production of books, or documents, or other evidence, at the taking of a deposition. A subpoena issued pursuant to this rule shall indicate on its face that the subpoena is issued in connection with an investigation under this rule. Subpoenas shall be served in the same manner as in civil cases in the superior court.

(h) Reports. The Board of Governors, in consultation with the Client Protection Board, shall file with the Supreme Court a full report on the activities and finances of the Fund at least annually and may make other reports to the court as necessary.

(i) Communications to the Association. Communications to the Association, Board of Governors (Trustees), Client Protection Board, Association staff, or any other individual acting under the authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any applicant or other person providing information.

LAWYERS' FUND FOR CLIENT PROTECTION (APR 15) PROCEDURAL RULES

Rules 1 through 5 (of APR 15)

[no change]

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

Rule 6. PROCEDURES (of APR 15)

A. Ineligibility. Whenever it appears that an application is not eligible for reimbursement pursuant to Rule 5, the applicant shall be advised of the reasons why the application may not be eligible for reimbursement.

B. Investigation and Report. The WSBA staff member assigned to the Board shall conduct an investigation regarding any application. The investigation may be coordinated with any disciplinary investigation regarding the lawyer. The staff member shall report to the Board and make a recommendation to the Board.

C. Notification of Lawyer. The lawyer, or his or her representative, regarding whom an application is made shall be notified of the application and provided a copy of it, and shall be requested to respond within 20 days. If the lawyer's address of record on file with the WSBA is not current, then a copy of the application should be sent to the lawyer at any other address on file with the WSBA. A copy of these Rules shall be provided to the lawyer or representative.

D. Withdrawal of Application/Restitution. If, during the investigation of an application, the Applicant withdraws the Application or the Applicant receives full restitution of the amount stated in the Application, the Applicant and the lawyer shall be advised that the file will be closed without further action.

E. Testimony. The Board may request that testimony be presented to complete the record. Upon request, the lawyer or applicant, or their representatives, may be given an opportunity to be heard at the discretion of the Board.

F. Finding of Dishonest Conduct. The Board may make a finding of dishonest conduct for purposes of considering an application. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

G. Evidence and Burden of Proof. Consideration of an application need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs. The applicant shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.

H. Pending Disciplinary Proceedings. Unless the Board or Trustees otherwise direct, no application shall be acted upon during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim.

I. Deferred Disciplinary Proceedings; Lawyer on Disability Inactive Status.

(1) If an application relates to a lawyer on disability inactive status, and/or a disciplinary proceeding or investigation is deferred due to a lawyer's transfer to disability inactive status, the Fund Board may act on the application when received or may defer processing the application for up to three years if the lawyer remains on disability inactive status.

(2) A lawyer on disability inactive status seeking to return to Active status may, while pursuing reinstatement pursuant to the Rules for Enforcement of Lawyer Conduct, request that the lawyer's obligation to make restitution for any applications approved while the lawyer was on disability inactive status be reviewed.

(A) If the request for review is based in whole or in part on the merits of the application(s), the lawyer may request the Fund Board review and reconsider any such applications. The Fund Board's decision on review shall be reported to the Trustees, which shall have sole authority for the final decision. If the Trustees determine that the application(s) should not have been approved, the lawyer will not be responsible for restitution and the applicant(s) shall not be required to repay the Fund. If the Trustees determine that the applications were appropriately granted and the lawyer is responsible for restitution, the rules regarding restitution shall apply.

(B) If the lawyer does not contest the merits of the applications but simply wants to request that restitution be waived,

the request shall be submitted to the Bar counsel for the Fund, who shall submit the request to the Trustees together with Fund counsel's recommendation. The decision of the Trustees shall be final and is not subject to appeal.

~~I~~**J. Public Participation**. Public participation at Board meetings shall be permitted only by prior permission granted by the Board chairperson.

~~J~~**K. Board Action**.

(1) Actions of the Board Which Are Final Decisions: A decision by the Board on an application for payment of $25,000 or less – whether such decision be to make payment, to deny payment, to defer consideration, or for any action other than payment of more than $25,000 – shall be final and without right of appeal to the Trustees.

(2) Actions of the Board Which Are Recommendations to the Trustees: A decision by the Board (a) on an application for more than $25,000, or (b) involving a payment of more than $25,000 (regardless of the amount stated in the application), is not final and is a recommendation to the Trustees which shall have sole authority for final decisions in such cases.

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.

Rules 7 and 8 (of APR 15)
[no change]

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

Rule 9. LIMITATIONS ON ~~AMOUNT OF~~ REIMBURSEMENT (of APR 15)

A. The Trustees may, at their discretion, set limitations on the amount of reimbursement.

B. Applications approved for $5,000 or less shall be paid in full upon approval by the Board (and the Trustees, if required under these Rules). Applications approved for more than $5,000 shall be paid $5,000 upon approval by the Board (and the Trustees, if required under these Rules); payment of the remaining balance approved shall be deferred until fiscal year end and shall be subject to any proration which may be approved by the Trustees.

C. At the last meeting of the Trustees for each fiscal year, the Fund Board shall report the total outstanding balance on approved gifts and shall recommend whether the outstanding balance should be paid in full or prorated. When approved gifts are prorated, the prorated payment shall reflect the total amount of the gift, less the initial $5,000 payment made upon approval by the Board. By way of illustration:

Example 1: The application is for an amount in excess of $75,000.00. The Fund Board recommends and the Board of Governors, as Trustees, approves a gift in the maximum allowable amount of $75,000. $5,000 is paid upon approval by the Trustees. At fiscal year end, the Fund Board recommends and the Board of Governors, as Trustees, approves using a prorating formula that would result in applicants receiving 20% of their unpaid gifts. 20% of $70,000 is $14,000, so a second payment of $14,000 is issued to the applicant.

Example 2: In the same fiscal year another applicant applies for and receives a gift in the amount of $7,500. $5,000 is paid upon approval. At fiscal year end, a second payment is issued for $500.

Rules 10 through 12 (of APR 15)
[no change]

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

Rule 13. CONFIDENTIALITY (of APR 15)

A. Matters Which Are Public. On approved applications, The facts and circumstances which generated the loss, the Board's ~~findings of fact and~~ recommendations to the Trustees with respect to payment of a claim, the amount of claim, the amount of loss as determined by the Board, the name of the lawyer causing the loss, and the amount of payment authorized and made, shall be public. ~~After payment is authorized, the name of the lawyer causing the loss shall be public.~~

B. Matters Which Are Not Public. The Board's file, including the application and response, supporting documentation, and staff investigative report, ~~investigation~~ and deliberations of any application; the name of the applicant, unless the applicant consents; ~~or~~ and the name of the lawyer unless the lawyer consents or unless the lawyer's name is made public pursuant to these rules, shall not be public.

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 14 through 16 (of APR 15)
[no change]

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

RULE 16. MEDIATION
[no change]

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

RULE 17. ADMINISTRATIVE SUSPENSION FROM PRACTICE

(a) Basis for Suspension From Practice. The Washington State Bar Association shall request that the Supreme Court suspend a member from the practice of law upon:

(1) notification from the Department of Social and Health Services ~~the execution of written findings from an adjudicative process~~ that ~~: (1)~~ the member is more than six months delinquent in noncompliance with a valid and enforceable order entered by a court of competent jurisdiction requiring the member to pay child support; or~~, and (2) the member has had the opportunity for an adjudicative proceeding to contest the issue of compliance with the child support order, and (3) there are currently no good faith negotiations for a repayment agreement or other modification of the order, and (4) there are no pending judicial or administrative proceedings to determine whether child support is delinquent. A member shall be considered in compliance with an order of child support if the member is current with a payment~~

~~arrangement pursuant to an order which contemplates payments for past due child support. The hearing will be held, on actual notice to the member of no less than sixty days. The hearing shall otherwise be conducted pursuant to and in accordance with the Rules for Enforcement of Lawyer Conduct but will be for an administrative suspension only so long as the conditions set forth above exist.~~

(2) failure of a member to comply with licensing requirements under these rules, the Rules for Enforcement of Lawyer Conduct, or the Bar Association Bylaws. This includes but is not limited to a member's:

(A) failure to pay the annual license fee to the Association;

(B) failure to pay the annual assessment to the Lawyers' Fund for Client Protection;

(C) failure to comply with MCLE requirements;

(D) failure to comply with professional liability insurance requirements;

(E) failure to file annual trust account information;

(F) failure to designate a resident agent; and

(G) failure to timely notify the Association of a change in address, phone number or email address.

(b) Notice and Order of Suspension. The Bar Association shall provide at least 60 days written notice of intent to seek suspension to a member at the member's address of record with the Bar Association. The Bar Association shall establish notice procedures consistent with this rule. A member shall have a right to submit proof that the grounds for the suspension do not exist or no longer exist. After ~~60 days from the execution of the written findings~~ such notice the Court may enter an order suspending the member from practice~~, unless the member submits satisfactory proof one of the conditions set forth above does not exist~~.

(c) ~~Reinstatement~~ Change of Status After Suspension Pursuant to This Rule. A member who has been administratively suspended under this rule shall have a right to submit proof to the Bar Association that the ~~of a condition~~ grounds for suspension no longer exist~~s~~. The member must adhere to status change procedures established by the Bar Association. The Court may enter an order ~~of reinstatement~~ changing status upon determination said proof is satisfactory and so long as the member meets all other requirements to practice law.

(d) Rules of Professional Conduct Not Superseded. Nothing in this rule supersedes any of the Rules of Professional Conduct.

RULE 18. ~~ADMISSION OF LAWYERS LICENSED IN OTHER STATES OR TERRITORIES OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA TO PRACTICE LAW IN WASHINGTON~~ [RESERVED]

~~**(a) Purpose.** This rule prescribes the procedure, conditions, and limitations for admission of lawyers from other states or territories of the United States or the District of Columbia, except as provided in rule 3. Lawyers from other states or territories or the District of Columbia will be admitted in Washington pursuant to this rule under procedures and conditions that, in the judgment of the Washington State Supreme Court, are substantially similar to the procedures and conditions under which the other licensing state or territory or the District of Columbia allows the admission of licensed Washington lawyers to their states.~~

~~**(b) Qualifications.** Before a lawyer licensed to practice law in another state or territory of the United States or the District of Columbia qualifies for admission to the practice of law in the State of Washington, the lawyer must:~~

~~(1) Present satisfactory proof of both admission to the practice of law, together with current good standing, in another state or territory of the United States or the District of Columbia, and active legal experience as a lawyer or counselor at law at the time of the application;~~

~~(2) Possess the good moral character and fitness requisite for a member of the Bar of the State of Washington;~~

~~(3) Execute under oath and file with the Bar Association two copies of an application in such form as may be required by the Board of Governors; and~~

~~(4) File with the application a certificate from the authority in such other state or territory or the District of Columbia having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice, and the date thereof, and as to the good standing of such lawyer or counselor at law or the equivalent; and~~

~~(5) Provide with the application such other evidence of the applicant's educational and professional qualifications, good moral character and fitness and compliance with the requirements of this rule as the Board of Governors may require; and~~

~~(6) Establish to the satisfaction of the Board of Governors that the state or territory or the District of Columbia that licensed the lawyer applicant allows the admission of licensed Washington lawyers under terms and conditions substantially similar to those set forth in these rules, provided that if the state or territory or the District of Columbia that licensed the lawyer applicant requires Washington lawyers to complete or meet other conditions or requirements, the applicant must meet a substantially similar requirement for admission in Washington; and~~

~~(7) Pay upon the filing of the application the fee established for such admission which shall be at least equal to that required pursuant to rule 3(d)(2) to be paid by a lawyer applicant to take the bar examination.~~

~~**(c) Procedure.**~~

~~(1) The Board of Governors shall approve or disapprove applications for admission of lawyers admitted to the practice of law in other states or territories of the United States or the District of Columbia. The Board may require additional proof of any facts stated in the application. In the event of the failure or refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Board may deny the application. Upon approval of the application by the Board of Governors, the Board shall recommend to the Supreme Court the admission of the applicant for the purposes herein stated. The Supreme Court may enter an order admitting to practice those applicants it deems qualified, conditioned upon such applicant:~~

~~(i) Completing a minimum of 4 hours approved preadmission education pursuant to rule 5 (b); and~~

~~(ii) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney pursuant to rule 5; and~~

~~(iii) Paying to the Bar Association its membership fee for the current year in the maximum amount required of active members; and~~

~~(iv) Filing with the Bar Association in writing his or her address in the State of Washington, together with a statement that the applicant has read the Rules of Professional Conduct and Rules for Enforcement of Lawyer Conduct, is familiar with their contents and agrees to abide by them.~~

~~(2) Upon the entry of an order of admission, the filing of the required materials and payment of the membership fee, the applicant shall be admitted to the practice of law in the State of Washington as specified by this 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.

RULE 19. LAWYER SERVICES DEPARTMENT

[no change]

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

RULE 20. CHARACTER AND FITNESS BOARD

(a) Composition. The Board shall consist of not less than three nonlawyer members, appointed by the Supreme Court, and not less than one lawyer member from each congressional district, appointed by the Board of Governors. The validity of the Board's actions is not affected if the Board's makeup differs from the stated constitution due to a temporary vacancy in any of the specified positions.

(b) Qualifications. Lawyer members must have been active members of the Bar Association for at least ~~7~~ 5 years.

(c) Board Chair. The Board of Governors shall annually designate one lawyer member of the Board to act as chair and another as vice-chair. The vice-chair shall serve in the absence of or at the request of the Board chair. If both the chair and the vice-chair will be absent from a meeting or hearing, the chair may appoint another member of the Board to serve as chair pro tem at any hearing.

(d) Vacancies. Vacancies in lawyer membership on the Board and in the office of the Board chair and the vice-chair shall be filled by the Board of Governors. Vacancies in nonlawyer membership shall be filled by the Supreme Court. A person appointed to fill a vacancy shall complete the unexpired term of the person he or she replaces, and if that unexpired term is less than 24 months he or she may be reappointed to a consecutive term.

(e) Quorum. A majority of the Board members shall constitute a quorum. Given a quorum, the concurrence of a majority of those present shall constitute action of the Board. In the event a quorum is not present, Bar Counsel and the Applicant or Petitioner may agree to waive the requirement of a quorum.

(f) Disqualification. In the event a grievance is made to the Bar Association alleging an act of misconduct by a lawyer member of the Board the procedures specified in ELC 2.3(b)(5) shall apply.

(g) Pro Tempore Members. When a member of the Board is disqualified or unable to function on a case for good cause, the chair of the Board may, by written order, designate a member pro tempore to sit with the Board to hear and determine the cause. A member pro tempore may be appointed from among those persons who have previously served as members of the Character and Fitness Board (or its predecessor Character and Fitness Committee), or from among lawyers appointed as alternate Board members by the Board of Governors and nonlawyers appointed as alternate Board members by the Supreme Court. A lawyer shall be appointed to substitute for a lawyer member of the Board, and a nonlawyer to substitute for a nonlawyer member of the board.

(h) Voting. Each member, whether nonlawyer or lawyer, shall have one vote.

(i) Terms of Office. The term of office for a member of the Board shall be 3 years. Newly created Board positions may be filled by appointments of less than 3 years, as designated by the Supreme Court or the Board of Governors, to permit as equal a number of positions as possible to be filled each year. All terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members shall continue to serve until replaced.

(j) Application of Rules. These rules and any subsequent amendments will apply in their entirety, on the effective date as ordered by the Supreme Court, to any pending matter, except as would not be feasible or would work an injustice. The Chair may rule on the appropriate procedure with a view to insuring a fair and orderly proceeding.

RULE 20.1 AUTHORITY OF BOARD

The Board shall have the power and authority to:

(a) Accept referrals from the Bar Counsel concerning matters of character and fitness bearing upon the qualification of Applicants for Admission, ~~or~~ Petitioners for Reinstatement, and any other applicants, including Association members changing status or membership class, referred to the Board pursuant to APR 7 or the Bar Association Bylaws.

(b) Review each Application for Admission, other application as described in 20.1(a), or Petition for Reinstatement to practice law in the state of Washington.

(c) Investigate matters relevant to the ~~admission or reinstatement~~ applications or petitions of any Applicant, ~~or~~ Petitioner, or Bar Association member changing status or membership class and conduct hearings concerning such matters.

(d) Perform such other functions and take such other actions as provided in these rules or as may be delegated to it by the Board of Governors or Supreme Court, or as may be necessary and proper to carry out its duties.

No Board member shall offer an opinion to an Applicant, Bar Association member, or Petitioner on whether the Applicant's or Petitioner's record establishes good moral character and fitness to practice law until after the completion of a hearing regarding that Applicant's or Petitioner's application or petition.

RULE 20.2 MEETINGS

The Board shall hold meetings at such times and places as it may determine. Where the chair of the Board determines that prompt action is necessary for protection of the public, and that circumstances do not permit a full meeting of the Board, the Board may vote on a matter otherwise ready for

review without meeting together, through telephone, electronic or written communication.

RULE 20.3 BAR COUNSEL

The Bar Association shall be represented by one or more ~~a~~ lawyers appointed by the Executive Director of the Bar Association, who shall act as counsel to the Board and/or ~~who~~ may make a recommendation in support of or in opposition to the admission or reinstatement of an Applicant or Petitioner.

RULE 20.4 CLERK

The Executive Director of the Bar Association may appoint a suitable person or persons to act as Clerk to the Board, and to assist the Board in carrying out its functions under these rules.

RULE 20.5 SERVICE

Service of papers and documents shall be made by first class postage prepaid mail to the Applicant's, Bar Association member's, or Petitioner's, or his or her counsel's, last known address on record with the Bar Association. If properly made, service by mail is deemed accomplished on the date of the mailing. Any notice of change of address shall be submitted in writing to the Bar Association.

APR 21 CHARACTER DEFINED

Good moral character is a record of conduct manifesting the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibilities, adherence to the law, and a respect for the rights of other persons and the judicial process.

APR 22 FITNESS DEFINED; INDEPENDENT FITNESS EXAMINATION

(a) Fitness - defined. Fitness is the absence of any current mental impairment or current drug or alcohol dependency or abuse which, if extant, would substantially impair the ability of the Applicant, Bar Association member, or Petitioner to practice law.

(b) Testimony and Evidence: If it appears that the Applicant, Bar Association member, or Petitioner has engaged in conduct that was or may have been caused in whole or in part by a mental impairment or drug or alcohol dependency or abuse, the Applicant, Bar Association member, or Petitioner may present testimony or evidence from a licensed or certified mental health professional (hereafter "examining professional").

(c) Independent Fitness Examination: If after reviewing ~~such~~ the testimony or evidence at a hearing the Board finds that examination or further examination is necessary or would assist the Board in performing its duties, the Board by majority vote may require an examination of the Applicant, Bar Association member, or Petitioner by an examining professional approved by Bar Counsel and the Lawyers' Assistance Program of the Washington State Bar Association.

(d) Failure to Comply: The failure of an Applicant, Bar Association member, or a Petitioner to agree or submit to a required independent fitness examination shall result in the Applicant's, Bar Association member's, or Petitioner's application or petition being denied.

(e) Costs: The cost of any examination required by the Board shall be borne by the Bar Association.

(f) Report: The examining professional shall issue a written report of his or her findings which report shall be provided to the Applicant or Petitioner and his or her counsel, Bar Counsel and the Character and Fitness Board.

(g) Confidentiality: Any report and testimony of an examining professional may be admitted into evidence at a hearing on, or review of, the Applicant's, Bar Association member's, or Petitioner's fitness and transmitted with the record on review by the Disciplinary Board or the Supreme Court. Reports and testimony regarding the Applicant's, Bar Association member's, or Petitioner's fitness shall otherwise be kept confidential in all respects and neither the report nor the testimony of the examining professional shall be discoverable or admissible in any other proceeding or action without the consent of the Applicant, Bar Association member, or Petitioner.

APR 23 CHARACTER AND FITNESS BOARD - PREHEARING PROCEDURE - APPLICATIONS FOR ADMISSION

(a) Admissions Staff Review. All applications for admission or licensing to practice law in Washington State or to change membership class or status with the Bar Association, and all petitions for readmission to the practice of law in Washington State shall be reviewed by the Bar Association Admissions staff for purposes of determining whether any of the factors set forth in rule 24.2(a) are present.

(b) Admissions Staff Review - Standard. All applications and petitions which reflect one or more of the factors set forth in rule 24.2(a) shall be referred to Bar Counsel for review.

(c) Review By Bar Counsel - Standard. Upon receiving a referral from the admissions staff, Bar Counsel may conduct such further investigation as he or she deems necessary and thereafter, applying the factors and considerations set forth in rule 24.2, and upon reviewing the material evidence in the light most favorable to the Bar Association's obligation to recommend the licensing or admission to the practice of law only those persons who possess good moral character and fitness, Bar Counsel shall refer to the Character and Fitness Board for hearing any Applicant about whom there is a substantial question whether the Applicant possesses the requisite good moral character and fitness to practice law.

APR 24 APPLICATIONS FOR ADMISSION

APR 24.1 DUTY OF APPLICANT

"Applicant", as used in APR 20-25.6, means every applicant for admission to practice, for limited licensing or admission, or for change of membership class or status under the Bar Association Bylaws. In matters involving investigations or hearings pursuant to the filing of a petition for reinstatement by a disbarred lawyer, "Applicant" shall also include "Petitioner".

(a) It shall be the duty of every Applicant to cooperate in good faith with any investigation by promptly furnishing written or oral explanations, documents, releases, authorizations, or anything else reasonably required by the Board or Bar Counsel. Failure to appear as directed or to furnish additional proof or answers as required or to cooperate fully shall be sufficient reason for the Board to recommend the rejection of an application.

(b) Applicants shall not have direct contact with any member of the Board from the time the Applicant's application is filed with the Bar Association until the matter is finally resolved by the Board or the Supreme Court, except to the extent direct contact is required during the hearing. If the Applicant believes that communication with the Board is necessary outside the hearing, such communication shall take place through Bar Counsel. If the Applicant believes that contact about the Applicant's matter with members of the Board is necessary after the matter is finally resolved by the Board or the Court, such contact should be made only through Bar Counsel.

(c) Applicants shall appear in person at any hearing before the Board, unless the Applicant's presence is waived by the Board for good cause shown. The presumption is that the Applicant's personal attendance at the hearing will be required.

APR 24.2 FACTORS CONSIDERED WHEN DETERMINING CHARACTER AND FITNESS

(a) Factors. The following factors shall be considered by the Admissions staff and Bar Counsel when determining whether an applicant shall be referred to the Character and Fitness Board for a determination of the applicant's character and/or fitness to practice law:

(1) unlawful conduct.

(2) academic misconduct.

(3) making of false statements or omitting material information in connection with an application for limited licensing to practice law, to sit for a bar examination, or otherwise for licensing or admission to the practice of law.

(4) misconduct in employment.

(5) acts involving dishonesty, making false statements, fraud, deceit or misrepresentation.

(6) abuse of legal process.

(7) neglect of financial responsibilities.

(8) disregard of professional obligations.

(9) violation of a court order.

(10) evidence of a current substantial mental impairment, including without limitation, drug or alcohol dependency or abuse.

(11) denial of admission to the bar in another jurisdiction on character and fitness grounds.

(12) disciplinary action by any professional disciplinary agency of any jurisdiction.

(13) any other conduct or condition which reflects adversely on moral character or fitness of the Applicant to practice law.

(b) Factors Considered by the Character and Fitness Board When Determining Good Moral Character. When determining whether past conduct disqualifies the Applicant from taking the Washington Bar Examination, or for licensing or admission to the Bar, the Character and Fitness Board shall consider those factors specified in rule 24.2(a) and the following factors in mitigation or aggravation:

(1) Applicant's age at the time of the conduct.

(2) Recency of the conduct.

(3) Reliability of the information concerning the conduct.

(4) Seriousness of the conduct.

(5) Factors or circumstances underlying the conduct.

(6) Cumulative nature of the conduct.

(7) Candor in the admissions process and before the Board.

(8) Materiality of any omissions or misrepresentations.

(9) Evidence of rehabilitation, which may include but is not limited to the following:

(i) absence of recent misconduct.

(ii) compliance with any disciplinary, judicial or administrative order arising out of the misconduct.

(iii) sufficiency of punishment.

(iv) restitution of funds or property, where applicable.

(v) Applicant's attitude toward the misconduct, including without limitation acceptance of responsibility and remorse.

(vi) personal assurances, supported by corroborating evidence, of a desire and intent to engage in exemplary conduct in the future;

(vii) constructive activities and accomplishments since the conduct in question.

(viii) the Applicant's understanding and acceptance of the factors leading to the misconduct and how similar misconduct may be avoided in the future.

(c) Factors Considered by the Character and Fitness Board in Fitness Cases Involving Drug or Alcohol Dependence or Abuse. When determining whether an Applicant is unfit to practice law due to drug or alcohol dependence or abuse, the Character and Fitness Board shall consider the following factors, no single one of which is determinative:

(1) Whether the Applicant is currently using drugs or alcohol.

(2) Whether the Applicant's drug or alcohol dependence or abuse is likely to cause or contribute to any of the conduct specified in rule 24.2(a).

(3) The nature, extent and duration of the Applicant's drug or alcohol dependence or abuse, and the Applicant's candor in the admissions process and before the Board when describing the problem.

(4) Whether the Applicant has been or is now in treatment and, if so:

(i) The nature and duration of the treatment.

(ii) Whether treatment was or is voluntary or involuntary.

(iii) Consistency of participation in or compliance with treatment.

(iv) Whether the treatment was effective.

(5) Whether the Applicant has undergone a drug or alcohol evaluation by a certified chemical dependency counselor or other professional with credentials acceptable to the Board and, if so, whether the substance of such person's opinion the findings have been made available to the Committee.

(6) The length of time the Applicant has been in recovery. In cases where the period of recovery is less than two years, the Applicant must demonstrate through appropriate expert opinion that there has been an adequate period of recovery.

(d) Factors Considered by the Character and Fitness Board in Fitness Cases Involving a Mental Impairment. When determining whether an Applicant is unfit to practice law due to a mental impairment, the Character and Fitness Board shall consider the following factors, no single one of which is determinative:

(1) Whether there is a current mental impairment.

(2) Whether the Applicant's mental impairment is likely to cause or contribute to any of the conduct specified in rule 24.2(a).

(3) The nature, extent and duration of the Applicant's mental impairment, and the Applicant's candor in the admissions process and before the Board when describing the impairment.

(4) Whether the Applicant's mental impairment is chronic or situational in nature.

(5) Whether the applicant has received or is receiving professional mental health treatment appropriate for the impairment, and if so:

(i) Whether the Applicant's impairment has been in remission for at least two years as verified by an appropriate mental health professional and, if not, whether the Applicant has demonstrated through appropriate expert opinion that the period of remission has been adequate.

(ii) Whether a mental health professional has identified any conditions, including without limitation further treatment, that must be complied with to continue the Applicant's state of remission and, if so, whether the Applicant is in compliance with those conditions.

(e) Factors Not Considered by the Character and Fitness Board. The following factors shall not be considered as evidence of an Applicant's character or fitness:

(1) Racial or ethnic identity.

(2) Sex.

(3) Sexual orientation.

(4) Marital status.

(5) Religious or spiritual beliefs or affiliation.

(6) Political beliefs or affiliation.

(7) Physical disability.

(8) National origin.

(9) Age.

(10) Learning disabilities.

APR 24.3 HEARINGS

(a) Notice. The Character and Fitness Board may fix a time and place for a hearing on the application, and Bar Counsel shall serve notice thereof not less than 30 days prior to the hearing upon the Applicant and upon such other persons as may be ordered by the Character and Fitness Board. This notice requirement may be waived by the Applicant.

(b) Right to Counsel. An Applicant may be represented by counsel.

(c) Burden of Proof. An Applicant must establish by clear and convincing evidence that he or she is of good moral character and possesses the requisite fitness to practice law.

(d) Proceedings Not Civil or Criminal. Hearings before the Character and Fitness Board are not civil nor criminal but are sui generis hearings to determine whether an Applicant ~~possesses~~ is of good moral character and possesses the requisite fitness to be admitted to practice law.

(e) Rules of Evidence.

(1) Evidentiary rulings shall be made by the Board chair ~~person~~. A majority of Board members present may by vote overrule a ruling by the chair ~~person~~.

(2) Consistent with section (d) of this rule, evidence, including hearsay evidence, is admissible if in the chair ~~person~~'s judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The chairperson may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(3) Witnesses shall testify under oath; all testimony shall be transcribed by a certified court reporter.

(4) Expert witnesses shall appear and testify in person or by telephone or video conference before the Board, unless in the discretion of the Board their appearance before the Board is waived.

(5) Generally, all documentary evidence submitted to the Board for consideration must be delivered to Bar Counsel not less than ~~14~~ 30 days prior to the hearing. Bar Counsel will provide copies of all documentary evidence, and any hearing briefs, memoranda, or other documentary material, to the Board members and to the Applicant prior to the hearing date.

(6) The Board may take notice of any judicially cognizable facts, or technical or scientific facts within a Board member's specialized knowledge.

(7) Questioning of the Applicant and the Applicant's witnesses shall be conducted by Bar Counsel or his or her designee and by ~~two~~ members of the Board ~~designated by the chair~~.

(f) Confidentiality: All hearings and documents before the Character and Fitness Board on applications for admission or limited admission to the ~~bar~~ Bar Association, admission to the law clerk program, and return to active membership are confidential, but may be provided to the Disciplinary Board or Supreme Court in connection with any appeal, or to other entities with the written consent of the applicant.

APR 24.4 DECISION AND RECOMMENDATION.

(a) Decision. Within ~~20~~ 30 days after the proceedings are concluded, or if a transcript is ordered, within 30 days after the transcript is received by the Board, unless a greater or shorter period is directed by the Board chair, the Board will file with the Bar Association written findings of fact, conclusions of law, and a recommendation. Any Board member or members may file a written dissent within the same time period.

(b) Action on Board Recommendation. The recommendation of the Character and Fitness Board shall be served upon the Applicant pursuant to rule 20.5.

(1) If the Board recommends admission, the record, recommendation and all exhibits shall be transmitted to the Supreme Court for disposition.

(2) If the Board recommends against admission, the record and recommendation shall be retained in the office of the Bar Association unless the Applicant requests that it be submitted to the Supreme Court by filing a Notice of Appeal with the Board within 15 days of service of the recommendation of the Character and Fitness Board. If the Applicant so requests, the Board will transmit the record, including the transcript, exhibits, and recommendation to the Supreme Court for review and disposition. ~~If the Applicant does not so request, the bar examination fee shall be refunded to the Applicant.~~ The Applicant must pay to the Supreme Court any fee required by the Court in connection with the Appeal and review.

(c) Reapplication. No application for admission may be filed within a period of one year after a decision of the Board

recommending against admission that is not appealed to the Supreme Court.

APR 24.5 ACTION ON SUPREME COURT'S DETERMINATION

(a) Application Approved. If the application is approved by the Supreme Court, admission shall be subject to the Applicant's taking and passing the bar examination and complying with ~~rule 5~~ all other requirements for admission.

(b) Application Denied. If the application is denied, the Bar Association shall maintain a record of the application, hearing, and appeal in the Bar Association records ~~the bar examination fee shall be refunded to the Applicant~~. No new petition for admission shall be filed within a period of one year after the date of the Supreme Court decision denying the application.

APR 25 PETITIONS FOR REINSTATEMENT AFTER DISBARMENT

APR 25.1 RESTRICTIONS ON REINSTATEMENT

(a) Petitions For Reinstatement. All Petitions for Reinstatement after Disbarment shall be referred for hearing before the Character and Fitness Board.

(b) When Petition May Be Filed. No petition for reinstatement shall be filed within a period of 5 years after disbarment or within a period of 2 years after an adverse decision of the Supreme Court upon a former petition, or within a period of 1 year after an adverse recommendation of the Character and Fitness Board on a former petition when that recommendation is not submitted to the Supreme Court. If prior to disbarment the lawyer was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for Enforcement of Lawyer Conduct, or any comparable rule, the period of such suspension shall be credited toward the 5 years referred to above.

(c) When Reinstatement May Occur. No disbarred lawyer may be reinstated sooner than 6 years following disbarment. If prior to disbarment the lawyer was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for Enforcement of Lawyer Conduct, or any comparable rule, the period of such suspension shall be credited toward the 6 years referred to above.

(d) Payment of Obligations. No disbarred lawyer may file a petition for reinstatement until costs and expenses and restitution ordered by the Disciplinary Board or the Supreme Court have been paid and until amounts paid out of the Lawyers' Fund for Client Protection for losses caused by the conduct of the Petitioner have been repaid to the client protection fund, or until periodic payment plans for costs and expenses, restitution and repayment to the client protection fund have been entered into by agreement between the Petitioner and disciplinary counsel. A Petitioner may seek review by the Chair of the Disciplinary Board of an adverse determination by disciplinary counsel regarding the reasonableness of any such proposed periodic payment plan. Such review will proceed as directed by the Chair of the Disciplinary Board and the decision of the Chair of the Disciplinary Board is final unless the Chair of the Disciplinary Board determines that the matter should be reviewed by the Disciplinary Board, in which case the Disciplinary Board review will proceed as directed by the Chair and the decision of the Board will be final.

APR 25.2 REVERSAL OF CONVICTION

If a lawyer has been disbarred solely because of his or her conviction of a crime and the conviction is later reversed and the charges dismissed on their merits, the Supreme Court may in its discretion, upon direct application by the lawyer, enter an order reinstating the lawyer upon such conditions as determined by the Supreme Court. At the time such direct application is filed with the court a copy shall be filed with the Bar Association. The Supreme Court may request a response to the application from the Bar Association.

APR 25.3 PETITIONS AND INVESTIGATIONS

(a) Form of Petition. A petition for reinstatement after disbarment shall be in writing in such form as the Character and Fitness Board may prescribe. The petition shall be filed with the Character and Fitness Board. The petition shall set forth the age, residence and address of the Petitioner, the date of disbarment, and a concise statement of facts claimed to justify reinstatement. The petition shall be accompanied by the total fees required of a lawyer Applicant under these rules, and by a completed application for admission.

(b) Investigations. The petition for reinstatement shall be referred to the Character and Fitness Board for hearing.

(c) Duty to Cooperate. It shall be the duty of every Petitioner to cooperate in good faith with any investigation by promptly furnishing written or oral explanations, documents, releases, authorizations, or anything else reasonably required by the Board or Bar Counsel. Failure to appear as directed or to furnish additional proof or answers as required or to cooperate fully shall be sufficient reason for the Committee to recommend the rejection of a petition.

(d) Proceedings Public. A petition for reinstatement after disbarment shall be a public proceeding from the time the petition is filed.

(e) Protective Orders. To protect a compelling interest, a Petitioner may, on a showing of good cause, move for a protective order prohibiting the disclosure or release of specific information, documents, or pleadings, and directing that the proceedings be conducted so as to implement the order.

APR 25.4 HEARING BEFORE CHARACTER AND FITNESS BOARD

(a) Notice. The Character and Fitness Board may fix a time and place for a hearing on the petition, and Bar Counsel shall serve notice thereof not less than 30 days prior to the hearing upon the Petitioner and upon such other persons as may be determined by Bar Counsel or as ordered by the Character and Fitness Board. Notice of the hearing shall also be published at least once in the Washington State Bar News and such other newspaper or periodical as the Character and Fitness Board may direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and shall give the date fixed for the hearing.

(b) Statement in Support or Opposition. On or prior to the date of hearing, anyone wishing to do so may file with the Character and Fitness Board a written statement for or against the petition, such statements to set forth factual matters showing that the Petitioner does or does not meet the requirements for reinstatement as set forth in these rules.

(c) Hearings. Hearings shall be conducted pursuant to rule 24.3.

APR 25.5 ACTION BY CHARACTER AND FITNESS BOARD

(a) Requirements for Favorable Recommendation. Reinstatement may be recommended by the Character and Fitness Board only upon a showing, supported by clear and convincing ~~proof~~ evidence, that the Petitioner possesses the qualifications and meets the requirements for reinstatement as set forth in these rules and that the Petitioner has been rehabilitated.

(b) Factors Considered by the Character and Fitness Board. In reaching the decision of whether the Petitioner has been rehabilitated, the Board shall consider the factors set forth in Rule 24.2 (b), (c) and (d), where applicable, and the following factors:

(i) The Petitioner's character, standing, and professional reputation in the community in which the Petitioner resided and practiced prior to disbarment.

(ii) The ethical standards which the Petitioner observed in the practice of law.

(iii) The nature and character of the conduct for which the Petitioner was disbarred.

(iv) The sufficiency of the punishment undergone in connection therewith, and the making or failure to make restitution where required.

(v) The Petitioner's attitude, conduct, and reformation subsequent to disbarment.

(vi) The time that has elapsed since disbarment.

(vii) The Petitioner's current proficiency in the law; and

(viii) The sincerity, frankness, and truthfulness of the Petitioner in presenting and discussing the factors relating to the Petitioner's disbarment and reinstatement.

(c) Factors Not Considered by the Character and Fitness Board. The following factors shall not be considered as evidence of a Petitioner's character or fitness:

(1) Racial or ethnic identity.

(2) Sex.

(3) Sexual orientation.

(4) Marital status.

(5) Religious or spiritual beliefs or affiliation.

(6) Political beliefs or affiliation.

(7) Physical disability.

(8) National origin.

(9) Learning disabilities.

(d) Action on Board Recommendation. The recommendation of the Character and Fitness Board shall be served upon the Petitioner pursuant to rule 20.5. If the Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar Association unless the Petitioner requests that it be submitted to the Disciplinary Board by filing with the Clerk of the Disciplinary Board a request for Disciplinary Board review within 15 days of service of the recommendation of the Character and Fitness Board. If the Petitioner so requests, the record and recommendation shall be transmitted to the Disciplinary Board for disposition and the review will be conducted under the procedure of rules 11.9 and 11.12 of the Rules for Enforcement of Lawyer Conduct. If the Petitioner does not so request, ~~the bar examination fee shall be refunded to the Petitioner, but~~ the record and recommendation shall be retained in the records of the Bar Association and the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Character and Fitness Board.

(e) Action on Disciplinary Board Recommendation. The recommendation of the Disciplinary Board shall be served upon the Petitioner. If the Disciplinary Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Disciplinary Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar Association unless the Petitioner requests that it be submitted to the Supreme Court by filing with the Clerk of the Disciplinary Board a request for Supreme Court review within 30 days of service of the recommendation. If the Petitioner so requests, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Petitioner does not so request, ~~the bar examination fee shall be refunded to the Petitioner, but~~ the record and the recommendation shall be retained in the records of the Bar Association and the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Disciplinary Board under the procedure of rule 13.9 of the Rules for Enforcement of Lawyer Conduct.

APR 25.6 ACTION ON SUPREME COURT'S DETERMINATION

(a) Petition Approved. If the petition for reinstatement is approved by the Supreme Court, the reinstatement shall be subject to the Petitioner's taking and passing the bar examination, completing all requirements for admission, paying to the Bar Association its ~~membership~~ license fee for the current year, and paying the costs incidental to the reinstatement proceeding as directed by the Supreme Court.

(b) Petition Denied. If the petition for reinstatement is denied, ~~the bar examination fee shall be refunded to the Petitioner, but~~ the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Supreme Court.

RULE 26 INSURANCE DISCLOSURE

[no change]

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

RULE 27 PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER

[no change]

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

SUGGESTED AMENDMENTS TO RULE 5.5 OF THE RULES OF PROFESSIONAL CONDUCT

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are (i) provided on a temporary basis and (ii) not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

~~(e) A lawyer authorized to provide legal services under paragraph (d)(1) of this Rule may provide legal services in this jurisdiction for no fee through a qualified legal services provider, as that term is defined in APR 8(e)(2). If such services involve representation before a court or tribunal, the lawyer shall seek admission under APR 8(b) and any fees for such admission shall be waived. The prohibition against compensation in this paragraph shall not prevent a qualified legal services provider from reimbursing a lawyer authorized to practice under paragraph (d)(1) for actual expenses incurred while rendering legal services under this pro bono exception. In addition, a qualified legal services provider shall be entitled to receive all court awarded attorney's fees for pro bono representation rendered by the lawyer.~~

Comment

[1] through [14].

[no change]

[15] [Washington revision] Paragraph (d) identifies ~~two~~ one circumstances~~s~~ in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraph~~s (d)(1) and~~(d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] [Washington revision] In Washington, paragraph (d)(1) applies to lawyers who are providing the services on a temporary basis only. If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer ~~may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education~~ must seek general admission under APR 3 or house counsel admission under APR 8(f).

[18] through [21]

[no change]

~~[22] Model Rule 5.5 does not contain a provision equivalent to paragraph (e) of Washington's Rule. Paragraph (e) provides that in-house lawyers, government lawyers, and others authorized to practice under paragraph (d) of this Rule may provide legal services for no fee through a qualified legal services provider, but it does not authorize any other form of law practice, whether for a fee or not, other than that authorized by Paragraph (d). For purposes of paragraph (e) of this Rule, the term "qualified legal services provider" is defined in Admission to Practice Rule 8(e)(2) as "a not for profit legal services organization whose primary purpose is to provide legal services to low income clients."~~

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.

RPC 5.8 MISCONDUCT INVOLVING DISBARRED, SUSPENDED, RESIGNED, AND INACTIVE LAWYERS

(a) A lawyer shall not engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.

(b) A lawyer shall not engage in any of the following with an individual who is a disbarred or suspended lawyer, or who has resigned in lieu of disbarment or discipline:

(1) practice law with or in cooperation with such an individual;

(2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;

(3) permit such an individual to use the lawyer's name for the practice of law;

(4) practice law for or on behalf of such an individual; or

(5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

SUGGESTED AMENDMENTS TO RULE 1.12A OF THE LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL CONDUCT

LPORPC 1.12A SAFEGUARDING PROPERTY

(a) through (g)

[no change]

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

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

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

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

(iii) funds necessary to restore appropriate balances.

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

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

(4) Receipts must be deposited intact.

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

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

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

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

(i) and (j)

[no change]

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

WSR 13-16-002

AGENDA

DEPARTMENT OF HEALTH

STATE BOARD OF HEALTH

[Filed July 24, 2013, 3:17 p.m.]

This report details current and anticipated rule-making activities for the department of health (DOH) and the state board of health (SBOH). If you have any questions regarding this report or DOH rule-making activities, please contact Tami Thompson at (360) 236-4044. If you have any questions regarding SBOH rule-making activities please contact Michelle Davis at (360) 236-4106.

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

SBOH

Rule Making

RCW or Session Law	Authority	WAC and Rule Title	CR-101 Filing WSR # and Date	CR-102 Filing WSR # and Date	CR-105 Filing WSR # and Date	CR-103 Filing WSR # and Date	Program Staff Contact
RCW 28A.210.090 28A.210.140	SBOH	Chapter 246-105 WAC, Immunization of child care and school children against certain vaccine preventable diseases.	Anticipate filing summer 2013				Tara Wolff (360) 236-4101

RCW or Session Law	Authority	WAC and Rule Title	CR-101 Filing WSR # and Date	CR-102 Filing WSR # and Date	CR-105 Filing WSR # and Date	CR-103 Filing WSR # and Date	Program Staff Contact
RCW 43.20.050 70.119A.080	SBOH	WAC 246-203-103 Keeping of animals.	09-17-132 8/19/2009	Anticipate filing December 2013			Ned Therien (360) 236-4103
RCW 69.30.030	SBOH	WAC 246-282-006 Vibrio Parahaemolyticus (VP) control plan.	12-24-036 11/29/2012	Anticipate filing June 2014			Rick Porso (360) 236-3302
RCW 43.20.050(2)	SBOH	WAC 246-290-460 Fluoridation of drinking water—Revises the fluoride concentration in Group A public water systems that choose to fluoridate under RCW 57.08.012.	11-11-046 5/13/2011 Requested by regulated community to protect public health.	Pending release of HHS guidance			Ned Therien (360) 236-4103
RCW 43.20.050	SBOH	Chapter 246-390 WAC, Drinking water laboratory certification.	06-23-077 11/13/2006	Anticipate filing Spring 2014			Theresa Phillips (360) 236-3147
RCW 70.83.050 43.20.050	SBOH	WAC 246-650-020 Performance of screening tests adding severe combined immunodeficiency.	13-11-040 5/10/2013	Anticipate filing September 2013			Tara Wolff (360) 236-4101

DOH

RCW or Session Law	Authority	WAC and Rule Title	CR-101 Filing WSR # and Date	CR-102 Filing WSR # and Date	CR-105 Filing WSR # and Date	CR-103 Filing WSR # and Date	Program Staff Contact
SHB 1270 (chapter 171, Laws of 2013)	Board of denturists	Chapter 246-18 WAC (entire chapter).	Anticipate filing fall 2013				Vicki Brown (360) 236-4865
SHB 1271 (chapter 172, Laws of 2013)	Board of denturists	WAC 246-812-XXX Education and training for teeth whitening and non-orthodontic removable devices.	Anticipate filing fall 2013				Vicki Brown (360) 236-4865
RCW 18.35.161	Board of hearing and speech	WAC 246-828-XXX Audioprosthologist prohibiting the use of the title.	09-11-116 5/20/2009				Janette Benham (360) 236-4857
RCW 18.35.161	Board of hearing and speech	WAC 246-828-020 Examinations.			Anticipate filing August 2013		Janette Benham (360) 236-4857
RCW 18.130.050 18.57.005	Board of osteopathic medicine and surgery	WAC 246-853-XXX Reentry to practice rules.	Anticipate filing fall 2013				Brett Cain (360) 236-4766
RCW 18.130.050 18.57.005	Board of osteopathic medicine and surgery	WAC 246-853-XXX Retired active status rules.	Anticipate filing fall 2013				Brett Cain (360) 236-4766
RCW 18.130.050 18.57.005	Board of osteopathic medicine and surgery	WAC 246-853-630(10) Delegation of LLRP equipment.	Anticipate filing fall 2013				Brett Cain (360) 236-4766
RCW 18.130.050 18.57.005	Board of osteopathic medicine and surgery	WAC 246-853-260 USMLE exam.	Anticipate filing fall 2013				Brett Cain (360) 236-4766
SHB 1737 (chapter 203, Laws of 2013)	Board of osteopathic medicine and surgery	WAC 246-853-XXX Supervision of physician assistants.	Anticipate filing fall 2013				Brett Cain (360) 236-4766

RCW or Session Law	Authority	WAC and Rule Title	CR-101 Filing WSR # and Date	CR-102 Filing WSR # and Date	CR-105 Filing WSR # and Date	CR-103 Filing WSR # and Date	Program Staff Contact
RCW 18.64.005 18.64A.030 18.74.410	Board of pharmacy	Chapter 246-878 WAC, Good compounding practices.	13-11-096 5/20/13	Anticipate filing February 2014		Anticipate filing May 2014	Doreen Beebe (360) 236-4834
RCW 18.64.005 HB 1609 (chapter 19, Laws of 2013)	Board of pharmacy	Title 246 WAC, renaming the board of pharmacy to pharmacy quality assurance commission.			Anticipate filing August 2013	Anticipate filing November 2013	Doreen Beebe (360) 236-4834
SSB 5416 (2013 - DOH request legislation)	Board of pharmacy	Title 246 WAC, electronic prescriptions.		Anticipate filing August 2013			Doreen Beebe (360) 236-4834
SSB 5148 (chapter 260, Laws of 2013)	Board of pharmacy	Title 246 WAC, allowing redistribution of unused medications for the uninsured.		Anticipate filing fall 2013			Doreen Beebe (360) 236-4834
RCW 18.25.0171 18.130.050 (1) and (12)	Chiropractic quality assurance commission	WAC 246-808-550 Future care contracts prohibited, revising the current rule to clarify the requirements for future care contracts.	10-06-017 2/22/2010				Leann Yount (360) 236-4856
RCW 18.32.0365	Dental quality assurance commission	WAC 246-817-510, 246-817-520, 246-817-525, 246-817-540, 246-817-545, expanded function dental auxiliaries (EFDA) acts that may not be performed by registered dental assistants or no credentialed persons.	10-23-081 11/15/2010				Jennifer Santiago (360) 236-4893
RCW 18.32.0365 18.350	Dental quality assurance commission	Chapter 246-817 WAC, Dental anesthesia assistant certification, establishing a new profession.	12-14-068 7/2/2012 13-04-075 2/4/2013 WSRs were combined into one proposed rule	13-09-039 4/16/2013		Anticipate filing summer 2013	Jennifer Santiago (360) 236-4893
RCW 18.32.040 18.130.064	Dental quality assurance commission	WAC 246-817-310 and 246-817–XXX, maintenance and retention of dental records and dental treatment records.	09-13-097 6/17/2009				Jennifer Santiago (360) 236-4893
ESHB 2314 (chapter 164, Laws of 2012)	DOH	Chapter 246-980 WAC, Home care aide. WAC 246-10-501 Application of brief adjudicative proceedings.	13-01-094 12/19/2012	13-12-066 6/4/2013 Rules hearing held on 7/9/2013		Anticipate filing summer 2013	Kendra Pitzler (360) 236-4723
RCW 70.98.080	DOH	Title 246 WAC, computed tomography diagnostic X-ray systems.	13-09-041 4/11/2013	Anticipate filing November 2013			Michelle Austin (360) 236-3250
RCW 70.290.060	DOH	Title 246 WAC, new chapter, Civil penalties of health benefit plans and third party administrators.	13-13-014 6/10/2013	Anticipate filing November 2013			Jeff Wise (360) 236-3483

RCW or Session Law	Authority	WAC and Rule Title	CR-101 Filing WSR # and Date	CR-102 Filing WSR # and Date	CR-105 Filing WSR # and Date	CR-103 Filing WSR # and Date	Program Staff Contact
SB 6290 (chapter 45, Laws of 2012)	DOH	Chapter 246-12 WAC, Administrative procedures and requirements for credentialed health care providers, establishing military status and military spouse inactive license status.	12-14-033 6/22/2012	Anticipate filing November 2013			Billie Jo Dale (360) 236-47852 [(360) 236-4841]
RCW 70.98.050	DOH	WAC 246-249-010, 246-254-165, definitions, site use permit, low level radioactive waste site use permit fees for generator or broker.		13-11-097 5/20/2013		Anticipate filing August 2013	Michelle Austin (360) 236-3250
RCW 70.98.050	DOH	WAC 246-224-0010, 246-224-0050, 246-224-0070, 246-224-0080, 246-224-0090, radiation machine assembly transferring the master license service program from the department of licensing to department of revenue.		13-11-019 5/7/2013		Anticipate filing August 2013	Michelle Austin (360) 236-3250
RCW 70.119.050	DOH	Chapter 246-292 WAC, Waterworks operator certification.	09-21-043 10/13/2009	Anticipate filing August 2013			Theresa Phillips (360) 236-3147
Chapter 43.70 RCW	DOH	Chapter 246-809 WAC, Counselors, marriage and family therapists, and social workers; chapter 246-811 WAC, Chemical dependency professionals; chapter 246-810 WAC, Certified counselors and advisors—Suicide continuing education training.	12-16-058 7/30/2012	Anticipate filing fall 2013			Betty Moe (360) 236-4912
RCW 18.89.050 18.89.140	DOH	WAC 246-928-442 Respiratory therapist acceptable continuing education.	10-17-098 8/17/2010	Anticipate filing December 2013			Susan Gragg (360) 236-4941
RCW 18.89.040	DOH	WAC 246-928-XXX Respiratory therapist scope of practice regarding administration of medications.	10-17-099 8/17/2010	Anticipate filing December 2013 or early 2014			Susan Gragg (360) 236-4941
RCW 18.84.040	DOH	WAC 246-926-180, amending the parenteral procedures for radiologic technologists.	10-15-101 7/20/2010	Anticipate filing December 2013			Susan Gragg (360) 236-4941
Chapter 18.290 RCW	DOH	WAC 246-825-990 Revising genetic counselors licensing fees.		Anticipate filing August 2013			Sue Gragg (360) 236-4941
RCW 18.84.040	DOH	WAC 246-926-300 Consider scope of practice for radiological assistants.	Anticipate filing August 2013				Sue Gragg (360) 236-4941
RCW 18.36A.160	DOH	Chapter 246-836 WAC, Naturopaths—Continuing education requirements.	Anticipate filing fall of 2013				Sue Gragg (360) 236-4941
RCW 18.36A.160	DOH	Chapter 246-836 WAC, Naturopaths—Exams.	Anticipate filing fall of 2013				Sue Gragg (360) 236-4941

RCW or Session Law	Authority	WAC and Rule Title	CR-101 Filing WSR # and Date	CR-102 Filing WSR # and Date	CR-105 Filing WSR # and Date	CR-103 Filing WSR # and Date	Program Staff Contact
RCW 18.36A.160	DOH	Chapter 246-836 WAC Naturopaths—Nonsurgical cosmetic procedures.	Anticipate filing fall of 2013				Sue Gragg (360) 236-4941
RCW 43.70.040 70.38.135	DOH	WAC 246-310-XXX Hospital acute care bed methodology.	09-16-118 8/4/2009				John Hilger (360) 236-2929
RCW 43.70.040 70.38.135	DOH	WAC 246-310-XXX Revising and updating the certificate of need adjudicative proceeding rules.	Anticipate filing fall 2013				John Hilger (360) 236-2929
Chapter 70.127 RCW	DOH	WAC 246-335-015 Definition of authorizing practitioner for in-home services.	Anticipate filing September 2013				John Hilger (360) 236-2929
RCW 71.12.670	DOH	Chapter 246-337 WAC, Residential treatment facilities, revise to align with current law and practices.	12-22-029 10/31/2012	Anticipate filing September 2013			Barbara Runyon (360) 236-2937
Chapter 70.185 RCW	DOH	Chapter 246-562 WAC, Physician visa waivers, revising rules consistent with current law.	13-08-019 3/26/2013				Renee Fullerton (360) 236-2814
RCW 18.06.160	DOH	Chapter 246-803 WAC, Point injection therapy.	13-01-093 1/2/2013				Vicki Brown (360) 236-4865
RCW 18.29.130	DOH	WAC 246-815-140 Continuing education for dental hygienists.	Anticipate filing fall 2013				Vicki Brown (360) 236-4865
RCW 18.205.100	DOH	WAC 246-810-XXX Development of procedural rule to accept alternative training.	Anticipate filing November 2013				Betty Moe (360) 236-4912
HB 1213 (chapter 73, Laws of 2013)	DOH	Chapter 246-809 WAC, Mental health counselors, marriage and family therapists and social workers; chapter 246-811 WAC, Chemical dependency professionals and chemical dependency professionals trainees.	Anticipate filing November 2013				Betty Moe (360) 236-4912
SHB 1629 (chapter 259, Laws of 2013)	DOH	Chapter 246-980 WAC, Home care aide provisional certification.	Anticipate filing fall 2013				Kendra Pitzler (360) 236-4723
RCW 18.50.040(3) 18.50.135	DOH	WAC 246-834-060 Application requirements for licensure as a midwife, 246-834-220 Credit toward educational requirements for licensure as a midwife, 246-834-230 Preceptor for midwife-in-training program.	Anticipate filing August 2013				Kendra Pitzler (360) 236-4723
HB 2056 (chapter 10, Laws of 2012)	DOH and SBOH	Title 246 WAC, changing the term "boarding home" to "assisted living facilities."			Anticipate filing October 2013		John Hilger (360) 236-2929

RCW or Session Law	Authority	WAC and Rule Title	CR-101 Filing WSR # and Date	CR-102 Filing WSR # and Date	CR-105 Filing WSR # and Date	CR-103 Filing WSR # and Date	Program Staff Contact
SSB 5148 (chapter 260, Laws of 2013)	DOH	Title 246 WAC, allowing redistribution of unused medications for the uninsured.		Anticipated filing fall 2013			Maura Craig (360) 236-4997
ESHB 2366 (chapter 181, Laws of 2012)	Examining board of psychology	Chapter 246-924 WAC, Psychology—Suicide continuing education and training.	12-17-137 8/21/2012	Anticipate filing fall 2013			Betty Moe (360) 236-4912
RCW 18.71.017 18.130.050 and 18.71.430	Medical quality assurance commission	WAC 246-919-430 (physicians) and 246-918-XXX (physician assistants (PA)), requiring additional practice information at renewal.	09-14-114 6/30/2009	10-21-098 6/30/2009 (expired) Rule will be reviewed by the commission to determine next steps			Julie Kitten (360) 236-2757
SHB 1737 (chapter 203, Laws of 2013)	Medical quality assurance commission	Chapters 246-919 and 246-918 WAC, allowing allopathic and osteopathic PAs to work in remote sites, increasing the number of PAs who may be supervised by a physician.		Anticipate filing fall 2013			Julie Kitten (360) 236-2757
RCW 18.130.250 18.79.110	Nursing care quality assurance commission	Chapter 246-840 WAC, establishing a retired active license status for nurses.	12-20-020 9/24/2012	Anticipate filing fall 2013			Paula Meyer (360) 236-2714
RCW 18.79.110	Nursing care quality assurance commission	WAC 246-840-045, 246-840-130, reducing licensing barriers for registered nurses and practical nurses who graduate from an international school of nursing.	12-17-079 8/14/2012				Paula Meyer (360) 236-2714
RCW 18.79.110 18.130.050	Nursing care quality assurance commission	WAC 246-840-740 Sexual misconduct prohibited, updating the 1999 rules.	12-17-017 8/2/2012				Paula Meyer (360) 236-2714
RCW 18.59.090 18.130.050	Occupational therapy practice board	WAC 246-847-030 Occupational therapists acting in a consulting capacity, 246-847-055 Initial application for individuals who have not practiced within the past four years, 246-847-068 Expired license, 246-847-070 Inactive credential, 246-847-125 Applicants currently licensed in other states or territories and 246-847-XXX Renewal for those that have not practiced in four years.	08-15-088 7/17/2008				Janette Benham (360) 236-4857
ESHB 2366 (chapter 181, Laws of 2012)	Occupational therapy practice board	Chapter 246-847 WAC, Suicide continuing education training.	Anticipate filing fall 2013				Janette Benham (360) 236-4857

RCW or Session Law	Authority	WAC and Rule Title	CR-101 Filing WSR # and Date	CR-102 Filing WSR # and Date	CR-105 Filing WSR # and Date	CR-103 Filing WSR # and Date	Program Staff Contact
RCW 18.130.050 18.22.015	Podiatric medical board	WAC 246-922-030 Approved schools of podiatric medicine, add and update approved schools.	Anticipate filing fall 2013				Brett Cain (360) 236-4766
RCW 18.130.050 18.22.015	Podiatric medical board	WAC 246-922-040 Examination, update to add Part III of PMLexis exam.	Anticipate filing fall 2013				Brett Cain (360) 236-4766
RCW 18.130.050 18.22.015	Podiatric medical board	WAC 246-922-100 Acts that may be delegated to an unlicensed person, to be repealed.	Anticipate filing fall 2013				Brett Cain (360) 236-4766
RCW 18.92.030 and 18.130.050	Veterinary Board of Governors	Chapter 246-933 WAC, Expired license, requirements for reinstating an expired license.	12-14-048 6/28/2012				Judy Haenke (360) 236-4947
RCW 18.92.030	Veterinary Board of Governors	WAC 246-933-460 Continuing education courses approved by the veterinary board.	10-13-095 6/15/2010	10-21-081 10/19/10 (expired) *Rule will be reviewed by the board to determine next steps*			Judy Haenke (360) 236-4947

KEY

CR means "code reviser" on the notice forms created by the office of the code reviser for use by all state agencies.

CR-101 is a preproposal statement of inquiry filed under RCW 34.05.310.

CR-102 is a proposed rule-making notice filed under RCW 34.05.320 or 34.05.340.

Proposal is Exempt under RCW 34.05.310(4) means a rule that does not require the filing of a CR-101 notice under RCW 34.05.310(4).

CR-105 is an expedited rule-making notice filed under RCW 34.05.353. This is an accelerated rule adoption process with no public hearing required.

CR-103 is rule-making order permanently adopting a rule, and filed under RCW 34.05.360 and 34.05.380.

EMERGENCY rules are temporary rules filed under RCW 34.05.350 and 34.05.380 by using a CR-103 Rule-making order. Emergency rules may be used to meet certain urgent circumstances. These rules are effective for one hundred twenty days after the filing date, and may be extended in certain circumstances.

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

RCW is the Revised Code of Washington.

WAC is the Washington Administrative Code.

WSR number is the Washington State Register official filing reference number given by the office of the code reviser when a notice is filed.

WSR 13-17-004

NOTICE OF PUBLIC MEETINGS

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed August 7, 2013, 2:13 p.m.]

Following is the schedule of regular meetings for the department of health, nursing care quality assurance commission (NCQAC) for 2013. This schedule follows the Open Public Meetings Act (chapter 42.30 RCW) and the Administrative Procedure Act (chapter 34.05 RCW). The NCQAC meetings are open to the public. Access for persons with disabilities may be arranged with advance notice. Please contact the staff person below for more information.

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

Date	Time	Location
January 11, 2013	8:30 a.m.	Department of Health 310 Israel Road S.E. Room 152/153 Tumwater, WA 98501
March 8, 2013	8:30 a.m.	Department of Health 310 Israel Road S.E. Room 152/153 Tumwater, WA 98501

May 10, 2013	8:30 a.m.	Department of Health 310 Israel Road S.E. Room 152/153 Tumwater, WA 98501
July 12, 2013	8:30 a.m.	Department of Health 310 Israel Road S.E. Room 152/153 Tumwater, WA 98501
September 13, 2013	8:30 a.m.	Pellegrino's Event Center 5757 Littlerock Road S.W. Tumwater, WA 98512
November 8, 2013	8:30 a.m.	Department of Health 310 Israel Road S.E. To be determined Tumwater, WA 98501
January 10, 2014	8:30 a.m.	Department of Health 310 Israel Road S.E. Room 152/153 Tumwater, WA 98501
March 14, 2014	8:30 a.m.	Department of Health 310 Israel Road S.E. Room 152/153 Tumwater, WA 98501
May 9, 2014	8:30 a.m.	Spokane Washington To be determined
July 11, 2014	8:30 a.m.	Department of Health 310 Israel Road S.E. Room 152/153 Tumwater, WA 98501

If you need further information please contact Mike Hively, Administrative Assistant, Department of Health, NCQAC, P.O. Box 47864, Olympia, WA 98504-7864, e-mail Mike.Hively@doh.wa.gov, web http://www.doh.wa.gov/hsqa/Professions/Nursing/default.htm, listserv http://listserv.wa.gov/cgi-bin/wa?SUBED1=nursing-qac&A=1.

WSR 13-17-009
POLICY STATEMENT
DEPARTMENT OF FISH AND WILDLIFE

[Filed August 8, 2013, 9:29 a.m.]

NOTICE OF ADOPTION OF A POLICY STATEMENT

Title of Policy Statement: 2013 – 2014 North of Falcon (C3608).

Issuing Entity: Washington fish and wildlife commission.

Subject Matter: This policy will guide department staff in considering conservation, allocation, in-season management, and monitoring issues associated with the annual salmon fishery planning process known as "North of Falcon." (North of Falcon policy statement.)

Located at http://wdfw.wa.gov/commission/policies/c3608.html.

Effective Date: February 8, 2013.

Contact Person: Tami Lininger, Executive Assistant, Washington Fish and Wildlife Commission, 600 Capitol Way North, Olympia, WA 98501-1091, (360) 902-2267, commission@dfw.wa.gov.

WSR 13-17-010
POLICY STATEMENT
DEPARTMENT OF FISH AND WILDLIFE

[Filed August 8, 2013, 9:30 a.m.]

NOTICE OF ADOPTION OF A POLICY STATEMENT

Title of Policy Statement: Columbia River Basin Salmon Management (C3620).

Issuing Entity: Washington fish and wildlife commission.

Subject Matter: The objectives of this policy are to promote orderly fisheries (particularly in waters in which the states of Washington and Oregon have concurrent jurisdiction), advance the conservation and recovery of wild salmon and steelhead, and maintain or enhance the economic well-being and stability of the fishing industry in the state. (Columbia River policy purpose statement.)

Located at http://wdfw.wa.gov/commission/policies/c3620.html.

Effective Date: January 12, 2013.

Contact Person: Tami Lininger, Executive Assistant, Washington Fish and Wildlife Commission, 600 Capitol Way North, Olympia, WA 98501-1091, (360) 902-2267, commission@dfw.wa.gov.

WSR 13-17-011
NOTICE OF PUBLIC MEETINGS
ATTORNEY GENERAL'S OFFICE
(Commercially Sexually Exploited Children Statewide Coordinating Committee)

[Filed August 8, 2013, 9:50 a.m.]

The following is the 2013 meeting schedule for the commercially sexually exploited children statewide coordinating committee, which was established by SB 5308 in the 2013 regular legislative session: **October 17, 2013**, **at 9:00 a.m. to 1:00 p.m.,** Chief Sealth Conference Room, 20th Floor, Attorney General's Office, 800 Fifth Avenue, Seattle, WA 98104.

Additional meeting details, including the agenda, will be available five to seven days prior to each meeting at http://www.atg.wa.gov/.

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

WSR 13-17-012
NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION

[Filed August 8, 2013, 11:32 a.m.]

The following meeting(s) have been added and revised:

Washington State Human Rights Commission Meeting (ADDED), September 5, 2013, at 10 a.m., in person – Strategic Planning, 711 South Capitol Way, Suite 402, Olympia, WA 98504.

Washington State Human Rights Commission Meeting (REVISED), September 26, 2013, at 9:30 a.m., Conference Call, 711 South Capitol Way, Suite 402, Olympia, WA 98504.

WSR 13-17-020
RULES OF COURT
STATE SUPREME COURT
[August 8, 2013]

IN THE MATTER OF THE ADOPTION OF NEW REGULATIONS 1-12 TO APR 28	)))	ORDER NO. 25700-A-1034

The Washington State Bar Association's Limited License Legal Technician Board having recommended the adoption of proposed new Regulations 1-12 to APR 28, to establish the admission and licensing requirements for all applicants seeking licensure as Limited License Legal Technicians and to define the scope of practice for future Limited License Legal Technicians, and the Court having determined that the proposed new regulations will aid in the prompt and orderly administration of justice and further determined the need for expedited adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the new regulations as shown below are adopted.

(b) That the new regulations will be published expeditiously and become effective upon publication.

DATED at Olympia, Washington this 8th day of August, 2013.

For the Court:

Madsen, C.J.

CHIEF JUSTICE

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 13-18 issue of the Register.

WSR 13-17-021
AGENDA
GAMBLING COMMISSION
[Filed August 9, 2013, 10:11 a.m.]

Following is the Washington state gambling commission'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 Susan Newer, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, phone (360) 486-3466, fax (360) 486-3625, e-mail Susan.Newer@wsgc.wa.gov.

Rule Development Agenda
July through December 2013

WAC	Subject of Rule-Making	CR-101	CR-102	CR-103	Effective
230-03-060	Fingerprinting applicants and licensees.	WSR 13-04-062	WSR 13-11-035	We anticipate the commissioners will adopt this amendment at their August 2013 meeting.	Mid-September 2013.
230-03-061	Conducting background checks on landlords of house-banked card rooms.	WSR 12-19-042	WSR 13-15-041	We anticipate the commissioners will adopt this amendment at their September 2013 meeting.	January 1, 2014.
230-05-015	Two part payment plan for license fees.	WSR 13-04-064	WSR 13-05-039	We anticipate the commissioners will adopt this amendment at their September 2013 meeting.	Mid-October 2013.
Amend: 230-03-060 230-03-320 230-03-325 230-03-335 230-05-020 230-05-030 230-05-035 230-07-155 230-11-012 230-11-014	Rules to implement ESSB 5723 which was passed during the 2013 legislation [legistalive] session authorizing enhanced raffles.	WSR 13-11-130	WSR 13-15-175	We anticipate the commissioners will adopt this rules package at their September 2013 meeting.	Mid-October 2013.

WAC	Subject of Rule-Making	CR-101	CR-102	CR-103	Effective
230-11-020 230-11-030 230-11-040 230-11-050 230-11-055 230-11-065 230-11-070 New Sections: 230-03-152 230-03-232 230-03-317 230-11-002 230-11-102 230-11-103					
230-15-453	Petition from the Public: Michael Marquess is requesting that match play coupons no longer be allowed for the card game mini-Baccarat.	WSR 13-15-030	Up for discussion and possible filing at the September 2013 commission meeting.		If this proposal is adopted, we would anticipate an effective date of January 1, 2014.
230-15-040	Petition from the Public: Ashford Kneitel is requesting for the card game mini-Baccarat, allowing an optional wager on the player's hand winning the next three consecutive games, or the banker's hand winning the next three consecutive games.	WSR 13-15-118	Up for discussion and possible filing at the September 2013 commission meeting.		If this proposal is adopted, we would anticipate an effective date of January 1, 2014.
230-15-040	Staff is proposing amendments to this rule to incorporate current practice into WAC.	WSR 13-15-120	Up for discussion and possible filing at the September 2013 commission meeting.		If this proposal is adopted, we would anticipate an effective date of January 1, 2014.
230-05-020 230-05-025 230-05-030 230-05-035	Staff may be proposing a fee increase of approximately five percent to become effective July 1, 2014. Any fee increase would require legislative approval.	WSR 13-15-084	Up for discussion and possible filing at the September 2013 commission meeting.		If this proposal is adopted, we would anticipate an effective date of July 1, 2014.
230-03-025	Special sales permits.	WSR 12-24-026	Fall 2013		
230-15-285	Staff is reviewing rules related to digital surveillance requirements for house-banked card games.		Fall 2013		
Chapter 230-15	Staff is reviewing all rules related to card games to streamline requirements.		Fall 2013		

Susan Newer
Rules Coordinator

WSR 13-17-027
NOTICE OF PUBLIC MEETINGS
BOARD FOR VOLUNTEER FIREFIGHTERS AND RESERVE OFFICERS

[Filed August 12, 2013, 9:49 a.m.]

The state board for volunteer firefighters and reserve officers has changed the meeting date for October 2013. The October meeting date will be Thursday, October 10, 2013, at 9:00 a.m. instead of October 18, 2013. The meeting will be in the James R. Larson Forum Building, 605 11th Avenue S.E., Suite 207, Olympia, WA 98501.

WSR 13-17-038
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed August 13, 2013, 8:52 a.m.]

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Disability Services
Behavioral Health and Service Integration Administration
Management Services Division

Final Notice of Changes to the Medicaid Nursing Facility Payment System Effective July 1, 2013

The purpose of this notice is to advise nursing facilities and the general public of changes that the state of Washington has made to the methodology by which nursing facilities are paid for services they provide to medicaid recipients, as of July 1, 2013.

This notice is furnished in accordance with federal medicaid law, at 42 U.S.C. Sec. 1396a (a)(13)(A) and 42 C.F.R. Sec. 447.205, and state regulations at WAC 388-96-718. Under these provisions, the department of social and health services (DSHS) must publish proposed and final new methodologies for determining the payment rates, and the justification for those new methodologies, when the changes would amount to "material" changes that require DSHS to amend its medicaid state plan under Title XIX of the federal Social Security Act.

The previous rate methodology was calculated to produce a weighted average daily rate of $170.37 in SFY 2012, and $171.43 in SFY 2013. (The state fiscal year runs from July 1 of one year to June 30 of the following calendar year, with the later year used for designation. For example, SFY 2013 runs from July 1, 2012, through June 30, 2013.) The weighted average daily rate designated in the operating budget is commonly known as the "budget dial" amount. DSHS is directed by state law to ensure that the weighted average daily rate actually paid does not exceed that amount; see RCW 74.46.421.

In 2013 the Washington state legislature passed two laws that affect the medicaid nursing facility rate methodology:

1) First, the legislature passed an operating budget for the coming biennium; see 3ESSB 5034, enacted as section 206, chapter 4, Laws of 2013, 2nd sp. sess., of the budget provides for weighted average daily rates not to exceed $171.35 for SFY 2014 and $171.58 for SFY 2015. The weighted average daily rates for SFYs 2012 through 2015 do not include either the "acuity" add-on (described below) or the add-on paid to reimburse facilities for the safety net assessment (SNA) they pay in relation to medicaid residents.

2) Second, HB 2042 was passed and became chapter 3, Laws of 2013, 2nd sp. sess. This law does the following:

a) Postpones the rebase to the 2011 medicaid cost report, which was to have applied to rates beginning July 1, 2013. Instead of a July 1, 2013, rebase of the noncapital rate components to the 2011 medicaid cost report, there will be a July 1, 2015, rebase of the noncapital components to the 2013 medicaid cost report. The 2007 medicaid cost report will continue to be used for rates between July 1, 2013, and June 30, 2015. RCW 74.46.431 is amended to accomplish this.

b) Directs the department to calculate rates for the July 1, 2013, through June 30, 2015, period by using the medicaid average case mix scores effective for January 1, 2013, rates adjusted under RCW 74.46.485 (1)(a), and increasing the scores each six months by one-half of one percent.

c) Continues for fiscal years 2014 and 2015 the "comparative analysis" and "acuity" rate add-ons that have applied to rates during the last biennium. The "comparative analysis" compares a facility's rate on July 1, 2013, with its rate on June 30, 2010. If the July 1, 2013, rate is smaller, the difference between the rates is given to the facility as an add-on to its daily rate. The "acuity" add-on rewards a facility for taking on higher-acuity residents by giving it a ten percent add-on to its direct care component rate if its direct care rate calculated under chapter 74.46 RCW is greater than its direct care rate in effect on June 30, 2010. The "acuity" add-on will continue to be subject to the reconciliation and settlement process provided in RCW 74.46.022(6).

To find and read the full text of acts adopted by the legislature go to http://www.leg.wa.gov.

No comments were received by the department in response to its earlier notice on this subject. That notice appeared at WSR 13-10-56 [13-10-056] in Issue No. 13-10, distributed on May 15, 2013.

The department, in conjunction with the Washington state health care authority, will proceed to file a medicaid state plan amendment reflecting these changes with the federal Centers for Medicare and Medicaid Services.

WSR 13-17-039
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed August 13, 2013, 8:53 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.

Behavioral Health and Service Integration Administration
Division of Management Services

Document Title: Final Notice of Changes to the Medicaid Nursing Faciliy [Facility] Payment System Effective July 1, 2013.

Subject: State plan amendment for medicaid nursing facility payment system.

Effective Date: July 1, 2013.

Document Description: The purpose of this notice is to advise nursing facilities and the general public of changes that the state of Washington has made to the methodology by which nursing facilities are paid for services they provide to medicaid recipients, as of July 1, 2013.

To receive a copy of the interpretive or policy statements, contact Ed Southon, Nursing Home Rates, Office of Rates Management, P.O. Box 45600, Olympia, WA 98503, phone (360) 725-2469, TDD/TTY 1-877-905-0454, fax (360) 725-2641, e-mail Edward.Southon@dshs.wa.gov, web site http://www.altsa.dshs.wa.gov/professional/rates/.

WSR 13-17-041
NOTICE OF PUBLIC MEETINGS
COMMISSION ON ASIAN PACIFIC AMERICAN AFFAIRS

[Filed August 13, 2013, 11:02 a.m.]

The commission on Asian Pacific American affairs has changed the following regular meetings:

From: September 14, 2013
10:00 a.m. - 2:00 a.m. [p.m.]
Everett Community College
2000 Tower Street
Gray Wolf Hall
Room 150
Everett, WA 98201

To: September 14, 2013
10:00 a.m. - 2:00 a.m. [p.m.]
Everett Community College
2000 Tower Street
Jackson Conference Center's Senate Training Room
Room 106
Everett, WA 98201

From: November 16, 2013
10:00 a.m. - 2:00 a.m. [p.m.]
International Family Center
Chinese Information and Service Center
611 South Lane Street
2nd Floor
Seattle, WA 98104

To: November 16, 2013
10:00 a.m. - 2:00 a.m. [p.m.]
Japanese Cultural & Community Center of Washington
1414 South Weller Street
Seattle, WA 98144

If you need further information contact Amy Van, 210 11th Avenue S.W., Suite 301A, P.O. Box 40925, (360) 725-5667, (360) 586-9501, amy.van@capaa.wa.gov, https://capaa.wa.gov.

WSR 13-17-043
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed August 13, 2013, 1:20 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #13-50.

Subject: Outpatient prospective payment system and outpatient hospital fee schedule.

Retroactive to dates of service on and after July 1, 2013, unless otherwise specified, the medicaid program of the HCA will:

- √ Update the outpatient prospective payment system and outpatient hospital fee schedule with an added code and coverage changes.
- √ Use the acquisition cost method to pay for neurostimulation studies.
- √ Apply benefit limitations for outpatient therapies.
- √ Change the method of how hospital safety net assessment program payments are processed and calculated.

For additional information, contact Amber Lougheed, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail amber.lougheed@hca.wa.gov, web site http://www.hca.wa.gov/.

WSR 13-17-044
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed August 13, 2013, 1:22 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #13-52.

Subject: Washington preferred drug list.

Effective for dates of service on and after September 1, 2013, the medicaid program of the HCA will publish an updated Washington preferred drug list.

For additional information, contact Amber Lougheed, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail amber.lougheed@hca.wa.gov, web site http://www.hca.wa.gov/.

WSR 13-17-045

INTERPRETIVE OR POLICY STATEMENT

HEALTH CARE AUTHORITY

[Filed August 13, 2013, 1:23 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #13-53.

Subject: Wheelchair and durable medical supplies (DME) medicaid provider guide.

Retroactive to dates of service on and after July 1, 2013, the medicaid program of the HCA covers HCPCS code E2378 with prior authorization.

The agency has updated the following documents to reflect this change:

- The coverage table in the Wheelchair and Durable Medical Supplies (DME) Medicaid Provider Guide.
- The wheelchairs and accessories fee schedule.

For additional information, contact Amber Lougheed, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail amber.lougheed@hca.wa.gov, web site http://www.hca.wa.gov/.

WSR 13-17-046

INTERPRETIVE OR POLICY STATEMENT

HEALTH CARE AUTHORITY

[Filed August 13, 2013, 1:24 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #13-54.

Subject: Prescription drug program.

The medicaid program of the HCA will implement the changes to maximum allowable costs in the prescription drug program.

For additional information, contact Amber Lougheed, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail amber.lougheed@hca.wa.gov, web site http://www.hca.wa.gov/.

WSR 13-17-052

NOTICE OF PUBLIC MEETINGS

UTILITIES AND TRANSPORTATION COMMISSION

[Filed August 14, 2013, 2:55 p.m.]

NOTICE OF CHANGE IN PUBLIC OPEN MEETING TIME
(Set for Thursday, October 10, 2013, at 9:00 a.m.)

Due to schedule conflicts, the Washington utilities and transportation commission will reschedule the time of its regular meeting of Thursday, October 10, 2013, from 9:30 a.m. to **9:00 a.m., in the Commission's Main Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA.**

In all other aspects the notice filed on November 15, 2012, remains in effect.

WSR 13-17-056

DEPARTMENT OF FISH AND WILDLIFE

[Filed August 15, 2013, 12:32 p.m.]

PUBLIC NOTICE

NOTICE OF AVAILABILITY FOR PUBLIC REVIEW AND COMMENT ON THE WASHINGTON DEPARTMENT OF FISH AND WILDLIFE'S (WDFW) REVISED HATCHERY GENETIC MANAGEMENT PLAN (HGMP) FOR THE CATHLAMET CHANNEL HATCHERY SPRING CHINOOK NET PEN PROGRAM

The revised HGMP for the Cathlamet Channel net pen spring chinook artificial production program is available for a thirty-day public review and comment period. The comments, WDFW's response, and any resultant modifications to the HGMP will subsequently be posted on the WDFW web site and provided to NOAA fisheries for its consideration.

The HGMP describes, in a format prescribed by NOAA fisheries, the operation of the artificial production program for chinook salmon, and the potential effects of the program on listed species. The HGMP will be provided to NOAA fisheries for consideration as a significant conservation measure under Section 4(d) of the Endangered Species Act.

The HGMP may be accessed for review through one of the following means: (1) Electronically via the internet on WDFW's web site at http://wdfw.wa.gov/hatcheries/; or (2) in person through a scheduled appointment at WDFW's headquarters in Olympia, Washington. To schedule an appointment or to obtain more information, please call (360) 902-2782.

WDFW will be accepting public comments on this HGMP for this Lower Columbia River artificial production program until October 4, 2013. Comments must be submitted in writing to Phil Anderson, Director, WDFW (Attention: Hatcheries – NRB 6th Floor), P.O. Box 43200, Olympia, WA 98504-3200, or electronically through e-mail addressed to HGMP-LCRcomments@dfw.wa.gov. All comments must be received by WDFW at the appropriate address or via e-mail by 5 p.m. Pacific Daylight Time on October 4, 2013.

This notice can also be found on the Washington State Register web site at http://www.leg.wa.gov/CODE REVISER/Pages/Washington_State_Register.aspx.

WSR 13-17-057
INTERPRETIVE STATEMENT
DEPARTMENT OF REVENUE
[Filed August 15, 2013, 3:13 p.m.]

INTERPRETIVE STATEMENT ISSUED

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

ETA 3179.2013
Washington State Estate Tax Treatment of Same-Sex Spouses

This ETA addresses the estate tax benefits for same-sex spouses under Washington state estate tax law, including the marital deduction, the Washington state qualified terminal interest property trust ("QTIP") and qualifying domestic trust ("QDOT") election. This ETA references Washington Referendum 74 (chapter 3, Laws of 2012), a Washington state statute that defines spouse as gender neutral and applicable to spouses of the same sex.

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

Tim Jennrich
Tax Policy Specialist

WSR 13-17-071
NOTICE OF PUBLIC MEETINGS
COUNTY ROAD ADMINISTRATION BOARD
[Filed August 16, 2013, 11:07 a.m.]

MEETING NOTICE: October 31, 2013
County Road Administration Board
2404 Chandler Court S.W.
Suite 240
Olympia, WA 98504
1:00 p.m. to 5:00 p.m.

MEETING NOTICE: November 1, 2013
County Road Administration Board
2404 Chandler Court S.W.
Suite 240
Olympia, WA 98504
8:30 a.m. - noon

Individuals requiring reasonable accommodation may request written materials in alternative formats, sign language interpreters, physical accessibility accommodations, or other reasonable accommodation, by contacting Karen Pendleton at (360) 753-5989, hearing and speech impaired persons can call 1-800-833-6384.

If you have questions, please contact Karen Pendleton at (360) 753-5989.

WSR 13-17-072
PUBLIC RECORDS OFFICER
WASHINGTON STATE UNIVERSITY
[Filed August 16, 2013, 11:13 a.m.]

Pursuant to RCW 28B.10.528, the board of regents delegated authority to Elson S. Floyd as president to act on behalf of the board of regents in matters pertaining to the management of Washington State University.

In accordance with RCW 42.56.580, I hereby designate Kathryn Barnard-LaPointe, Executive Director, News Services, French Administration Building, Suite 446, Pullman, WA 99164-1040, as the university's public records officer. In this capacity, you are the person to whom members of the public may direct requests for disclosure of public records and who will oversee the university's compliance with the public records requirements of chapters 42.56 RCW and 504-45 WAC.

Elson S. Floyd, Ph.D.
President

WSR 13-17-080
HEALTH CARE AUTHORITY
[Filed August 19, 2013, 9:31 a.m.]

NOTICE

Title or Subject: Medicaid state plan amendments (SPA) related to the Patient Protection and Affordable Care Act (ACA).

Effective Date: November 1, 2013, and January 1, 2014.

Description: The health care authority (HCA) is planning to submit the following medicaid SPAs to implement provisions of the Patient Protection and Affordable Care Act (ACA):

- 13-0029 will address the disregard of certain income when determining eligibility for pregnant teens. This SPA is proposed to become effective on November 1, 2013, and will have no effect on annual aggregate expenditures.
- 13-0030 will address mandatory and optional eligibility groups in the family/adult category. States must cover certain mandatory groups under their medicaid programs, except for the adult group, which is voluntarily elected by states and is mandatory for states that will begin to use the modified adjusted gross income (MAGI) methodology for determining eligibility for the other medicaid and CHIP coverage groups. Washington is also electing to cover certain optional eligibility groups. This SPA is proposed to become effective on January 1,

2014, and will have no effect on annual aggregate expenditures.

- 13-0031 will address the application forms and methods for individuals to apply for and renew medicaid coverage and describe the frequency of medicaid renewals of eligibility and documents agreements for the coordination of eligibility and enrollment with other agencies administering insurance affordability programs. This SPA is proposed to become effective on January 1, 2014, and will have no effect on annual aggregate expenditures.
- 13-0032 will describe the options elected by Washington with respect to MAGI-based income methodologies, which is the income methodology that will be used effective January 1, 2014, for determining eligibility for most children, pregnant women and parents and caretaker relatives and the new adult expansion group. This SPA is proposed to become effective on January 1, 2014. Per the state's enacted budget for the 2013-2015 biennium, expenditures are expected to be $646,018,000 per year (federal medicaid funds = $830,810,000 minus state general funds of $184,792,000 = $646,018,000).
- 13-0033 will describe specific requirements for what constitutes state residency. This SPA is proposed to become effective on January 1, 2014, and will have no effect on annual aggregate expenditures.
- 13-0034 will describe the rules concerning medicaid requirements related to United States citizenship and noncitizen eligibility. This SPA is proposed to become effective on January 1, 2014, and will have no effect on annual aggregate expenditures.
- 13-0035 provides the opportunity for the state to indicate in the state plan that hospitals in the state determine eligibility presumptively; Washington does not choose to exercise this option. This SPA is proposed to become effective on January 1, 2014, and will have no effect on annual aggregate expenditures.

For additional information, contact Stephen Kozak, Eligibility Policy and Service Delivery, P.O. Box 45534, Olympia, WA 98504-5534, phone (360) 725-1343, TDD/TTY 800-848-6529, fax (360) 664-2186, e-mail Stephen.kozak@hca.wa.gov.

WSR 13-17-084

NOTICE OF PUBLIC MEETINGS

SEATTLE COMMUNITY COLLEGES

[Filed August 19, 2013, 12:30 p.m.]

In compliance with RCW 42.30.075, the Seattle Community Colleges - District VI board of trustees will be holding a special meeting on Monday, September 16, 2013, at Seattle Central Community College, 1701 Broadway, Seattle, WA 98122. The originally scheduled September 12 meeting is cancelled.

If you have any questions, please contact Harrietta Hanson at (206) 934-3850.

WSR 13-17-090

INTERPRETIVE OR POLICY STATEMENT

DEPARTMENT OF HEALTH

[Filed August 20, 2013, 11:04 a.m.]

Title of Interpretive or Policy Statement: Dentist Scope of Practice—Use of Botulinum Toxin Injections/Dermal Fillers (IS-1).

Issuing Entity: Dental quality assurance commission.

Subject Matter: Use of botulinum toxin injections/dermal fillers by dentists.

Effective Date: July 26, 2013.

Contact Person: Jennifer Santiago, Program Manager, Health Systems Quality Assurance, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-4893.

WSR 13-17-092

NOTICE OF PUBLIC MEETINGS

UNIFORM LEGISLATION COMMISSION

[Filed August 20, 2013, 12:09 p.m.]

Following are the 2013 meeting days and times for the Washington uniform legislation commission for publication in the *Washington State Register*. These meetings take place at 4 p.m. on the second Wednesday in February, May, August, and November in the office of Professor Anita Ramasastry, Commission Chair, University of Washington School of Law, Room 417, William H. Gates Hall, Seattle, WA 98195-3020. The actual dates are:

February 13	
May 8	
August 14	this meeting did not take place; it may be rescheduled
November 13	

WSR 13-17-097

HEALTH CARE AUTHORITY

[Filed August 21, 2013, 6:54 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment 13-27 Telehealth.

Effective Date: January 1, 2014.

Description: The health care authority intends to submit Medicaid State Plan Amendment (SPA) 13-27 regarding telehealth. Telehealth is when a health care practitioner uses interactive real-time audio and video telecommunications to deliver covered services that are within his or her scope of

practice to a client at a site other than the site where the provider is located.

This SPA is being submitted at the request of the federal Centers for Medicare and Medicaid Services. The medicaid program has covered certain telehealth services since 2004; this SPA does not change existing services or payments or change aggregate annual expenditures.

For additional information, contact Gail Kreiger, Health Care Services, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1681, TDD/TTY 1-800-848-5429, fax (360) 725-1328, e-mail gail.kreiger@hca.wa.gov.

WSR 13-17-108
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)
[Filed August 21, 2013, 9:59 a.m.]

The department of health, board of osteopathic medicine and surgery has changed the following regular meeting:

From: September 27, 2013, meeting at Pacific NW University of Health Sciences in Yakima, Washington.

To: September 27, 2013, meeting at the Oxford Inn and Suites in Yakima, Washington.

If you need further information contact Brett Cain, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4766, fax (360) 236-2901, e-mail brett.cain@doh.wa.gov, or on our web site at www.doh.wa.gov.

WSR 13-17-109
RULES OF COURT
STATE SUPREME COURT
[August 20, 2013]

IN THE MATTER OF ADOPTION TO THE STANDARDS FOR INDIGENT DEFENSE AND CERTIFICATION OF COMPLIANCE FORM FOR CrR 3.1, JuCR 9.2 AND CrRLJ 3.1	)))))	ORDER NO. 25700-A-1035

The Washington State Bar Association Council on Public Defense having recommended amendments to the Certification of Compliance Form for CrR 3.1, JuCR 9.2 and CrRLJ 3.1, and the Court having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

That the Certification of Compliance Form shown below is adopted and becomes effective upon its publication. The effective dates of Certification of Compliance Form Section 2(d) and Section 2(e) is October 1, 2013.

DATED at Olympia, Washington this 20th day of August, 2013.

For the Court

Madsen, C.J.

CHIEF JUSTICE

[ ] SUPERIOR COURT [ ] JUVENILE DEPARTMENT
[ ] DISTRICT COURT [ ] MUNICIPAL COURT
FOR
[ ] CITY OF [ ] COUNTY OF _____,
STATE OF WASHINGTON

[ ] No.: _____
[ ] Administrative Filing

CERTIFICATION BY:
[NAME], [WSBA#]

FOR THE:
[1ST, 2ND, 3RD, 4TH] CALENDAR QUARTER OF [YEAR]

CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CRR 3.1/CRRLJ 3.1/JUCR 9.2

The undersigned attorney hereby certifies:

1. Approximately _____% of my total practice time is devoted to indigent defense cases.

2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:

a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.

b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, incompliance with Standard 5.2.

c. **Investigators:** I have investigators available to me and will use investigative services as appropriate, in compliance with Standard 6.1.

d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases. [Effective October 1, 2013 for felony and juvenile offender caseloads; effective January 1, 2015 for misdemeanor caseloads: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]

e. **Case Specific Qualifications:** I am familiar with the specific case qualifications in Standard 14.2, Sections B-K and will not accept appointment in a case as lead counsel unless I meet the qualifications for that case. [Effective October 1, 2013]

Signature, WSBA# Date

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 13-17-114
HEALTH CARE AUTHORITY

[Filed August 21, 2013, 11:07 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 13-39 Preventive Care Services.

Effective Date: January 1, 2014.

Description: The agency intends to submit a medicaid SPA 13-39. This SPA is being submitted to add certain preventive care services as covered services. The estimated annual aggregate cost of these services is $12,153,000. These services are:

- Developmental screenings by primary care providers (pediatricians, general or family physicians, advanced registered nurse practitioners (ARNPs) or physician assistants (PAs)) for autism as part of EPSDT visits for children though three years of age. The agency requires that providers follow the schedule and use validated screening tool or instrument(s) based on the American Academy of Pediatrics Bright Futures recommendations. This change is being made to comply with the state budget approved by the legislature in ESSB [3ESSB] 5034.
- Annual preventive medicine evaluation services by primary care providers (physicians, ARNPs or PAs) for clients twenty-one years of age and older. These codes include the provision of counseling/anticipatory guidance/risk factor reduction interventions at the time of the initial or periodic comprehensive preventive medicine examination. In addition, providers must screen for tobacco and other substance use, as well as domestic violence. This change is being made to support comparability in the classic medicaid covered services with the coming essential benefit health care provisions of the Affordable Care Act.
- Screening, Brief Intervention, and Referral to Treatment (SBIRT). The service will be provided by state-trained providers. SBIRT is a comprehensive, evidence-based public health practice designed to identify people who are at risk for or have some level of substance use disorder which can lead to illness, injury, or other long-term morbidity or mortality. SBIRT services are provided in a wide variety of medical and community healthcare settings. This change is being made to comply with the state budget approved by the legislature in ESSB 5034 and support comparability in the classic medicaid covered services with the coming essential benefit health care provisions of the Affordable Care Act.

For additional information, contact Gail Kreiger, Healthcare Benefits and Utilization Management, 626 8th Avenue, Olympia, WA 98501, phone (360) 725-1681, TDD/TTY 800-848-5429, fax (360) 725-1328, e-mail gail.kreiger@hca.wa.gov.