

**WSR 16-13-020**  
**RULES OF COURT**  
**STATE SUPREME COURT**

[June 2, 2016]

IN THE MATTER OF THE PROPOSED ) ORDER  
 AMENDMENTS TO APR 20-25.6— ) NO. 25700-A-1145  
 CHARACTER AND FITNESS BOARD )

The Washington State Bar Association, having recommended the adoption of the proposed amendments to APR 20-25.6—Character and Fitness Board, 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 new rules as shown below are adopted.

(b) That the new rules will be published in the Washington Reports and will become effective September 1, 2016.

DATED at Olympia, Washington this 2nd day of June, 2016.

|               |                    |
|---------------|--------------------|
|               | Madsen, C.J.       |
| Johnson, J.   | Wiggins, J.        |
| Owens, J.     | Gonzalez, J.       |
| Fairhurst, J. | Gordon McCloud, J. |
| Stephens, J.  | Mary Yu, J.        |

**ADMISSION AND PRACTICE RULES (APR)**

**RULE 20. DEFINITIONS RELATING TO CHARACTER AND FITNESS BOARD DETERMINATIONS**

**(a) Applicant.** "Applicant" as used in APR 20-25.6 means every applicant for admission to practice law, for limited admission or licensure to practice law, 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 a petitioner for reinstatement.

**(b) Bar Counsel.** "Bar Counsel" as used in APR 20-25.6 means one or more lawyers employed by the Bar Association who shall represent the Bar Association in reviewing applications for admission, readmission and licensure or at hearings before the Character and Fitness Board and/or act as counsel to the Character and Fitness Board. Bar Counsel who represents the Bar Association at hearings before the Character and Fitness Board may make a recommendation in support of or in opposition to the admission or reinstatement of an Applicant.

**(c) Good Moral Character.** 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.

**(d) Fitness to Practice Law.** Fitness to practice law is a record of conduct that establishes that the Applicant meets the essential eligibility requirements for the practice of law.

**(e) Essential Eligibility Requirements.** The essential eligibility requirements for the practice of law are:

(1) The ability to exercise good judgment and to conduct oneself with a high degree of honesty, integrity, and trustworthiness in financial dealings, legal obligations, professional relationships, and in one's professional business.

(2) The ability to conduct oneself in a manner that engenders respect for the law and adheres to the Washington Rules of Professional Conduct.

(3) The ability to diligently, reliably, and timely perform legal tasks and fulfill professional obligations to clients, attorneys, courts and others.

(4) The ability to competently undertake fundamental lawyering skills such as legal reasoning and analysis, recollection of complex factual information and integration of such information with complex legal theories, problem solving, and recognition and resolution of ethical dilemmas; and

(5) The ability to communicate comprehensibly with clients, attorneys, courts, and others, with or without the use of aids or devices.

**(f) Health Diagnosis.** "Health diagnosis" as used in APR 20-25.6 means a determination or conclusion regarding a sensory, mental, or physical condition that:

(1) Is medically cognizable or diagnosable; or

(2) Exists in a record or history; or

(3) Is perceived to exist whether or not it exists in fact.

**(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 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 non-lawyer 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. APPLICATION OF RULES AUTHORITY OF BOARD**

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.

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, Petitioners for Reinstatement, and any other applicants, including Association members changing status or membership class, referred to the Board pursuant to APR7 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 applications or petitions of any Applicant, 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 lawyers appointed by the Executive Director of the Bar Association, who shall act as counsel to the Board and/or 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 Suggested Amendments to Admission to Practice Rules Washington State Bar Association accomplished on the date of the mailing. Any notice of change of address shall be submitted in writing to the Bar Association.

#### **RULE 21. FACTORS CONSIDERED WHEN DETERMINING CHARACTER AND FITNESS 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.

(a) Factors Considered. The following factors shall be considered when determining an Applicant's good moral character and 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 admission to practice law, to sit for a bar examination, or otherwise for licensure 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) conduct demonstrating an inability to meet one or more essential eligibility requirements for the practice of law;

(11) denial of admission to the bar in this or another jurisdiction on character and fitness grounds;

(12) disciplinary action by any professional licensing or disciplinary agency of any jurisdiction;

(13) conduct that physically threatens or harms another person; and

(14) any other conduct which reflects adversely on moral character or fitness of the Applicant to practice law.

**(b) Aggravating and Mitigating Factors.** The following factors shall be considered in mitigation or aggravation when determining an applicant's good moral character or fitness to practice law:

(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; and

(9) Evidence of rehabilitation, recovery, or remission, which may include but is not limited to the following, no single one of which is determinative:

(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;

(ix) length of time in which the Applicant has been in recovery or remission, where applicable, and if it is less than two years, expert opinion that the period of treatment, recovery or remission is adequate for the applicant to meet the essential eligibility requirements for the practice of law; and

(x) compliance with any recommended or prescribed treatment plans.

**(c) Non-Discrimination Policy.** In determining good moral character and fitness to practice law, the Bar Association and the Character and Fitness Board shall not discriminate against any applicant on the basis of:

(1) Race, color or ethnic identity;

(2) Gender or gender identity;

(3) Sexual orientation;

(4) Marital status;

(5) Creed or religion;

(6) Political beliefs or affiliation;

(7) Sensory, mental or physical disability;

(8) National origin;

(9) Age;

(10) Honorably discharged veteran or military status;

(11) Use of a trained service animal by a person with a disability; or

(12) Any other class protected under state or federal law.

**RULE 22. CHARACTER AND FITNESS DEFINED REVIEW OF APPLICATIONS FOR ADMISSION; APPLICANT DUTIES AND RIGHTS 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 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.

**RULE 22.1 REVIEW OF APPLICATIONS**

**(a) Admissions Staff Review.** All applications for admission or licensure 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 21(a) are present.

**(b) Referral to Bar Counsel—Standard.** All applications and petitions which reflect one or more of the factors set forth in Rule 21(a) shall be referred to Bar Counsel for review.

**(c) Review By Bar Counsel.** Upon receiving a referral from the admissions staff, Bar Counsel may conduct such further investigation as he or she deems necessary. Any investigation or inquiry into a health diagnosis, alcohol or drug dependence, or treatment for either must comply with sections (e) and (f) of this Rule.

**(d) Referral for Hearing—Standard.** 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. In determining whether a substantial question exists, Bar Counsel shall apply the factors and considerations set forth in Rule 21(a) and review the material evidence in the light most favorable to the Bar Association's obligation to recommend the licensure or admission to the practice of law of only those persons who possess good moral character and fitness to practice law.

**(e) Basis for Inquiry into Health Diagnosis and Drug or Alcohol Dependence.** Any inquiry by the Bar Association or the Character and Fitness Board about drug or alcohol dependence, a health diagnosis, or treatment for either can occur only if it appears that the Applicant has engaged in conduct that demonstrates the inability to meet one or more of the essential eligibility requirements and (1) the drug or alcohol dependence, health diagnosis, or treatment information was disclosed voluntarily to explain the conduct or as a voluntary response to any question on the application; or (2) the Association or the Board learns from a third-party source that the drug or alcohol dependence, health diagnosis, or treatment was raised as an explanation for the conduct.

**(f) Scope of Inquiry into Health Diagnosis and Drug or Alcohol Dependence.** When a basis for an inquiry by the Bar Association or the Character and Fitness Board has been established under section (e), any such inquiry must be narrowly, reasonably, and individually tailored and adhere to the following:

(1) The first inquiry will be to request statements from the Applicant;

(2) Following completion of the inquiry in section (f)(1) above, additional statements may be requested from treatment providers if reasonably deemed necessary by the Bar Association or the Board. The statements of treatment providers shall be accorded considerable weight; and

(3) In those cases in which the statements from the Applicant and treatment providers do not resolve reasonable concerns about the Applicant's ability to meet the essential eligibility requirements, the Bar Association or Board may seek medical or treatment records. Any requests for medical or treatment records shall be by way of narrowly tailored requests and releases that provide access only to information that is reasonably necessary to assess the Applicant's ability to meet the essential eligibility requirements.

(4) Any testimony or records from medical or other treatment providers may be admitted into evidence at a hearing

on, or review of, the Applicant's fitness and transmitted with the record on review to the Disciplinary Board and/or the Supreme Court. Records and testimony regarding the Applicant's fitness shall otherwise be kept confidential in all respects and neither the records nor the testimony of the medical or treatment provider shall be discoverable or admissible in any other proceeding or action without the written consent of the Applicant.

#### **RULE 22.2 APPLICANT DUTIES AND RIGHTS**

**(a) Duty of Applicant.** 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 Bar Counsel, the Bar Association or the Character and Fitness Board consistent with these rules. 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) Applicant Contact with Character and Fitness Board.** Applicants shall not have direct contact with any member of the Character and Fitness 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) Applicant Right to Counsel.** An applicant may be represented by counsel at any time during the application process.

#### **RULE 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.

**(a) Composition.** The Character and Fitness Board shall consist of not less than three community representatives who are not lawyers, 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 be active members of the Bar Association and have been active members for at least 5 years.

**(c) Board Chair.** The Board of Governors shall annually designate one lawyer member of the Character and Fitness Board to act as chair and another as vice-chair. The vice-chair shall serve as chair in the absence of or at the request of the 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 chair and vice-chair shall be filled by the Board of Governors. Vacancies in community representative 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 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 community representatives 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 community representative to substitute for a community representative member of the Board.

**(h) Voting.** Each member, whether community representative 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 two nonconsecutive terms with a minimum of three years

between terms except as otherwise provided in these rules. Members shall continue to serve until replaced.

#### **RULE 23.1. AUTHORITY OF BOARD**

**(a)** The Board shall have the power and authority to:

**(1)** Conduct hearings concerning matters of character and fitness bearing upon the qualification of Applicants referred to the Board by Bar Counsel and of all petitioners for reinstatement;

**(2)** Request medical or other treatment records, hear testimony from and ask questions of medical or other treatment providers in accordance with Rule 22.1 (e) and (f);

**(3)** Request an Applicant to submit to an Independent Medical Examination in accordance with Rule 24.1(f);

**(4)** Recommend the approval or denial of an Applicant's application after hearing; and,

**(5)** 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.

**(b)** No Board member shall offer an opinion to an Applicant on whether the Applicant's record establishes good moral character and fitness to practice law until after the completion of a hearing regarding that Applicant's application or petition.

#### **RULE 23.2. 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 23.3. 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 23.4. SERVICE**

Unless otherwise agreed by the parties in writing, service of papers and documents shall be made by first class postage prepaid mail to the Applicant'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.

#### **RULE 24. CHARACTER AND FITNESS BOARD HEARINGS APPLICATIONS FOR ADMISSION**

##### **RULE 24.1. HEARING PROCEDURE 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.

**(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) Appearance and Right to Counsel.** 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. 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 or criminal but are sui generis hearings to determine whether an Applicant is of good moral character and possesses the requisite fitness to practice law.

**(e) Rules of Evidence.**

(1) Evidentiary rulings shall be made by the Board chair. A majority of Board members present may by vote overrule a ruling by the chair.

(2) Consistent with section (d) of this Rule, evidence, including hearsay evidence, is admissible if in the chair'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 to be submitted to the Board for consideration must be delivered to Bar Counsel not less than 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, by members of the Board, and by the Applicant or the Applicant's counsel.

(8) The Board may question medical or other treatment providers and seek medical or other treatment records consistent with the provisions of Rule 22.1(e), 22.1(f) and Rule 24.1(f).

**(f) Independent Medical Examination.** An independent medical examination may be requested by the Character and Fitness Board only when a basis for an inquiry by the Board exists under Rule 22.1(e) and only after testimony and evidence presented at the hearing has failed to resolve the Board's reasonable concerns regarding the Applicant's ability to meet the essential eligibility requirements to practice law. If the applicant has not previously been requested to provide information under APR 22.1 (f)(1), (2) and (3), the Board shall provide the applicant with the opportunity to submit such information, within such reasonable timelines as the Board shall establish, prior to requesting the independent medical examination.

(1) Time and Place. Any independent medical examination shall occur at a time and place convenient to the applicant and shall be conducted by a provider mutually agreed upon by the applicant and the Bar Association.

(2) Failure to Comply: The failure of an Applicant to agree to or submit to a required independent medical examination shall result in the Applicant's application or petition being denied.

(3) Costs: The cost of any independent medical examination required by the Board shall be borne by the Bar Association.

(4) Report: The examining professional shall issue a written report of his or her findings which report shall be provided to the Applicant and his or her counsel, Bar Counsel and the Character and Fitness Board.

(5) Confidentiality of IME: Any report and testimony of an examining professional may be admitted into evidence at a hearing on, or review of, the Applicant's fitness and transmitted with the record on review to the Disciplinary Board and/or the Supreme Court. Reports and testimony regarding the Applicant'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.

(6) Rebuttal to IME: Applicants shall have the right to provide rebuttal medical information from their treating clinicians if such information is provided within thirty (30) days

from the receipt of the independent medical examination report provided pursuant to section (i).

**(g) Confidentiality.** All hearings and documents before the Character and Fitness Board on applications for admission or limited admission to the 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.

**RULE 24.2. DECISION AND RECOMMENDATION FACTORS CONSIDERED WHEN DETERMINING CHARACTER AND FITNESS**

**(a) Decision.** Within 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 23.5.

(1) If the Character and Fitness Board recommends admission, the record, recommendation and all exhibits shall be transmitted to the Supreme Court for disposition.

(2) If the Character and Fitness 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 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. 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, and the Bar Association shall maintain a record of the application, hearing and Board recommendation in the Bar Association records.

**(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.

**RULE 24.3. ACTION ON SUPREME COURT'S DETERMINATION HEARINGS**

**(a) Application Approved.** If the application is approved by the Supreme Court, admission shall be subject to the Applicant's taking and passing any required qualifying examinations and complying with 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. No new application for admission shall be filed within a period of one year after the date of the Supreme Court decision denying the application.

**~~(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 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. A majority of Board members present may by vote overrule a ruling by the chair.

(2) Consistent with section (d) of this rule, evidence, including hearsay evidence, is admissible if in the chair'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 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 members of the Board.

**~~(f) Confidentiality.~~** All hearings and documents before the Character and Fitness Board on applications for admis-



sion or limited admission to the 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.

#### **RULE 24.4. DECISION AND RECOMMENDATION**

**(a) Decision.** Within 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. 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.

#### **RULE 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 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. 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.

#### **RULE 25. PETITIONS FOR REINSTATEMENT AFTER DISBARMENT**

##### **RULE 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. The provisions of Rules 20 through 24.3 shall apply to Petitions for Reinstatement unless otherwise provided for in Rules 25 through 25.6.

**(b) When Petition May Be Filed.** No petition for reinstatement shall be filed within a period of 5 five years after disbarment or within a period of 2 two 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 or the Disciplinary 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 five years referred to above.

**(c) When Reinstatement May Occur.** No disbarred lawyer may be reinstated sooner than 6 six 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 six 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.

##### **RULE 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.

##### **RULE 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 and filed with the Character and Fitness Board Bar Association. 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 for admission 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. Bar Counsel and Admissions staff shall conduct such investigation as appears necessary, and in accordance with APR 20-24.3.

**(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 Character and Fitness 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 Board 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.

#### **RULE 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 Bar Association's official members' magazine 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 24.13 except to the extent that provisions of rules 25-25.6 conflict with the provisions of Rule 24.1, and except that such hearings shall be public.

#### **RULE 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 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) Rehabilitation--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~~ 21(b), ~~(e)~~ 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) ~~Non-Discrimination. Factors Not Considered by the Character and Fitness Board.~~** The Bar Association and the Character and Fitness Board shall not discriminate against any petitioner based on the factors in Rule 21(c). 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 ~~23.5~~ 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 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 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.

RULE 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 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 Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Supreme Court.

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

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

WSR 16-13-021
RULES OF COURT
STATE SUPREME COURT
[June 2, 2016]

IN THE MATTER OF THE PROPOSED ) ORDER
AMENDMENTS TO RULES OF PRO- ) NO. 25700-A-1146
FESSIONAL CONDUCT (RPC) 1.0A— )
TERMINOLOGY, 1.1—COMPETENCE, )
1.2—SCOPE OF REPRESENTATION )
AND ALLOCATION, 1.4—COMMUNI- )
CATION, 1.5—FEES, 1.6- CONFIDEN- )
TIALITY OF INFORMATION, 1.10— )
IMPUTATION OF CONFLICTS OF )
INTEREST: GENERAL RULE, 1.14— )
CLIENT WITH DIMINISHED CAPAC- )
ITY, 1.17—SALE OF LAW PRACTICE, )
1.18—DUTIES TO PROSPECTIVE CLI- )
ENT, 4.4—RESPECT FOR RIGHTS OF )
THIRD PERSON, 5.3— RESPONSIBILI- )
TIES REGARDING NONLAWYER )
ASSISTANTS, 5.5— UNAUTHORIZED )
PRACTICE OF LAW; MULTIJURISDIC- )
TIONAL PRACTICE OF LAW, 6.5— )
NONPROFIT AND COURT-ANNEXED )
LIMITED LEGAL SERVICE PRO- )
GRAMS, 7.1— COMMUNICATIONS )

CONCERNING A LAWYERS SER- )
VICES, 7.2—ADVERTISING, 7.3— )
DIRECT CONTACT WITH PROSPEC- )
TIVE CLIENTS, AND 8.5—DISCI- )
PLINARY AUTHORITY; CHOICE OF )
LAW )

The Washington State Bar Association, having recom-
mended the adoption of the proposed amendments to Rules
of Professional Conduct (RPC) 1.0A—Terminology, 1.1—
Competence, 1.2—Scope of Representation and Allocation,
1.4—Communication, 1.5—Fees, 1.6—Confidentiality of
Information, 1.10—Imputation of Conflicts of Interest: Gen-
eral Rule, 1.14—Client with Diminished Capacity, 1.17—
Sale of Law Practice, 1.18—Duties to Prospective Client,
4.4—Respect for Rights of Third Person, 5.3—Responsibili-
ties Regarding Nonlawyer Assistants, 5.5—Unauthorized
Practice of Law; Multijurisdictional Practice of Law, 6.5—
Nonprofit and Court-Annexed Limited Legal Service Pro-
grams, 7.1—Communications Concerning a Lawyers Ser-
vices, 7.2—Advertising, 7.3—Direct Contact with Prospec-
tive Clients, and 8.5—Disciplinary Authority; Choice of
Law, 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 new rules as shown below are adopted.

(b) That the new rules will be published in the Washing-
ton Reports and will become effective September 1, 2016.

DATED at Olympia, Washington this 2nd day of June,
2016.

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

RULES OF PROFESSIONAL CONDUCT

RULES: 1.0A, 1.1, 1.2, 1.4, 1.5, 1.6, 1.10, 1.14, 1.17, 1.18, 4.4, 5.3, 5.5, 6.5,
7.1, 7.2, 7.3, 8.5

RULE 1.0A
TERMINOLOGY

(a) - (m) [Unchanged.]

(n) "Writing" or "written" denotes a tangible or elec-
tronic record of a communication or representation, including
handwriting, typewriting, printing, photostating, photogra-
phy, audio or videorecording and e-mail electronic communi-
cations. A "signed" writing includes an electronic sound,
symbol or process attached to or logically associated with a
writing and executed or adopted by a person with the intent to
sign the writing.

Comment

Screened

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[9] [Washington revision] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer or LLLT remains protected. The personally disqualified lawyer or LLLT should acknowledge the obligation not to communicate with any of the other lawyers or LLLTs in the firm with respect to the matter. Similarly, other lawyers or LLLTs in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer or LLLT with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers or LLLTs of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer or LLLT to avoid any communication with other firm personnel and any contact with any firm files or other materials information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer or LLLT relating to the matter, denial of access by the screened lawyer or LLLT to firm files or other materials information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer or LLLT and all other firm personnel.

#### RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

#### Comment

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#### Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] [Washington revision] When lawyers or LLLTs from more than one law firm are providing legal services to the client on a particular matter, the lawyers and/or LLLTs ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When mak-

ing allocations of responsibility in a matter pending before a tribunal, lawyers, LLLTs, and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

#### *Maintaining Competence*

[6 8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Additional Washington Comments (7 9-10)

[9] This rule applies to lawyers only when they are providing legal services. Where a lawyer is providing nonlawyer services ("supporting lawyer") in support of a lawyer who is providing legal services ("supported lawyer"), the supported lawyer should treat the supporting lawyer as a nonlawyer assistant for purposes of this rule and Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants).

[7 10] In some circumstances, a lawyer can also provide adequate representation by enlisting the assistance of an LLLT of established competence, within the scope of the LLLT's license and consistent with the provisions of the LLLT RPC. However, a lawyer may not enter into an arrangement for the division of the fee with an LLLT who is not in the same firm as the lawyer. See Comment [7] to Rule 1.5(e); LLLT RPC 1.5(e). Therefore, a lawyer may enlist the assistance of an LLLT who is not in the same firm only (1) after consultation with the client in accordance with Rules 1.2 and 1.4, and (2) by referring the client directly to the LLLT.

#### RULE 1.2

#### SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN LAWYER AND CLIENT

(a) - (f) [Unchanged.]

#### Comment

#### *Allocation of Authority between Client and Lawyer*

[1] [Washington revision] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4 (a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4 (a)(2) and may take such action as is impliedly authorized to carry out the representation. See also Rule 1.1, comments [6] and [10] as to decisions to associate other lawyers or LLLTs.

#### RULE 1.4 COMMUNICATION

(a) - (b) [Unchanged.]

**Comment**

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*Communicating with Client*

[2] **[Washington revision]** If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from an opposing lawyer an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a). See also Rule 1.1, comments [6] and [10] as to decisions to associate other lawyers or LLLTs.

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[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged. A lawyer should promptly respond to or acknowledge client communications.

**RULE 1.5**  
**FEES**

(a) - (f) [Unchanged.]

**Comment**

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*Division of Fee*

[7] **[Washington revision]** A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1. See also Rule 1.1, comments [6]

and [10] as to decisions to associate other lawyers or LLLTs. See also Washington Comment [18].

**RULE 1.6****CONFIDENTIALITY OF INFORMATION**

(a) [Unchanged.]

(b) A lawyer to the extent the lawyer reasonably believes necessary:

(1) - (6) [Unchanged.]

(7) may reveal information relating to the representation to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client;

(7 8) may reveal information relating to the representation of a client to inform a tribunal about any breach of fiduciary responsibility when the client is serving as a court-appointed fiduciary such as a guardian, personal representative, or receiver.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

**Comment**

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*Detection of Conflicts of Interest*

[13] [Washington revision] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of

these Rules. See also Rule 1.1, comment [6], [7], and [10] as to decisions to associate other lawyers or LLLTs.

[14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

~~[13]~~ 15]

~~[14]~~ 16]

~~[15]~~ 17]

*Acting Competently to Preserve Confidentiality*

[18 16] Paragraph (c) requires a lawyer must to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

[19 17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality

agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

*Former Client*

~~[20]~~ 18]

Additional Washington Comments (~~19-26~~ 21-28)

~~[21]~~ 19]

~~[22]~~ 20]

~~[23]~~ 21]

~~[24]~~ 22]

~~[25]~~ 23]

~~[26]~~ 24]

~~[27]~~ 25]

~~[28]~~ 26]

**RPC 1.10**

**IMPUTATION OF CONFLICTS OF INTEREST:  
GENERAL RULE**

(a) - (f) [Unchanged.]

**Comment**

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Additional Washington Comments (9 - 14)

*Principles of Imputed Disqualification*

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[11] Under Rule 5.3, this Rule also applies to nonlawyer assistants and lawyers who previously worked as nonlawyers at a law firm. See *Daines v. Alcatel*, 194 F.R.D. 678 (E.D. Wash. 2000); *Richards v. Jain*, 168 F. Supp. 2d 1195 (W.D. Wash. 2001). For the definition of nonlawyer for the purposes of Rule 5.3, see Washington Comment [3 5] to Rule 5.3.

**RPC 1.14**

**CLIENT WITH DIMINISHED CAPACITY**

(a) - (c) [Unchanged.]

**Comment**

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[4] **[Washington revision]** If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rules 1.2(d) and 1.6 (b)(7 8).

**RULE 1.17**  
**SALE OF LAW PRACTICE**

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) - (d) [Unchanged.]

**Comment**

*Client Confidences, Consent and Notice*

[7] [Washington revision] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to detailed client-specific information relating to the representation, such as the client's file and to the file, however, requires client consent. But see Rule 1.6 (b)(7) (permitting disclosure of information relating to the representation in limited circumstances to detect and resolve potential conflicts of interest). The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

**RULE 1.18**  
**DUTIES TO PROSPECTIVE CLIENT**

(a) A person who consults ~~discusses~~ with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from ~~had discussions with~~ a prospective client shall not use or reveal that information ~~learned in the consultation~~, except as Rule 1.9 would permit with respect to information of a former client or except as provided in paragraph (e).

(c) - (d) [Unchanged.]

(e) A lawyer may condition ~~conversations~~ a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. The prospective client may also expressly consent to the lawyer's subsequent use of information received from the prospective client.

**Comment**

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations ~~discussions~~ with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] [Washington revision] ~~Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's communications in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to a communication that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, and is thus not a "prospective client," within the meaning of paragraph (a). Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."~~ See also Washington Comment [10].

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[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation ~~interview~~ to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

**RULE 4.4**  
**RESPECT FOR RIGHTS OF THIRD PERSONS**

(a) [Unchanged.]

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

**Comment**

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[2] Paragraph (b) recognizes that lawyers sometimes receive a documents or electronically stored information that was ~~were~~ mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally

included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the ~~original~~ document or electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been ~~wrongfully~~ inappropriately obtained by the sending person. For purposes of this Rule, "document or electronically stored information" includes in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is e-mail or other electronic modes of transmission subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

[3] Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving ~~it the document~~ that it was inadvertently sent ~~to the wrong address~~. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

#### RULE 5.3

##### RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) - (c) [Unchanged.]

##### Comment

[1] ~~2]~~ Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters will act in a way compatible with the professional obligations of the lawyer ~~Rules of Professional Conduct~~. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm, the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

##### *Nonlawyers Within the Firm*

[2] ~~4]~~ Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

##### *Nonlawyers Outside the Firm*

[3] ~~[Washington revision]~~ A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer. Where an outside lawyer is retained to provide non-legal services, the lawyer should be treated like a nonlawyer assistant. See also comment [9] to Rule 1.1.

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Additional Washington Comment (~~5~~ 3)

[5] ~~3]~~ A nonlawyer for purpose of this Rule denotes an individual other than a lawyer or an LLLT acting as such. For responsibilities regarding an LLLT associated with a lawyer, see Rule 5.10. If a lawyer or an LLLT in a firm is providing services that do not require use of the lawyer's or the LLLT's license, then lawyers at the firm should treat such a lawyer or



LLLT as a nonlawyer assistant under this Rule rather than as a subordinate lawyer under Rule 5.1 or as an LLLT under Rule 5.10. See also Additional Washington Comment [9] to Rule 1.1.

#### RULE 5.5

##### UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) - (c) [Unchanged.]

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, 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; and, when performed by a foreign lawyer and requires advice on the law of this or another jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized ~~to provide~~ by federal law or other law or rule to provide in of this jurisdiction.

(e) For purposes of paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

#### Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

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[5] There are occasions in which a lawyer admitted to practice 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 under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs ~~(d)(1) and (d)(2)~~, this Rule does not authorize a U.S. or foreign lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally or as house counsel under APR 8(f) here.

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

[8] **[Washington revision]** Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client. See also Rule 1.1, comment [6].

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[15] **[Washington revision]** Paragraph (d)(1) identifies ~~one another~~ circumstance in which a lawyer who is admitted to practice in another United States or a foreign jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, or the equivalent thereof, may provide legal services on a temporary basis i.e. as "in-house counsel" for an employer. Paragraph (d)(2) identifies a circumstance in which such a lawyer 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 (d)(2), a lawyer who is admitted to practice law in another United States or foreign 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 or as house counsel under APR 8(f). The Washington version of this comment has been amended to take account of the requirement that in-house counsel wishing to engage in non-temporary practice in Washington must either be generally admitted to practice under Admission and Practice Rule 3 or obtain a limited license to practice law as in-house counsel under Admission and Practice Rule 8(f).

[16] Paragraph (d)(1) applies to a U.S. or foreign 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. To further decrease any risk to the client, when advising on the domestic law of a United States jurisdiction or on the law of the United States, the foreign lawyer authorized to practice under paragraph (d)(1) of this Rule needs to base that advice on the

advice of a lawyer licensed and authorized by the jurisdiction to provide it.

[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 must seek general admission under APR 3 or house counsel admission under APR 8(f).

[18] Paragraph (d)(2) recognizes that a U.S. or foreign lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

**RPC 6.5  
NONPROFIT AND COURT-ANNEXED  
LIMITED LEGAL SERVICE PROGRAMS**

**Comment**

Additional Washington Comments (6 - 7)

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[7] Paragraph (a)(3) was taken from former Washington RPC 6.5 (a)(3) as enacted in 2002. The replacement of "confidences and secrets" in paragraph (a)(3) with "information relating to the representation" was necessary to conform the language of the Rule to a terminology change in Rule 1.6. No substantive change is intended. See Comment ~~[19 21]~~ to Rule 1.6.

**RULE 7.1  
COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

**Comment**

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[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public a prospective client.

**RULE 7.2  
ADVERTISING**

(a) - (c) [Unchanged.]

**Comment**

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are ~~is~~ now among one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. ~~Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule.~~ But see Rule 7.3(a) for the prohibition against ~~the a~~ solicitation of a ~~pro-~~prospective possible client through a real-time electronic exchange initiated by the lawyer ~~that is not initiated by the prospective client.~~

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

*Paying Others to Recommend a Lawyer*

[5] **[Washington revision]** Except as permitted under paragraphs (b)(1)-(b)(4), ~~L~~awyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and commu-

nications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, ~~banner ads~~, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 ~~for the~~ (duties of lawyers and law firms with respect to the conduct of nonlawyers ~~who prepare marketing materials for them~~); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another). For the definition of nonlawyer for the purposes of Rule 5.3, see Washington Comment [3] [5] to Rule 5.3.

[6] **[Washington revision]** A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public prospective clients, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

### RULE 7.3

#### SOLICITATION OF DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not, directly or through a third person, by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective possible client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or an LLLT or
- (2) has a family, close personal, or prior professional relationship with the lawyer; or
- (3) has consented to the contact by requesting a referral from a not-for-profit lawyer referral service.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the target of the solicitation ~~prospective client~~ has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress or harassment.
- (c) - (d) [Unchanged.]

#### Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] ~~4~~ There is a potential for abuse when a solicitation involves inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with someone a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject a person the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The person prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] ~~2~~ This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyers have advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. In particular, Advertising and written and recorded communications can which may be mailed or auto-dialed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws

governing solicitations. These forms of communications and solicitations make it possible for the public a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm a person's the client's judgment.

[4 3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic contact conversations between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5 4] **[Washington revision]** There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or a person with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or an LLLT. Consequently, the general prohibition in Rule 7.3(a) is not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[6 5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3 (b)(2), or which involves contact with someone a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3 (b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication prospective client may violate the provisions of Rule 7.3(b).

[7 6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This

form of communication is not directed to people who are seeking legal services for themselves, a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8 7]

[9 8]

Additional Washington Comments (9 10 - 12 14)

[10 9]

[11 10]

[12 11]

[13 12]

[14] The phrase "prospective client" in Rule 7.3(a) has been replaced with the phrase "possible client" because the phrase "prospective client" has become a defined phrase under Rule 1.18 with a different meaning. This is a departure from the ABA Model Rule which has dispensed altogether with the phrase "from a prospective client" in this rule. The rule is not intended to preclude lawyers from in-person conversations with friends, relatives or other professionals (i.e. intermediaries) about other friends, relatives, clients or patients who may need or benefit from the lawyer's services, so long as the lawyer is not asking or expecting the intermediary to engage in improper solicitation. See RPC 8.4(a) which prohibits improper solicitation "through the acts of another". Absent limitation of prohibited in-person communications to "possible clients" there is a danger that lawyers might mistakenly infer that the kind of benign conversations with non-client intermediaries described above are precluded by this rule.

#### RULE 8.5

#### DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) - (c) [Unchanged.]

#### Comment

#### *Choice of Law*

\*\*\*\*\*

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule. With respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of that paragraph may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.

**Reviser's note:** The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

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

### WSR 16-14-001

#### NOTICE OF PUBLIC MEETINGS CENTER FOR CHILDHOOD DEAFNESS AND HEARING LOSS

[Filed June 22, 2016, 3:08 p.m.]

The Washington State Center for Childhood Deafness and Hearing Loss board of trustees has set their calendar of meetings for the 2016/2017 school year. All meetings, unless otherwise noted, will be held on [at] the Washington School for the Deaf, 611 Grand Boulevard, Vancouver, WA.

#### Special Meetings

- July 25-26, 2016: Hotel Murano (1320 Broadway, Tacoma, WA) from 8 a.m. to 4 p.m. each day
- September 29, 2016: Location yet to be determined (1-5 p.m.)

#### Board Meetings

- September 30, 2016: Location yet to be determined (8 a.m. - 3 p.m.)
- November 4, 2016 (9:45 a.m. - 3 p.m.)
- January 6, 2017 (9:45 a.m. - 3 p.m.)
- February 3, 2017 (9:45 a.m. - 3 p.m.)
- March 3, 2017 (9:45 a.m. - 3 p.m.)
- May 5, 2017 (9:45 a.m. - 3 p.m.)
- June 15, 2017 (9:45 a.m. - 3 p.m.)

### WSR 16-14-004

#### RULES COORDINATOR WASHINGTON STATE SCHOOL FOR THE BLIND

[Filed June 23, 2016, 9:53 a.m.]

Pursuant to RCW 34.05.312, the rules coordinator for the Washington State School for the Blind is Scott McCallum, Superintendent, 2214 East 13th Street, Vancouver, WA 98661, phone (360) 947-3301, fax (360) 737-2120, e-mail scott.mccallum@wssb.wa.gov.

Scott McCallum  
Superintendent

### WSR 16-14-015 RULES COORDINATOR POLLUTION LIABILITY INSURANCE AGENCY

[Filed June 24, 2016, 9:34 a.m.]

Pursuant to RCW 34.05.312, the rules coordinator for the pollution liability insurance agency is Cassandra Garcia, P.O. Box 40930, Olympia, WA 98504-0930, phone (360) 407-0514, fax (360) 407-0509, e-mail cassandra.garcia@plia.wa.gov.

Russell E. Olsen  
Executive Director

### WSR 16-14-018

#### NOTICE OF PUBLIC MEETINGS HUMAN RIGHTS COMMISSION

[Filed June 24, 2016, 10:36 a.m.]

The following is for a special commission meeting for June 30, 2016: Washington state human rights commission, commission meeting, on June 30, 2016, at 1:00 p.m., conference call, call-in number (712) 432-0490, access code 833014#.

### WSR 16-14-019

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

[Filed June 24, 2016, 10:42 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 (DSHS).

#### Aging and Long-Term Support Administration Division of Home and Community Services (HCS)

Document Title: Public Notice.

Subject: Amendment to Residential Support Waiver (RSW).

Effective Date: August 1, 2016.

The health care authority (HCA) and DSHS intend to submit an amendment to RSW WA.1086. This waiver will be amended to add wellness education to the client training waiver service.

Wellness education is a new provider type under the client training waiver service that will provide customized health and lifestyle information. Each month, waiver participants will receive articles about topics related to their specific health conditions and wellness interests, which is obtained from the client assessment. Wellness education is currently offered within the client training service in the COPES waiver program.

DSHS is requesting an effective date of August 1, 2016.

A draft of the amendment will be posted for review and comment from July 20, 2016, through August 19, 2016. The amendment can be viewed at https://www.dshs.wa.gov/altsa/stakeholders/hcbs-residential-support-waiver-amendments. Comments must be received by 5:00 on August 19, 2016.

Comments may be provided by e-mail or letter to the contact person listed below.

If you would like to receive a paper copy of the amendment, please call (360) 725-2576 during the review period and provide your name, telephone number and mailing address.

Please provide comments to Sandy Spiegelberg, Program Manager, HCS, P.O. Box 45600, Olympia, WA 98504, phone (360) 725-2576, TDD/TTY (360) 438-2637, fax (360) 586-9727, e-mail Sandra.Spiegelberg@dshs.wa.gov, web site https://www.dshs.wa.gov/altsa.

**WSR 16-14-021**

**NOTICE OF PUBLIC MEETINGS  
PUBLIC WORKS BOARD**

[Filed June 24, 2016, 4:42 p.m.]

**NOTICE OF REVISION TO PUBLIC MEETINGS 2016**

The public works board will be holding regularly scheduled meetings on the following dates at 9:00 a.m.:

- ~~January 22, 2016~~ Canceled
- February 5, 2016 Start time 8:00 a.m.
- ~~March 4, 2016~~ Canceled
- March 18, 2016 New date
- April 1, 2016
- May 6, 2016
- ~~June 3, 2016~~ Canceled
- June 10, 2016 New date
- July 8, 2016
- ~~August 5, 2016~~ Canceled
- August 12, 2016 New date
- ~~August 19, 2016~~ Canceled
- September 8, 2016 Board retreat**
- September 9, 2016 Business meeting**
- October 20, 2016
- November 4, 2016
- December 2, 2016

Please contact the public works board at (360) 725-2744 for any further information.

**WSR 16-14-023**

**HEALTH CARE AUTHORITY**

[Filed June 27, 2016, 10:03 a.m.]

**NOTICE**

Title or Subject: Medicaid State Plan Amendment (SPA) 16-0029 Recovery Audit Contractors.

Effective Date: July 21, 2016.

Description: Section 6411(a) of the Affordable Care Act expanded the recovery audit contractor (RAC) program to medicaid and requires each state medicaid program to establish an RAC program, absent an exception, to enable the auditing of claims for services furnished by medicaid providers.

The health care authority (the agency) intends to submit medicaid SPA 16-0029 in order to request a full exception to the federal requirement for an RAC. The agency believes it has appropriate resources in place to identify and recover improper payments related to medicaid fraud, waste and abuse.

The agency anticipates SPA 16-0029 to have no effect on annual aggregate expenditures.

The SPA is in the development process; therefore a copy is not yet available for review. To contact the agency for additional information and a copy of the SPA when it becomes available, please contact Lisa DeLaVergne, Program Integrity, 626 8th Avenue S.E., Olympia, WA 98501, phone (360) 725-1705, TDD/TTY 1-800-848-5429, fax (360) 586-0212, e-mail lisa.delavergne@hca.wa.gov, web site www.hca.wa.gov/medicaid/pi.

**WSR 16-14-024**

**NOTICE OF PUBLIC MEETINGS  
YAKIMA VALLEY  
COMMUNITY COLLEGE**

[Filed June 27, 2016, 10:23 a.m.]

**Notice of Regular Meetings**

Following is the schedule of regular meetings for Yakima Valley College (YVC) for 2016-2017:

| Date              | Time      | Location                                       |
|-------------------|-----------|--|
| <b>2016</b>       |           |  |
| July 14, 2016     | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus<br>CANCELLED |
| August 11, 2016   | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus<br>CANCELLED |
| September 8, 2016 | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| October 13, 2016  | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| November 16, 2016 | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |

| Date               | Time      | Location                                       |
|--------------------|-----------|--|
| December 8, 2016   | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus<br>CANCELLED |
| <b>2017</b>        |           |  |
| January 12, 2017   | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| February 16, 2017  | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| March 9, 2017      | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| April 13, 2017     | 4:30 p.m. | Library Meeting Room<br>Grandview Campus       |
| May 18, 2017       | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| June 8, 2017       | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| July 13, 2017      | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus<br>CANCELLED |
| August 10, 2017    | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus<br>CANCELLED |
| September 14, 2017 | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| October 12, 2017   | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| November 16, 2017  | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus              |
| December 14, 2017  | 4:30 p.m. | King Room<br>HUB<br>Yakima Campus<br>CANCELLED |

The Yakima campus is located at South 16th Avenue and Nob Hill Boulevard in the city of Yakima, Washington. The Grandview campus is at 500 West Main Street in Grandview, WA.

If you need further information, contact the President's Office, YVC, P.O. Box 22520, Yakima, WA 98907, (509) 574-4635.

**WSR 16-14-025**  
**NOTICE OF PUBLIC MEETINGS**  
**BELLINGHAM TECHNICAL COLLEGE**  
 [Filed June 27, 2016, 11:01 a.m.]

**Amended Amended Notice**  
**ASBTC Services and Activities (S&A) Fee**  
**Budget Committee**  
**Regular Meeting Schedule**  
**2016**

Pursuant to RCW 42.30.075, the Bellingham Technical College ASBTC S&A fee budget committee's regular meetings during 2016 will be held on the first and third Tuesdays of each month, except where indicated, beginning January 19. All meetings will begin at 3:30 p.m. in the College Services Building Board Room, unless otherwise noted, at Bellingham Technical College, 3028 Lindbergh Avenue, Bellingham, WA 98225.

- January 19, 2016
- February 2 and 16, 2016
- March 1 and 15, 2016  
(March 15 meeting in CC 233)
- April 5 and 19, 2016
- May 3 and 17, 2016
- June 7, 2016
- October 4 and 18, 2016
- November 1 and 15, 2016
- December 6 and 20, 2016

If you have questions, please contact Melisa Nelson at (360) 752-8443 or e-mail [mnelson@btc.edu](mailto:mnelson@btc.edu).

**WSR 16-14-026**  
**NOTICE OF PUBLIC MEETINGS**  
**BELLINGHAM TECHNICAL COLLEGE**  
 [Filed June 27, 2016, 11:02 a.m.]

**Amended Amended Notice**  
**Associated Students Executive Team**  
**Regular Meeting Schedule**  
**2016**

Pursuant to RCW 42.30.075, the Bellingham Technical College ASBTC executive team's regular meetings during 2016 will be held every Wednesday of each month, except where indicated, beginning January 6. All meetings will begin at 4:00 p.m. in the College Services Board Room, unless indicated otherwise, at Bellingham Technical College, 3028 Lindbergh Avenue, Bellingham, WA 98225.

- January 6, 13, 20, 27, 2016  
*(January Meetings held in Campus Center 300)*
- February 3, 10, 17, 24, 2016  
*(February 3 meeting held in CC300; February 10 and 17 meetings are in CC233)*

March 2, 9, 16, 23, 30, 2016  
*(March 2 and 16 meetings are in CC233)*  
 April 6, 13, 20, 27, 2016  
 May 4, 11, 18, 25, 2016  
 June 1, 8, 15, 22, 2016  
 July 13 and 27, 2016  
 August 10 and 24, 2016  
 September 7, 14, 21, 28, 2016  
 October 5, 12, 19, 26, 2016  
 November 2, 9, 16, 23, 30, 2016  
 December 7, 14, 2016

If you have questions, please contact Melisa Nelson at (360) 752-8443 or e-mail [mnelson@btc.edu](mailto:mnelson@btc.edu).

**WSR 16-14-027**  
**NOTICE OF PUBLIC MEETINGS**  
**COMMISSION ON**  
**ASIAN PACIFIC AMERICAN AFFAIRS**

[Filed June 27, 2016, 11:44 a.m.]

The commission on Asian Pacific American affairs has changed the following regular meeting:

From: September 17, 2016  
 10:00 a.m. - 2:00 a.m. [p.m.]  
 Vancouver Community Library  
 901 C Street  
 Vancouver, WA 98660

To: September 17, 2016  
 9:00 a.m. - 2:00 a.m. [p.m.]  
 Clark College  
 Gaiser Hall 213  
 1033 Fort Vancouver Way  
 Vancouver, WA 98663

If you need further information contact Brianne Ramos, 210 11th Avenue S.W., Suite 301A, P.O. Box 40925, (360) 725-5667, [brianne.amos@capaa.wa.gov](mailto:brianne.amos@capaa.wa.gov), [www.capaa.wa.gov](http://www.capaa.wa.gov).

**WSR 16-14-028**  
**NOTICE OF PUBLIC MEETINGS**  
**COLUMBIA BASIN COLLEGE**

[Filed June 27, 2016, 12:04 p.m.]

The Columbia Basin [College] board of trustees' meetings will be held on the second Monday of every month with the exception of its annual meeting/retreat on September 7, 2016, 9:00 a.m. - 2:00 p.m. The next regularly scheduled meeting will be on October 10, 2016, at 4:00 p.m. All board of trustees meetings will be held in the CBC Beers Board Room.

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

**WSR 16-14-029**  
**PUBLIC RECORDS OFFICER**  
**CHARTER SCHOOL COMMISSION**

[Filed June 27, 2016, 1:13 p.m.]

Pursuant to RCW 42.56.580, the public records officer for the Washington state charter school commission (effective July 1, 2016) is Mike Brown, Office of Superintendent of Public Instruction, 600 Washington Street S.E., P.O. Box 47200, Olympia, WA 98504-7200, phone (360) 725-6372, fax (360) 753-4201, e-mail [PublicRecordsRequest@k12.wa.us](mailto:PublicRecordsRequest@k12.wa.us).

Sandy Green  
 Executive Assistant

**WSR 16-14-034**  
**PUBLIC RECORDS OFFICER**  
**DEPARTMENT OF CORRECTIONS**

[Filed June 28, 2016, 8:23 a.m.]

Pursuant to RCW 42.56.580, the public records officer for the department of corrections is Denise Vaughan, P.O. Box 41101, Olympia, WA 98504-1101, phone (360) 725-8854, e-mail [dlvaughan@DOC1.WA.GOV](mailto:dlvaughan@DOC1.WA.GOV).

Maria Puccio  
 Rules Coordinator

**WSR 16-14-036**  
**AGENDA**  
**DEPARTMENT OF AGRICULTURE**

[Filed June 28, 2016, 8:59 a.m.]

Following is the department of agriculture's semi-annual rules development agenda for the period of July 1 through December 31, 2016. This document is being sent in compliance with RCW 34.05.314.

The department may undertake additional rule-making activity as conditions warrant. If you have questions regarding the department's rule-making agenda, please contact Henri Gonzales at (360) 902-1802 or [hgonzales@agr.wa.gov](mailto:hgonzales@agr.wa.gov).



**Semi-Annual Rules Agenda  
July 1 - December 31, 2016  
P.O. Box 42560  
Olympia, WA 98504-2560**

| WAC Chapter                                       | Rule Title   | Agency Contact   | Tentative Timeline |           |              | Subject of Rule Making  |
|---|--|--|--------------------|-----------|--------------|---|
|   |  |  | CR-101<br>CR-105   | CR-102    | CR-103       |   |
| <b>ANIMAL SERVICES DIVISION</b>                   |  |  |                    |           |              |   |
| 16-29   | Animal disease traceability  | Jodi Jones<br>Animal Services Division<br>Phone (360) 902-1889               | July               | September | October      | Clarifies data slaughter facilities must furnish, adds an alternative to reporting when certain conditions are met; and clarifies penalties associated with reporting violations.   |
| 16-54   | Animal importation   | Jodi Jones<br>Animal Services Division<br>Phone (360) 902-1889               | July               | September | October      | Removes the certificate of veterinary inspection exemption for cattle consigned to a category 2 restricted holding facility; modifies the vesicular stomatitis restrictions; and modifies the exemptions to import health requirements for dogs, cats, and ferrets. |
| 16-71   | Equine diseases in Washington state  | Jodi Jones<br>Animal Services Division<br>Phone (360) 902-1889               | July               | September | October      | Decreases the number of days horses with vesicular stomatitis must be held in quarantine.   |
| 16-86   | Cattle and bison diseases in Washington state                                    | Jodi Jones<br>Animal Services Division<br>Phone (360) 902-1889               | July               | September | October      | Eliminates requirement for Q fever testing in raw milk dairies.   |
| 16-610  | Livestock brand inspection   | Jodi Jones<br>Animal Services Division<br>Phone (360) 902-1889               | May                | July      | August       | Increases the certificate of permit fee from \$1.00 to \$5.00 (per book of twenty-five); adds requirement that veterinarians need to pass a written exam in order to be certified to issue livestock inspection certificates; and housekeeping changes.             |
| <b>COMMODITY INSPECTION DIVISION</b>              |  |  |                    |           |              |   |
| New   | Industrial hemp research   | Victor Shaul<br>Seed Inspection Program<br>Phone (509) 249-6950              | June               | August    | September    | Establishes in rule an industrial hemp research pilot program.  |
| 16-390  | WSDA fruit and vegetable inspection districts, inspection fees and other charges | Jim Nelson<br>Fruit and Vegetable Inspection Program<br>Phone (509) 884-4253 | June               | Expedited | August       | Merges the two fruit and vegetable inspection districts and accounts; delays implementation of fee increase currently scheduled for January 1, 2017.  |
| 16-403  | Standards for apples marketed within the state of Washington                     | Jim Nelson<br>Fruit and Vegetable Inspection Program<br>Phone (509) 884-4253 | June 2015          | September | November     | Clarifies provisions of the packing and marketing standards for apples.   |
| 16-414  | Washington standards for cherries  | Jim Nelson<br>Fruit and Vegetable Inspection Program<br>Phone (509) 884-4253 | July               | September | November     | Updates the rule to promote clarity.  |
| 16-439  | Pears, summer and fall   | Jim Nelson<br>Fruit and Vegetable Inspection Program<br>Phone (509) 884-4253 | July               | September | November     | Updates the rule to promote clarity.  |
| <b>FOOD SAFETY AND CONSUMER SERVICES DIVISION</b> |  |  |                    |           |              |   |
| 16-157  | Organic food standards and certification   | Brenda Book<br>Organic Program<br>Phone (360) 902-2090                       | September          | November  | January 2016 | Removes the organic mushroom standards due to conflict with federal standards; and updates the certification fee schedules.   |

| WAC Chapter                                      | Rule Title  | Agency Contact  | Tentative Timeline |           |           | Subject of Rule Making  |
|--|---|---|--------------------|-----------|-----------|---|
|  |   |   | CR-101<br>CR-105   | CR-102    | CR-103    |   |
| 16-167   | Intrastate commerce in foods  | Claudia Coles<br>Food Safety and Consumer Services Division<br>Phone (360) 902-1905 | April              | August    | October   | Incorporates the current federal regulations regarding intrastate commerce.   |
| 16-250   | Commercial feed   | Randy Treadwell<br>Feed/RRT<br>Phone (509) 413-3739                                 | November           | January   | February  | Updates rule to be equivalent to federal acts in order to conduct feed inspections under state credentials.   |
| <b>PESTICIDE [PESTICIDE] MANAGEMENT DIVISION</b> |   |   |                    |           |           |   |
| 16-228   | General pesticide rules   | Joel Kangiser<br>Pesticide Management Division<br>Phone (360) 902-2013              | June               | August    | October   | Establishes a "specialty" classification (and multiple exams) for pest control areas where there is a low number of licensees and moves some of the existing specialized licensing classes into it.   |
| 16-233   | Worker protection standards   | Joel Kangiser<br>Pesticide Management Division<br>Phone (360) 902-2013              | July               | Expedited | September | Adopts the recently updated federal EPA standards.  |
| <b>PLANT PROTECTION DIVISION</b>                 |   |   |                    |           |           |   |
| 16-350   | Registration and certification of fruit tree planting stock           | Cindy Cooper<br>Plant Services Program<br>Phone (360) 902-2062                      | July 2015          | October   | December  | Amends the voluntary fruit tree certification program by: Defining terminology, recognizing the Clean Plant Center Northwest as the primary foundation source, allowing an extra generation of prunus trees for propagation, and allowing the use of tissue culture to propagate registered stool beds. |
| 16-470   | Quarantine—Agricultural pests (apple maggot quarantine)               | Jim Marra<br>Pest Program<br>Phone (360) 902-2071                                   | March 2015         | August    | October   | Adds municipal solid waste, yard debris, organic feedstock, organic materials, and agricultural waste to the regulated articles for apple maggot; establishes a special permit to allow transportation of these articles from the quarantine area for disposition or treatment in the pest-free area.   |
| 16-470   | Quarantine—Agricultural pests (apple maggot quarantine)               | Jim Marra<br>Pest Program<br>Phone (360) 902-2071                                   | December 2015      | May       | July      | Modifies the boundaries of the quarantine area to include the southeast portion of Lincoln County.  |
| 16-662   | Weights and measures—National handbooks and retail sale of motor fuel | Jerry Buendel<br>Weights and Measures Program<br>Phone (360) 902-1856               | November 2015      | July      | August    | Adopts the 2016 version of multiple handbooks and establishes in rule a civil penalty matrix for violations of the Motor Fuel Quality Act.  |

Henri Gonzales  
Rules Coordinator

**WSR 16-14-041**  
**NOTICE OF PUBLIC MEETINGS**  
**HORSE RACING COMMISSION**  
[Filed June 28, 2016, 11:33 a.m.]

The meeting originally scheduled for October 14, 2016, will now be held on October 7, 2016. The meeting will be at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

The Washington horse racing commission is revising its published notice of 2016 meeting dates and locations.

The location for the August 12, 2016, and September 9, 2016, meeting will now be held at 2300 Ron Crockett Drive, Auburn, WA 98001.

**WSR 16-14-042**  
**NOTICE OF PUBLIC MEETINGS**  
**GRAYS HARBOR COLLEGE**

[Filed June 28, 2016, 12:49 p.m.]

The Grays Harbor College board of trustees is holding a special meeting on Monday, June 27, 2016, at 11:00 a.m. in the Manspeaker Instructional Building on the Grays Harbor College campus.

**WSR 16-14-047**  
**AGENDA**  
**PARKS AND RECREATION**  
**COMMISSION**

[Filed June 29, 2016, 7:22 a.m.]

In accordance with RCW 34.05.314, the state parks and recreation commission submits this semi-annual agenda for rules under development for publishing in the Washington state register.

State parks is conducting a thorough review and may have additional rules as conditions arise.

Any questions related to the specific rules identified in the agenda can be directed to the manager or Valeria Evans, Rules Coordinator, 1111 Israel Road, Olympia, WA 98504-2560, (360) 902-8597 or [valeria.evans@parks.wa.gov](mailto:valeria.evans@parks.wa.gov).

**Semi-Annual Rule-Making Agenda**  
**July 1 - December 2016**  
**Rules Under Development**

| <b>WAC Citation</b>                        | <b>Reason and/or Expected Outcome</b>   | <b>Contact</b>  | <b>Status of Rule Making</b> | <b>Anticipated Date of Adoption</b> | <b>Comments</b>   |
|--|---|---|------------------------------|-------------------------------------|---|
| WAC 352-32-030<br>Camping.                 | Staff proposes to amend this rule to better support state parks as [a] primarily fee-for-service agency. Some programs identified in this rule were rescinded or modified.                                | Todd Tatum<br>Business Development Manager<br>P.O. Box 42650<br>Olympia, WA 98502<br>(360) 902-8631<br><a href="mailto:Todd.Tatum@parks.wa.gov">Todd.Tatum@parks.wa.gov</a> | Anticipating                 |                                     | January 24, 2013, commission directed staff to modify rule to conform to Commission Policy 37-13-1. |
| WAC 352-32-085<br>Technical rock climbing. | Staff recommend[s] changing part of subsection (3) to be consistent with closure provisions recommended in WAC 352-32-050 Park periods.   | Ed Girard<br>Operations Manager<br>P.O. Box 42650<br>Olympia, WA 98502<br>(360) 902-8847<br><a href="mailto:Ed.Girard@parks.wa.gov">Ed.Girard@parks.wa.gov</a>              | Anticipating                 |                                     |   |
| WAC 352-37-105<br>Fires and campfires.     | On the ocean beaches, the agency does not provide designated campfire pits, rings or other campfire enclosures. A portion of this WAC section is superfluous, and staff recommends that it be eliminated. | Ed Girard<br>Operations Manager<br>P.O. Box 42650<br>Olympia, WA 98502<br>(360) 902-8847<br><a href="mailto:Ed.Girard@parks.wa.gov">Ed.Girard@parks.wa.gov</a>              | Anticipating                 |                                     |   |
| WAC 352-32-250<br>Standard fees charged.   | Staff proposes to amend this rule to better support state parks as [a] primarily fee-for-service agency. Some programs identified in this rule were rescinded or modified.                                | Todd Tatum<br>Business Development Manager<br>P.O. Box 42650<br>Olympia, WA 98502<br>(360) 902-8631<br><a href="mailto:Todd.Tatum@parks.wa.gov">Todd.Tatum@parks.wa.gov</a> | Anticipating                 |                                     | January 24, 2013, commission directed staff to modify rule to conform Commission Policy 37-13-1.    |

| WAC Citation  | Reason and/or Expected Outcome   | Contact  | Status of Rule Making | Anticipated Date of Adoption | Comments  |
|---|--|--|-----------------------|------------------------------|---|
| WAC 352-32-251<br>Limited income senior citizen, disability, and disabled veteran passes. | Staff proposes to amend this rule to better support state parks as [a] primarily fee-for-service agency. Some programs identified in this rule were rescinded or modified. | Todd Tatum<br>Business Development Manager<br>P.O. Box 42650<br>Olympia, WA 98502<br>(360) 902-8631<br>Todd.Tatum@parks.wa.gov | Anticipating          |                              | January 24, 2013, commission directed staff to modify rule to conform to Commission Policy 37-13-1. |
| WAC 352-32-251<br>Limited income senior citizen, disability, and disabled veteran passes. | Editing for consistent language and some minor changes such as adding free day access.   | Linda Burnett<br>P.O. Box 426520 [42650]<br>Olympia, WA 98504<br>(360) 902-8561<br>Linda.Burnett@parks.wa.gov                  | Anticipating          |                              |   |
| WAC 352-32-252<br>Off-season senior citizen passes—Fee.                                   | Editing for consistent language and some minor changes such as adding free day access.   | Linda Burnett<br>P.O. Box 426520 [42650]<br>Olympia, WA 98504<br>(360) 902-8561<br>Linda.Burnett@parks.wa.gov                  | Anticipating          |                              |   |
| WAC 352-32-253<br>Foster parent program.  | Editing for consistent language and some minor changes such as adding free day access.   | Linda Burnett<br>P.O. Box 426520 [42650]<br>Olympia, WA 98504<br>(360) 902-8561<br>Linda.Burnett@parks.wa.gov                  | Anticipating          |                              |   |
| WAC 352-37-200<br>Special group recreation event permit.                                  | Staff recommends the agency address in subsection (4) be changed to reflect current headquarters address.  | Ed Girard<br>Operations Manager<br>P.O. Box 42650<br>Olympia, WA 98502<br>(360) 902-8847<br>Ed.Girard@parks.wa.gov             | Anticipating          |                              |   |

Valeria Evans  
Management Analyst

**WSR 16-14-055**  
**DEPARTMENT OF COMMERCE**

[Filed June 30, 2016, 9:24 a.m.]

The Washington state department of commerce plans to hold a public hearing on the proposed Washington state plan for the 2017-2018 community services block grant (CSBG).

The plan can be viewed as of July 1-24, 2016, on our current web site at <http://www.commerce.wa.gov/Programs/services/Pages/CommunityServicesBlockGrantProgram.aspx>.

Starting July 25, 2016, the plan can be viewed on our new web site at <http://www.commerce.wa.gov/serving-communities/community-opportunities/community-services-block-grants/>.

The hearing will be held on Tuesday, August 2, 2016, from 10:00 a.m. - 12:00 p.m. at Department of Commerce, 2nd Floor Conference Room #230, 1011 Plum Street S.E., Olympia, WA 98504-2525.

Two typewritten copies of all oral testimony are requested. There will be a question and answer period. Written testimony will be accepted until 5:00 p.m. August 2, 2016.

Written testimony for the CSBG hearing should be sent to the attention of Diane Fay, Department of Commerce,

1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525.

Alternate format plans are available upon request by mail or TTY (360) 586-4623. Meetings sponsored by commerce are accessible to persons with disabilities. Accommodations may be arranged with a minimum of ten working days' notice to Monica Bhavnani at (360) 725-2854 or [Monica.Bhavnani@commerce.wa.gov](mailto:Monica.Bhavnani@commerce.wa.gov). A copy of the document can be mailed to you upon request.

If you have any questions or need additional information, please contact Monica Bhavnani at (360) 725-2854 or [monica.bhavnani@commerce.wa.gov](mailto:monica.bhavnani@commerce.wa.gov).

**WSR 16-14-058**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed June 30, 2016, 1:20 p.m.]

I am requesting that the code reviser decodify and recodify the following sections in chapter 388-101 WAC, effective August 1, 2016:

| <b>Current WAC Number and Title</b>   | <b>New Number - Same Title</b> | <b>Current WAC Number and Title</b>   | <b>New Number - Same Title</b> |
|---|--------------------------------|---|--------------------------------|
| 388-101-3040 Residential services contract  | 388-101D-0020                  | 388-101-3380 Client transportation  | 388-101D-0165                  |
| 388-101-3190 Service provider responsibilities  | 388-101D-0025                  | 388-101-3390 Physical and safety requirements                                     | 388-101D-0170                  |
| 388-101-3200 Staffing requirements  | 388-101D-0030                  | 388-101-3400 Services to nonclients   | 388-101D-0175                  |
| 388-101-3205 Liability insurance required   | 388-101D-0035                  | 388-101-3410 Community protection clients and other clients in the same household | 388-101D-0180                  |
| 388-101-3206 Liability insurance required—Commercial general liability insurance or business liability insurance coverage | 388-101D-0040                  | 388-101-3420 Client refusal to participate in services                            | 388-101D-0185                  |
| 388-101-3207 Liability insurance required—Professional liability insurance coverage                                       | 388-101D-0045                  | 388-101-3430 Changes in client service needs—Nonemergent                          | 388-101D-0190                  |
| 388-101-3210 Administrative documents   | 388-101D-0050                  | 388-101-3440 Changes in client service needs—Emergent                             | 388-101D-0195                  |
| 388-101-3220 Administrator responsibilities and training  | 388-101D-0055                  | 388-101-3450 Service provider refusal to serve a client                           | 388-101D-0200                  |
| 388-101-3240 Policies and procedures  | 388-101D-0060                  | 388-101-3460 Individual support plan  | 388-101D-0205                  |
| 388-101-3245 Background check—General   | 388-101D-0065                  | 388-101-3470 Development of the individual instruction and support plan           | 388-101D-0210                  |
| 388-101-3258 Training requirements  | 388-101D-0085                  | 388-101-3480 Documentation of the individual instruction and support plan         | 388-101D-0215                  |
| 388-101-3260 Staff training   | 388-101D-0090                  | 388-101-3490 Implementation of the individual instruction and support plan        | 388-101D-0220                  |
| 388-101-3270 Staff training before working alone with clients   | 388-101D-0095                  | 388-101-3500 Accessibility of the individual instruction and support plan         | 388-101D-0225                  |
| 388-101-3280 Staff training within four weeks of employment   | 388-101D-0100                  | 388-101-3510 Ongoing updating of the individual instruction and support plan      | 388-101D-0230                  |
| 388-101-3290 Staff training within six months of employment   | 388-101D-0105                  | 388-101-3520 Shared expenses and client related funds                             | 388-101D-0235                  |
| 388-101-3300 Staff training to be current   | 388-101D-0110                  | 388-101-3530 Individual financial plan  | 388-101D-0240                  |
| 388-101-3302 Certified community residential services and supports—General training requirements                          | 388-101D-0115                  | 388-101-3540 Managing client funds  | 388-101D-0245                  |
| 388-101-3310 Approval of staff-coverage schedules   | 388-101D-0120                  | 388-101-3545 Using client funds for health services                               | 388-101D-0250                  |
| 388-101-3320 Client rights  | 388-101D-0125                  | 388-101-3550 Reconciling and verifying client accounts                            | 388-101D-0255                  |
| 388-101-3330 Treatment of clients   | 388-101D-0130                  | 388-101-3560 Combining service provider and client funds                          | 388-101D-0260                  |
| 388-101-3340 Subcontracting   | 388-101D-0135                  | 388-101-3570 Client bankbooks and bankcards                                       | 388-101D-0265                  |
| 388-101-3350 Residential guidelines   | 388-101D-0140                  | 388-101-3580 Client financial records   | 388-101D-0270                  |
| 388-101-3360 Client services  | 388-101D-0145                  |   |                                |
| 388-101-3370 Client health services support   | 388-101D-0150                  |   |                                |
| 388-101-3372 Medical devices  | 388-101D-0155                  |   |                                |
| 388-101-3375 Nurse delegation   | 388-101D-0160                  |   |                                |

| <b>Current WAC Number and Title</b>                         | <b>New Number - Same Title</b> | <b>Current WAC Number and Title</b>   | <b>New Number - Same Title</b> |
|---|--------------------------------|---|--------------------------------|
| 388-101-3590 Transferring client funds                      | 388-101D-0275                  | 388-101-3860 Positive behavior support plan   | 388-101D-0410                  |
| 388-101-3600 Client loans                                   | 388-101D-0280                  | 388-101-3870 Client protection  | 388-101D-0415                  |
| 388-101-3610 Client reimbursement                           | 388-101D-0285                  | 388-101-3880 Group home providers   | 388-101D-0420                  |
| 388-101-3620 Client payment                                 | 388-101D-0290                  | 388-101-3890 Restrictive procedures   | 388-101D-0425                  |
| 388-101-3630 Medication services—General                    | 388-101D-0295                  | 388-101-3900 Restrictive procedures approval  | 388-101D-0430                  |
| 388-101-3640 Medication—Types of support                    | 388-101D-0300                  | 388-101-3910 Physical intervention systems  | 388-101D-0435                  |
| 388-101-3650 Medication—Self-administration                 | 388-101D-0305                  | 388-101-3920 Physical interventions   | 388-101D-0440                  |
| 388-101-3660 Medication assistance                          | 388-101D-0310                  | 388-101-3930 Restrictive physical interventions                                     | 388-101D-0445                  |
| 388-101-3670 Medication administration—Nurse delegation     | 388-101D-0315                  | 388-101-3940 Physical intervention training   | 388-101D-0450                  |
| 388-101-3680 Medication administration                      | 388-101D-0320                  | 388-101-3950 Mechanical and chemical restraints                                     | 388-101D-0455                  |
| 388-101-3690 Medication refusal                             | 388-101D-0325                  | 388-101-3960 Monitoring physical and mechanical restraints                          | 388-101D-0460                  |
| 388-101-3700 Storage of medications                         | 388-101D-0330                  | 388-101-3970 Community protection—Approval  | 388-101D-0465                  |
| 388-101-3710 Medication organizers                          | 388-101D-0335                  | 388-101-3980 Community protection—Policies and procedures                           | 388-101D-0470                  |
| 388-101-3720 Medications—Documentation                      | 388-101D-0340                  | 388-101-3990 Community protection—Treatment team meetings                           | 388-101D-0475                  |
| 388-101-3730 Disposal of medications                        | 388-101D-0345                  | 388-101-4000 Community protection—Staff training                                    | 388-101D-0480                  |
| 388-101-3740 Psychoactive medication assessment             | 388-101D-0350                  | 388-101-4010 Community protection—Treatment plan                                    | 388-101D-0485                  |
| 388-101-3750 Psychoactive medication treatment plan         | 388-101D-0355                  | 388-101-4020 Community protection—Client records                                    | 388-101D-0490                  |
| 388-101-3760 Psychoactive medication monitoring             | 388-101D-0360                  | 388-101-4030 Community protection—Client transportation                             | 388-101D-0495                  |
| 388-101-3770 Psychoactive medications—Other                 | 388-101D-0365                  | 388-101-4040 Community protection—Program residential location                      | 388-101D-0500                  |
| 388-101-3780 Confidentiality of client records              | 388-101D-0370                  | 388-101-4050 Community protection—Reducing a client's restrictions                  | 388-101D-0505                  |
| 388-101-3790 Charging for searching and duplicating records | 388-101D-0375                  | 388-101-4060 Community protection—Leaving the program against treatment team advice | 388-101D-0510                  |
| 388-101-3800 Retention of client records                    | 388-101D-0380                  | 388-101-4070 Crisis diversion—Access to services                                    | 388-101D-0515                  |
| 388-101-3810 Contents of client records                     | 388-101D-0385                  | 388-101-4080 Crisis diversion bed services—Location                                 | 388-101D-0520                  |
| 388-101-3820 Client's property records                      | 388-101D-0390                  | 388-101-4090 Crisis diversion bed services—Services and activities                  | 388-101D-0525                  |
| 388-101-3830 Record entries                                 | 388-101D-0395                  | 388-101-4100 Crisis diversion bed services—Treatment plan                           | 388-101D-0530                  |
| 388-101-3840 Positive behavior support                      | 388-101D-0400                  |   |                                |
| 388-101-3850 Functional assessment                          | 388-101D-0405                  |   |                                |

| Current WAC Number and Title   | New Number - Same Title | Current WAC Number and Title   | New Number - Same Title |
|--|-------------------------|--|-------------------------|
| 388-101-4110 Crisis diversion bed and support service providers—Client records | 388-101D-0535           | 388-101-4130 Crisis diversion support services—Location                | 388-101D-0545           |
| 388-101-4120 Crisis diversion bed services—Client records                      | 388-101D-0540           | 388-101-4140 Crisis diversion support services—Services and activities | 388-101D-0550           |

Katherine Iyall Vasquez  
Rules Coordinator

**WSR 16-14-060**  
AGENDA  
**NOXIOUS WEED CONTROL BOARD**  
[Filed June 30, 2016, 1:48 p.m.]

Following is the state noxious weed control board's semi-annual rules development agenda for the period of July 1 through December 31, 2016. This document is being sent in compliance with RCW 34.05.314.

The board may undertake additional rule-making activity as conditions warrant. If you have any questions, please contact Alison Halpern at (360) 902-2053 or ahalpern@agr.wa.gov.

**Semi-Annual Rules Agenda**  
**July 1 - December 31, 2016**  
**P.O. Box 42560, Olympia, WA 98504-2560**

|            |   |   | Tentative Timeline |           |          |  |
|------------|---|---|--------------------|-----------|----------|--|
| WAC Number | Rule Title  | Agency Contact  | CR-101             | CR-102    | CR-103   | Subject of Rule Making   |
| 16-750     | State noxious weed list and schedule of monetary penalties. | Alison Halpern<br>Executive Secretary<br>phone (360) 902-2053 | July               | September | November | Possible changes to noxious weed list and state weed board bylaws. |

Alison Halpern  
Executive Secretary

**WSR 16-14-063**  
**DEPARTMENT OF ECOLOGY**  
[Filed June 30, 2016, 2:41 p.m.]

**PUBLIC NOTICE**  
**Announcing the Reissuance of the Fresh Fruit Packing Industry General Permit**

**Permit:** The Washington state department of ecology (ecology) is reissuing the fresh fruit packing industry NPDES and state waste discharge general permit (permit). The new permit will be in effect for a term of five years, from the effective date of September 1, 2016, through August 31, 2021.

**Purpose of the Permit:** The purpose of the fresh fruit packing industry general permit is to regulate the discharge of wastewater from fresh fruit packing facilities. This permit meets the requirements of chapters 90.48, 90.52, and 90.54

RCW as amended, and the Federal Water Pollution Control Act (FWPCA) (Title 33 United States Code, Section 1251 et seq.) as amended. All requirements of 40 Code of Federal Regulations (C.F.R.) 122.41 and 122.42 are incorporated in this general permit by reference. This general permit establishes treatment/disposal methods, effluent limits, and best management practices for discharges from the fresh fruit packing industry. Compliance with this general permit is anticipated to protect human health and waters of the state.

**Summary of Public Involvement:** A public notice of draft permit was published in the legal section of the Yakima Herald-Republic, the Wenatchee Daily World on May 4, 2016, and in the Washington State Register (WSR 16-09-074). A mailing containing this notice was sent to all current permittees and other interested parties. A public comment period for the draft permit and supporting documents was held from May 4 through June 17, 2016. Ecology held public

workshops on May 18, 2016, in Union Gap and on May 19, 2016, in Leavenworth. A public hearing was held on June 9, 2016, at the Central Region Office in Union Gap.

**Copies of Permit and Fact Sheet:** The final permit and fact sheet may [be] downloaded at [http://www.ecy.wa.gov/programs/wq/permits/fruit\\_packers/index.html](http://www.ecy.wa.gov/programs/wq/permits/fruit_packers/index.html); or you may request a copy from Cynthia Huwe, (509) 457-7105 or e-mail [cynthia.huwe@ecy.wa.gov](mailto:cynthia.huwe@ecy.wa.gov).

**Applying for Coverage Under the Permit:** Facilities that applied for coverage and are covered under the existing general permit will also be covered under the new permit. New or unpermitted facilities may obtain coverage under the new permit by submitting a complete permit application to ecology and satisfying all applicable public notice and State Environmental Policy Act requirements (WAC 173-226-200). The application for coverage is available online at [http://www.ecy.wa.gov/programs/wq/permits/fruit\\_packers/index.html](http://www.ecy.wa.gov/programs/wq/permits/fruit_packers/index.html).

**Appeal Procedures:** In accordance with **chapter 43.21B RCW**, the terms and conditions of this permit may be appealed within thirty days of the issuance of the permit. An

appeal must be filed in writing to both the pollution control hearings board and ecology at the address provided below. Appeals may not be delivered by e-mail.

The terms and conditions of this permit, *as they apply to an individual discharger*, may be appealed within thirty days of the effective date of coverage of that discharger, in accordance with **chapter 43.21B RCW**. This type of appeal is limited to the permit's applicability or nonapplicability to a specific discharger.

**Street Address:** Pollution Control Hearings Board, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501; or the Department of Ecology, Attn: Appeals Processing Desk, 300 Desmond Drive S.E., Lacey, WA 98503.

**Mailing Address:** Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903; or the Department of Ecology, Attn: Appeals Processing Desk, P.O. Box 47608, Olympia, WA 98504-7608.

**Further Information:** Contact Sanjay Barik at [sanjay.barik@ecy.wa.gov](mailto:sanjay.barik@ecy.wa.gov) or (509) 454-4247; or Marcia Porter at [marcia.porter@ecy.wa.gov](mailto:marcia.porter@ecy.wa.gov) or (509) 454-7864; or at 1250 West Alder Street, Union Gap, WA.

**WSR 16-14-064**

**AGENDA**

**RECREATION AND CONSERVATION OFFICE**

(Recreation and Conservation Funding Board)

(Salmon Recovery Funding Board)

[Filed June 30, 2016, 3:02 p.m.]

Following is the semi-annual rule-making agenda for the recreation and conservation funding board and salmon recovery funding board, prepared by the recreation and conservation office, for publication in the Washington State Register pursuant to RCW 34.05.314. There may be additional rule-making activity not on the agenda as conditions warrant.

If you have questions about this rule-making agenda, please contact Leslie Connelly, Rules Coordinator, P.O. Box 40917, Olympia, WA 98504-0917, (360) 902-3080, or [leslie.connelly@rco.wa.gov](mailto:leslie.connelly@rco.wa.gov).

| WAC Chapter   | Purpose of Rule Being Developed or Amended  | Current Activity     |                                      |                    |
|---|---|----------------------|--------------------------------------|--------------------|
|   |   | Preproposal (CR-101) | Proposal (CR-102) Expedited (CR-105) | Permanent (CR-103) |
| Chapter 286-04 WAC, General and chapter 286-13 WAC, General grant assistance rules. | (1) Allow the director to apply chapter 286-13 WAC to grant programs administered by the recreation and conservation office;<br>(2) Include an option for a technical review of applications before final evaluation;<br>(3) Clarify the evaluation process and who makes final decisions;<br>(4) Allow the director to determine application deadlines;<br>(5) Modify the deadline for an applicant's plan;<br>(6) Add deadlines for reimbursement of grant funds and final project deliverables; and<br>(7) Clarify eligible grant costs. | 4/5/16               | 5/31/16                              | 7/15/16            |



| WAC Chapter   | Purpose of Rule Being Developed or Amended   | Current Activity     |                                      |                    |
|---|--|----------------------|--------------------------------------|--------------------|
|   |  | Preproposal (CR-101) | Proposal (CR-102) Expedited (CR-105) | Permanent (CR-103) |
| Chapter 286-26 WAC, Nonhighway road and off-road vehicle funds. | Repeal chapter and move the rules into chapter 286-13 WAC, General grant assistance rules. | 11/2/16              | 12/21/16                             | 1/31/17            |
| Chapter 286-27 WAC, Washington wildlife and recreation program. | Repeal chapter and move the rules into chapter 286-13 WAC, General grant assistance rules. | 11/2/16              | 12/21/16                             | 1/31/17            |
| Chapter 286-35 WAC, Boating facilities program.                 | Repeal chapter and move the rules into chapter 286-13 WAC, General grant assistance rules. | 11/2/16              | 12/21/16                             | 1/31/17            |
| Chapter 286-40 WAC, Land and water conservation fund.           | Repeal chapter and move the rules into chapter 286-13 WAC, General grant assistance rules. | 11/2/16              | 12/21/16                             | 1/31/17            |
| Chapter 286-42 WAC, Aquatic lands enhancement account program.  | Repeal chapter and move the rules into chapter 286-13 WAC, General grant assistance rules. | 11/2/16              | 12/21/16                             | 1/31/17            |
| Title 420 WAC, new chapter                                      | Duties of the governor's salmon recovery office.   | 12/7/16              | 1/20/17                              | 3/31/17            |
| Title 420 WAC, new chapter                                      | Duties of lead entities.   | 12/7/16              | 1/20/17                              | 3/31/17            |
| Title 420 WAC, new chapter                                      | Duties of regional recovery organizations.   | 12/7/16              | 1/20/17                              | 3/31/17            |

**WSR 16-14-066**

**AGENDA**

**OFFICE OF THE CODE REVISER**

[Filed June 30, 2016, 3:52 p.m.]

**Semi-Annual Rule-Making Agenda  
July through December 2016**

Following is the office of the code reviser's semi-annual rule-making agenda for publication in the Washington State Register pursuant to RCW 34.05.314.

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

If you have questions about this rule-making agenda, please contact Kerry S. Radcliff, Rules Coordinator, P.O. Box 40551, Olympia, WA 98504-0551, phone (360) 786-6697, fax (360) 786-1529, e-mail Radcliff.Kerry@leg.wa.gov.

| WAC Citation     | Subject Matter   | Current Activity   |   |                    |
|------------------|--|--|---|--------------------|
|                  |  | Preproposal (CR-101)   | Proposed (CR-102) or Expedited (CR-105) | Permanent (CR-103) |
| Chapter 1-21 WAC | The changes may include, but not be limited to, filing deadlines; creating explanatory language that will set out in rule a process for accepting electronic filings; and clarifying specific procedures for filing WSR documents. | WSR 06-01-003 filed December 7, 2005. Will refile CR-101 as we begin the rule-making process, possibly in 2016-2017. |   |                    |

Kerry S. Radcliff  
Rules Coordinator

**WSR 16-14-070****AGENDA****UNIVERSITY OF WASHINGTON**

[Filed July 1, 2016, 9:12 a.m.]

**Semi-Annual Agenda for Rules Under Development  
(Per RCW 34.05.314)  
July 2016**

Rule-making activity not now anticipated may also be added as conditions warrant between semi-annual agendas:

1. Rule making will continue for chapter 478-160 WAC, Admission and registration procedures for the University of Washington, during the second half of 2016 (a CR-101 was filed on August 5, 2015).

2. Rule making is anticipated for WAC 478-160-163 Waivers of tuition and fees, during the second half of 2016.

3. Rule making is anticipated for housekeeping amendments to multiple Title 478 WAC rules during the second half of 2016.

For more information concerning the above rules, please contact Rebecca Goodwin Deardorff, Director of Rules Coordination, University of Washington, Box 351210, Seattle, WA 98195-1210, phone (206) 543-9219, e-mail rules@uw.edu, web www.washington.edu/rules/.

**WSR 16-14-072****POLICY STATEMENT****UNIVERSITY OF WASHINGTON**

[Filed July 1, 2016, 9:16 a.m.]

The University of Washington (UW) has recently created or revised the following policy statements, orders, internal codes, and bylaws:

- "Reorganization, Consolidation, and Elimination Procedures," revised effective January 7, 2016 (*Faculty Code*, Chapter 26, Section 26-41).
- "Administrative and Conciliatory Proceedings for the Resolution of Differences," multiple sections revised effective January 7, 2016 (*Faculty Code*, Chapter 27).
- "Adjudicative Proceedings for the Resolution of Differences," multiple sections revised effective January 7, 2016 (*Faculty Code*, Chapter 28).
- "Information Security and Privacy Incident Reporting and Management Policy," revised effective January 7, 2016 (Administrative Policy Statement 2.5).
- "Research Misconduct Policy," revised effective February 12, 2016 (Executive Order No. 61).
- "Managing Asbestos and Other Regulated Building Materials," new effective March 14, 2016 (Administrative Policy Statement 12.1).
- "Conflict of Interest Regarding Appointment, Employment, and Academic Decisions," revised effective March 30, 2016 (*Faculty Code*, Chapter 24, Section 24-50).
- "The Vice President for Finance and Facilities," revised and renumbered effective May 9, 2016 (Administrative Order No. 9).

- "The Vice President for Student Life," revised and renumbered effective May 9, 2016 (Administrative Order No. 10).
- "Information Technology, Telecommunications and Networking Projects and Acquisitions Policy," revised effective May 11, 2016 (Administrative Policy Statement 2.3).
- "Committees of the Board," revised effective May 12, 2016 (*Board of Regents Governance*, Bylaws, Article IV).
- "Advisory Committees of the Board of Regents," revised effective May 12, 2016 (*Board of Regents Governance*, Standing Orders, Chapter 4).
- "Eligibility for Election to the Senate," revised effective May 18, 2016 (*Faculty Code*, Chapter 22, Section 22-43).
- "The Grading System," revised effective June 14, 2016 (*Student Governance and Policies*, Chapter 110, Section 1).
- "Reasonable Accommodation of Students with Disabilities," new effective June 20, 2016 (*Student Governance and Policies*, Chapter 208).
- "Nondiscrimination and Affirmative Action," revised effective June 21, 2016 (Executive Order No. 31).
- "Sexual Violence Elimination Policy,[""] new effective June 21, 2016 (Executive Order No. 51).
- "Institutional Overhead Policy,[""] revised effective June 21, 2016 (Administrative Policy Statement 33.2).

To view any item noted above, see the UW Policy Directory [washington.edu/admin/rules/policies/](http://washington.edu/admin/rules/policies/). For more information regarding these materials contact Rebecca Goodwin Deardorff, Director of Rules Coordination, University of Washington, Box 351210, Seattle, WA 98195-1210, or e-mail rules@uw.edu.

**WSR 16-14-077****NOTICE OF PUBLIC MEETINGS****LOWER COLUMBIA COLLEGE**

[Filed July 1, 2016, 9:41 a.m.]

The Lower Columbia College board of trustees has revised their meeting schedule for the remainder of 2016.

If you have any questions, please don't hesitate to contact Christopher C. Bailey, JD, President.

**2016 MEETING SCHEDULE****Updated June 22, 2016**

The trustees meet on the third Wednesday of each month at 5:00 in the Heritage Room of the Administration Building unless noted differently below.

|                   |           |  |
|-------------------|-----------|--|
| January 20, 2016  | 5:00 p.m. | Regular Meeting                                      |
| February 17, 2016 | 8:30 a.m. | Workshop (all day)                                   |
| March 9, 2016     | 5:00 p.m. | Special Executive Session<br>ADM 205 (training room) |
| March 16, 2016    | 5:00      | Regular Meeting                                      |

|                               |  |                 |
|-------------------------------|--|-----------------|
| April 20, 2016                | 5:00 p.m.                                    | Regular Meeting |
| May 18, 2016                  | 5:00 p.m.                                    | Regular Meeting |
| June 22, 2016                 | 5:00 p.m.                                    | Regular Meeting |
| <del>July 20, 2016</del>      | Cancelled and rescheduled to August 29, 2016 |                 |
| August 29, 2016               | 8:30 p.m.                                    | Workshop        |
| <del>September 21, 2016</del> | Cancelled due [to] late summer workshop      |                 |
| October 19, 2016              | 5:00 p.m.                                    | Regular Meeting |
| November 16, 2016             | 5:00 p.m.                                    | Regular Meeting |
| December 14, 2016             | 5:00 p.m.                                    | Regular Meeting |

(moved up one week due to winter efficiency closure)

|               |                    |
|---------------|--------------------|
|               | Madsen, C.J.       |
| Johnson, J.   | Wiggins, J.        |
| Owens, J.     | Gonzalez, J.       |
| Fairhurst, J. | Gordon McCloud, J. |
| Stephens, J.  | Yu, J.             |

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-16 issue of the Register.

**WSR 16-14-088**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
[June 29, 2016]

**WSR 16-14-089**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
[June 29, 2016]

IN THE MATTER OF THE EXPEDITED ) ORDER  
ADOPTION OF CrR 4.2(g), STATE- ) NO. 25700-A-1155  
MENT OF DEFENDANT ON PLEA OF )  
GUILTY TO NONSEX OFFENSES; CrR )  
4.2(g), STATEMENT OF DEFENDANT )  
ON PLEA OF GUILTY TO SEX )  
OFFENSE; CrR 4.2(g) FELONY FIRE- )  
ARM OFFENDER REGISTRATION )  
ATTACHMENT; JuCR 7.7, STATEMENT )  
ON PLEA OF GUILTY; JuCR 7.7 FEL- )  
ONY FIREARM OFFENDER REGIS- )  
TRATION ATTACHMENT; CrRLJ 4.2(g) )  
STATEMENT OF DEFENDANT ON )  
PLEA OF GUILTY; CrRLJ 4.2(g) "DUI" )  
ATTACHMENT; CrRLJ 4.2(i) PETITION )  
FOR DEFERRED PROSECUTION; )  
CrRLJ 4.2(i) PETITION FOR )  
DEFERRED PROSECUTION OF CRIMI- )  
NAL MISTREATMENT CHARGE )

IN THE MATTER OF THE EXPEDITED ) ORDER  
ADOPTION OF GR 27—FAMILY LAW ) NO. 25700-A-1156  
COURTHOUSE FACILITATORS )

The Washington State Association of County Clerks' Proposed Amendment to GR 27—Family Law Courthouse Facilitators, having recommended the expeditious adoption of the proposed amendment to GR 27—Family Law Courthouse Facilitators, 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 expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 29th day of June, 2016.

The Washington State Pattern Forms Committee, having recommended the expeditious adoption of the proposed changes to CrR 4.2(g), Statement of Defendant on Plea of Guilty to Non-Sex Offenses; CrR 4.2(g), Statement of Defendant on Plea of Guilty to Sex Offense; CrR 4.2(g) Felony Firearm Offender Registration Attachment; JuCR 7.7, Statement on Plea of Guilty; JuCR 7.7 Felony Firearm Offender Registration Attachment; CrRLJ 4.2(g) Statement of Defendant on Plea of Guilty; CrRLJ 4.2(g) "DUI" Attachment; CrRLJ 4.2(i) Petition for Deferred Prosecution; CrRLJ 4.2(i) Petition for Deferred Prosecution of Criminal Mistreatment Charge, 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 expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 29th day of June, 2016.

|               |                    |
|---------------|--------------------|
|               | Madsen, C.J.       |
| Johnson, J.   | Wiggins, J.        |
| Owens, J.     | Gonzalez, J.       |
| Fairhurst, J. | Gordon McCloud, J. |
| Stephens, J.  | Yu, J.             |

GR 27  
FAMILY LAW COURTHOUSE FACILITATORS

(a) Generally, RCW 26.12.240 and RCW 11.88.170 provide a county may create a courthouse facilitator program to provide basic services to pro se litigants in family law and guardianship cases. This Rule applies only to courthouse facilitator programs created pursuant to RCW 26.12.240 or RCW 11.88.170.

(b) The Washington State Supreme Court shall create a Family Courthouse Facilitator Advisory Committee supported by the Administrative Office of the Courts to establish minimum qualifications and develop and administer a curriculum of initial and ongoing training requirements for family

law and guardianship courthouse facilitators. The Administrative Office of the Courts shall assist counties in administering family law courthouse facilitator programs.

(c) Definitions. For the purpose of this rule the following definitions apply:

(1) A Family Law Courthouse Facilitator is an individual or individuals who has or have met or exceeded the minimum qualifications and completed the curriculum developed by the Administrative Office of the Courts Courthouse Facilitator Advisory Committee and who is or are providing basic services in family law or guardianship cases in a Superior Court.

(2) Family Law Cases include, but are not limited to, dissolution of marriage, modification of dissolution matters such as child support, parenting plans, non-parental custody or visitation, and parentage by unmarried persons to establish paternity, child support, child custody and visitation.

(3) Guardianship cases include cases filed under RCW 11.88, RCW 11.90, RCW 11.92 and RCW 73.36.

(4) "Basic Service" includes but is not limited to:

a) referral to legal and social service resources, including lawyer referral and alternate dispute referral programs and resources on obtaining family law forms and instructions;

b) assistance in calculating child support using standardized computer based program based on financial information provided by the pro se litigant;

c) processing interpreter requests for facilitator assistance and court hearings;

d) assistance in selection as well as distribution of forms and standardized instructions that have been approved by the court, clerk's office, or the Administrative Office of the Courts;

e) assistance in completing forms that have been approved by the court, clerk's office, or the Administrative Office of the Courts;

f) explanation of legal terms;

g) information on basic court procedures and logistics including requirements for service, filing, scheduling hearings and complying with local procedures;

h) review of completed forms to determine whether forms have been completely filled out but not as to substantive content with respect to the parties' legal rights and obligations;

i) previewing pro se documents prior to hearings for matters such as dissolution of marriage, review hearings, and show cause and temporary relief motions calendars under the direction of the Clerk or Court to determine whether procedural requirements have been complied with;

j) attendance at pro se hearings to assist the Court with pro se matters;

k) assistance with preparation of court orders under the direction of the Court; and

l) preparation of pro se instruction packets under the direction of the Administrative Office of the Courts.

(d) Family Law Courthouse Facilitators shall, whenever reasonably practical, obtain a written and signed disclaimer of attorney-client relationship, attorney-client confidentiality and representation from each person utilizing the services of the Family Law Courthouse Facilitator. The prescribed disclaimer shall be in the format developed by the Administrative Office of the Courts.

(e) No attorney-client relationship or privilege is created, by implication or by inference, between a Family Law Courthouse Facilitator providing basic services under this rule and the users of Family Law Courthouse Facilitator Program services.

(f) Family law Courthouse facilitators providing basic services under this rule are not engaged in the unauthorized practice of law. Upon a courthouse facilitator's voluntary or involuntary termination from a courthouse facilitator program, that person is no longer a courthouse facilitator providing services pursuant to RCW 26.12.240 or RCW 11.88.170 or this Rule.

WSR 16-14-090

AGENDA

HEALTH CARE AUTHORITY

[Filed July 5, 2016, 11:01 a.m.]

The following is the Washington health care authority's semi-annual rule-making agenda for publication in the Washington state register pursuant to RCW 34.05.314.

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

If you have questions about this rule-making agenda, contact Wendy Barcus, Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, phone (360) 725-1306, e-mail wendy.barcus@hca.wa.gov.

| WAC Citation | Subject Matter   | Current Activity              |  |         |
|--------------|--|-------------------------------|--|---------|
|              |  | CR-101                        | CR-102 or CR-105   | CR-103E |
| 182-50       | Health care authority—General—Prescription drug program            | WSR 16-09-011<br>filed 4/8/16 | WSR 16-13-030<br>filed 6/6/16<br>Hearing date 7/26/16            |         |
| 182-55       | Health care authority—General—Health technology assessment program | WSR 14-10-070<br>filed 5/6/14 | CR-102<br>WSR 16-11-067<br>filed 5/16/16<br>Hearing date 6/21/16 |         |

| WAC Citation   | Subject Matter   | Current Activity                |  |         |
|--|--|---------------------------------|--|---------|
|  |  | CR-101                          | CR-102 or CR-105   | CR-103E |
| 182-61-0005  | Health care authority—General—Records including health care information  | WSR 14-20-040<br>filed 9/24/14  |  |         |
| 182-08, 182-12, 182-16   | Public employees benefits board—Enrollment, eligibility, and appeal rules  | WSR 16-10-097<br>filed 5/4/16   |  |         |
| 182-500-0005   | Washington apple health—Medical definitions  | WSR 16-10-033<br>filed 4/26/16  | WSR 16-13-008<br>filed 6/2/16<br>Hearing date 7/26/16            |         |
| 182-500-0020   | Washington apple health—Definitions—C  | WSR 16-12-023<br>filed 5/20/16  |  |         |
| 182-500-0030, 182-500-0050, 182-500-0085, 182-531-0050, 182-531-0200, 182-531-0550, 182-531-1050   | Washington apple health—Physician-related services definition, services requiring prior authorization, experimental and investigational services, medical definitions—E, I, and P, hospital services definitions | WSR 16-07-137<br>filed 3/22/16  |  |         |
| 182-501-0070   | Washington apple health—Health care coverage—Noncovered services   | WSR 16-06-103<br>filed 3/1/16   | CR-102<br>WSR 16-09-111<br>filed 4/20/16<br>Hearing date 5/24/16 |         |
| 182-502-0006, 182-530-7700, 182-531-0250   | Washington apple health—Medicare cost sharing for qualified medicare beneficiaries   | WSR 15-23-075<br>filed 11/16/15 |  |         |
| 182-503-0050   | Washington apple health—Verification of eligibility  | WSR 15-12-121<br>filed 6/3/15   |  |         |
| 182-504-0130, 182-504-0135, 182-518-0025   | Washington apple health—Reinstated coverage pending an appeal; Continued coverage pending an appeal; Notice requirements—Changes in and terminations of coverage   | WSR 15-07-047<br>filed 3/12/15  |  |         |
| 182-505-0100, 182-505-0210, 182-505-0215, 182-505-0225, 182-505-0235, 182-505-0237, 182-505-0240, 182-505-0300   | Washington apple health—Family, children, pregnancy and adult medical programs   | WSR 16-09-024<br>filed 4/12/16  |  |         |
| 182-507-0125, 182-512-0400, 182-512-0960, 182-513-1100, 182-513-1200, 182-513-1205, 182-513-1210, 182-513-1215, 182-513-1220, 182-513-1225, 182-513-1235, 182-513-1240, 182-513-1245, 182-513-1300, 182-513-1301, 182-513-1305, 182-513-1315, 182-513-1316, 182-513-1317, 182-513-1318, 182-513-1319, 182-513-1320, 182-513-1325, 182-513-1330, 182-513-1340, 182-513-1345, 182-513-1350, 182-513-1355, 182-513-1363, 182-513-1364, 182-513-1365, 182-513-1366, 182-513-1367, 182-513-1380, 182-513-1385, 182-513-1395, 182-513-1400, 182-513-1405, 182-513-1415, 182-513-1425, 182-513-1430, 182-513-1445, 182-513-1450, 182-513-1455, 182-515-1500, 182-515-1505, 182-515-1506, 182-515-1507, 182-515-0508, 182-515-1509, 182-515-1510, 182-515-1511, 182-515-1512, 182-515-1513, 182-515-1514 | Washington apple health—Long-term care eligibility rules   | WSR 14-21-024<br>filed 10/2/14  | WSR 16-14-012<br>filed 6/23/16                                   |         |
| 182-509-0360   | Washington apple health—MAGI income—How a child's income is counted  | WSR 16-09-112<br>filed 4/20/16  |  |         |

| WAC Citation   | Subject Matter   | Current Activity                |  |                                |
|--|--|---------------------------------|--|--------------------------------|
|  |  | CR-101                          | CR-102 or CR-105   | CR-103E                        |
| 182-516  | Washington apple health—Trusts, annuities, and life estates—Effects on medical program   | WSR 16-01-014<br>filed 12/4/15  | WSR 16-14-008<br>filed 6/23/16<br>Hearing date 8/9/16            |                                |
| 182-526  | Washington apple health—Administrative hearing rules for medical services programs   | WSR 15-07-018<br>filed 3/9/15   |  |                                |
| 182-530-2000, 182-530-2100, 182-530-3200   | Washington apple health—Pharmacy—smoking cessation for pregnant women, minimum days' supply required when dispensing contraceptives, and requesting authorization for emergency fill | WSR 14-21-096<br>filed 10/14/14 | CR-102<br>WSR 16-07-089<br>filed 3/18/16<br>Hearing date 4/26/16 |                                |
| 182-530  | Washington apple health—Covered outpatient drug—Reimbursement and drug rebate program  | WSR 16-14-053<br>filed 6/29/16  |  |                                |
| 182-531-1675   | Washington apple health—Gender dysphoria treatment program   | WSR 16-08-005<br>filed 3/24/16  |  |                                |
| 182-532-720  | Washington apple health—TAKE CHARGE program  | WSR 16-02-023<br>filed 12/29/15 |  | WSR 16-10-012<br>filed 4/22/16 |
| 182-535-1066, 182-535-1079, 182-535-1080, 182-535-1082, 182-535-1088, 182-535-1090, 182-535-1098, 182-535-1100   | Washington apple health—Dental-related services  | WSR 16-09-071<br>filed 4/18/16  |  |                                |
| 182-538C   | Washington apple health—Grievance system for behavioral health administrative services organizations (BH-ASO)  | WSR 16-08-032<br>filed 3/30/16  | CR-102<br>WSR 16-12-090<br>filed 5/31/16<br>Hearing date 7/5/16  | WSR 16-08-031<br>filed 4/19/16 |
| 182-538-130, 182-538-150, 182-501-0200   | Washington apple health—Exemptions and ending enrollment in managed care; Apple health foster care program; Third-party resources  | WSR 16-08-050<br>filed 4/1/16   | CR-102<br>WSR 16-12-089<br>filed 5/31/16<br>Hearing date 7/5/16  | WSR 16-09-108<br>filed 4/19/16 |
| 182-543-0500, 182-543-2000, 182-543-5000, 182-545-200  | Washington apple health—Durable medical equipment, complex rehabilitation technology, prosthetics/ orthotics, outpatient rehabilitation  | WSR 16-13-009<br>filed 6/2/16   |  |                                |
| 182-546-0001, 182-546-0100, 182-546-0200, 182-546-0250, 182-546-0300, 182-546-0400, 182-546-0450, 182-546-0500, 182-546-0600, 182-546-0700, 182-546-0800, 182-546-0900, 182-546-1000, 182-546-1500, 182-546-2500, 182-546-4000 | Washington apple health—Ambulance transportation services  | WSR 14-03-080<br>filed 1/15/14  |  |                                |
| 182-546-4600   | Washington apple health—Ambulance transportation—Involuntary substance use disorder treatment—Ricky Garcia Act   | WSR 16-14-040<br>filed 6/28/16  |  | WSR 16-14-039<br>filed 6/28/16 |
| New section in 182-546   | Washington apple health—Ground emergency medical transportation program (GEMT)   | WSR 15-24-129<br>filed 12/2/15  |  |                                |
| 182-548, 182-549   | Washington apple health—Federally qualified health centers and rural health clinics  | WSR 16-13-130<br>filed 6/21/16  |  |                                |
| 182-550-2600   | Washington apple health—Inpatient psychiatric services   | WSR 15-22-009<br>filed 10/22/15 |  |                                |
| 182-551-2010, 182-551-2030, 182-551-2125, 182-551-2130, 182-551-2210   | Washington apple health—Home health services   | WSR 16-11-094<br>filed 5/18/16  |  |                                |
| 182-551-3000   | Washington apple health—Private duty nursing   | WSR 15-24-036<br>filed 11/20/15 |  |                                |
| 182-554-100, 182-554-200, 182-554-300, 182-554-400, 182-554-600, 182-554-700, 182-554-800, 182-554-900   | Washington apple health—Enteral nutrition  | WSR 15-02-038<br>filed 12/31/14 |  |                                |

| WAC Citation | Subject Matter  | Current Activity                |                  |                                |
|--------------|---|---------------------------------|------------------|--------------------------------|
|              |   | CR-101                          | CR-102 or CR-105 | CR-103E                        |
| 182-554-500  | Washington apple health—Covered enteral nutrition products, equipment and related supplies—Orally administered—Clients twenty years of age and younger only | WSR 15-02-038<br>filed 12/31/14 |                  | WSR 16-09-027<br>filed 4/12/16 |
| 182-558      | Washington apple health—Premium payment program   | WSR 16-02-037<br>filed 12/30/15 |                  |                                |

Wendy Barcus  
Rules Coordinator

**WSR 16-14-092**  
**DEPARTMENT OF ECOLOGY**  
[Filed July 5, 2016, 11:23 a.m.]

**PUBLIC NOTICE**  
**Announcing the Issuance of the**  
**Modified Phase I Municipal Stormwater Permit**

**Purpose of the Phase I Municipal Stormwater General Permit:** The Phase I municipal stormwater general permit (permit) regulates the discharges from storm sewer systems owned or operated by Clark, King, Pierce and Snohomish counties; the cities of Seattle and Tacoma; and public entities located in these cities and counties. The permit requires these municipalities and secondary permittees to protect surface water and groundwater quality by developing and implementing a stormwater management program to control stormwater runoff into and from their storm sewer systems.

**Modifications to the Permit:** One of the Phase I municipal stormwater permit requirements is for Phase I municipalities to adopt a stormwater program that will provide equal or similar protection of receiving waters and pollutant control as compared to Appendix 1 of the permit. This modification will incorporate, in Appendix 10 of the permit, ecology's determination of equivalency for these stormwater programs.

The modification also incorporates a new appendix, Appendix 13, which describes and requires an adaptive management plan for pollutants that discharge from the City of Seattle's municipal separate storm sewer system outfalls to the Lower Duwamish Waterway.

A public comment period, including two public hearings, for the proposed permit modification was held from May 18, 2016, through June 30, 2016. Ecology has listened to, read, and responded to all of the public comments received during this comment period. Ecology made revisions to the final permit in response to public comments.

The modified permit will go into effect on **August 19, 2016**. Facilities covered under the existing municipal stormwater general permit will continue to be covered under the modified permit.

**Permit and Supporting Documents:** You may download the final permit, response to comments, and other supporting documents beginning on July 20, 2016, from the following web site [www.ecy.wa.gov/programs/wq/stormwater/municipal/permitMod2016.html](http://www.ecy.wa.gov/programs/wq/stormwater/municipal/permitMod2016.html).

**Ecology Contact:** For questions concerning the permit modification contact Abbey Stockwell, Washington State

Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7221, e-mail [abbey.stockwell@ecy.wa.gov](mailto:abbey.stockwell@ecy.wa.gov).

**Appeals:** This permit may be appealed to the pollution control hearings board (PCHB) within thirty days of the date of receipt of the final permit. The appeal process is governed by chapters 43.21B RCW and 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2) (also see glossary).

To appeal, the following must be done within thirty days of receipt of this permit:

- File the appeal and a copy of this permit with PCHB (see addresses below). Filing means actual receipt by PCHB during regular business hours.
- Serve a copy of the appeal and this permit on ecology in paper form - by mail or in person (see addresses below). **E-mail is not accepted.**

The appeal must also comply with other applicable requirements in chapters 43.21B RCW and 371-08 WAC.

**Address and Location Information:**

**Street Addresses:** **Department of Ecology**, Attn: Appeals Processing Desk, 300 Desmond Drive S.E., Lacey, WA 98503; or **Pollution Control Hearings Board**, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501.

**Mailing Addresses:** **Department of Ecology**, Attn: Appeals Processing Desk, P.O. Box 47608, Olympia, WA 98504-7608; or **Pollution Control Hearings Board**, P.O. Box 40903, Olympia, WA 98504-0903.

**WSR 16-14-110**  
**NOTICE OF PUBLIC MEETINGS**  
**WALLA WALLA**  
**COMMUNITY COLLEGE**  
[Filed July 6, 2016, 10:02 a.m.]

The board of trustees of Walla Walla Community College, District Number Twenty, has cancelled its regularly scheduled July 20, 2016, meeting.

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