WSR 21-04-082
RULES OF COURT
STATE SUPREME COURT
[January 21, 2021]

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RAP 4.2, RAP 4.3, RAP 10.4, RAP 10.7, RAP 10.8, RAP 10.l0(b), RAP 12.4, RAP 13.4, RAP 13.5(c), RAP 13.7(e), RAP 16.7(c), RAP 16.l0(d), RAP 16.16(e), RAP 16.17, RAP 16.21(c), RAP 16.22, RAP 17.4(g), RAP l8.13A(h), RAP 18.14(c), NEW RAP 18.17, RAP FORMS 3, 4, 6, 9, 17, 18, 20, 23	))))))))))))	**AMENDED ORDER AS TO EFFECTIVE DATE** NO. 25700-A-1323

The Washington State Supreme Court Word Count Workgroup, having recommended the adoption of the proposed amendments to RAP 4.2, RAP 4.3, RAP 10.4, RAP 10.7, RAP 10.8, RAP 10.l0(b), RAP 12.4, RAP 13.4, RAP 13.5(c), RAP 13.7(e), RAP 16.7(c), RAP 16.l0(d), RAP 16.16(e), RAP 16.17, RAP 16.21(c), RAP 16.22, RAP 17.4(g), RAP 18.13A(h), RAP 18.14(c), new RAP 18.17, RAP Forms 3, 4, 6, 9, 17, 18, 20, 23, and the Court having considered the proposed amendments, 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 proposed amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9(j)(l), the proposed amendments will be published in the Washington Reports and will become effective on September 1, 202l.

DATED at Olympia, Washington this 21st day of January, 2020.

	Stephens, C.J.
Johnson, J.	Gordon McCloud, J.
Madsen, J.	Yu, J.
Owens, J.	Montoya-Lewis, J.
Gonzalez, J.	Whitener, J.

RAP 4.2 DIRECT REVIEW OF SUPERIOR COURT DECISION BY SUPREME COURT

(a) - (b) [Unchanged.]

(c) Form of Statement of Grounds for Direct Review. The statement should be captioned "Statement of Grounds for Direct Review," contain the title of the case as provided in rule 3.4, conform to the formatting requirements of RAP 18.17 ~~rule 10.4(a)~~, and contain under appropriate headings and in the order here indicated:

(1) - (2) [Unchanged.]

(3) *Grounds for Direct Review*. The grounds upon which the party contends direct review should be granted.

The statement of grounds for direct review should ~~not exceed 15 pages, exclusive of appendices and the title sheet.~~ comply with the length limitations of RAP 18.17.

(d) Answer to Statement of Grounds for Direct Review. A respondent may file an answer to the statement of grounds for direct review. In an appeal, the answer should be filed within 14 days after service of the statement on respondent. In a discretionary review, the answer should be filed with any response to the motion for discretionary review. The answer should comply with the formatting requirements and length limitations of RAP 18.17. ~~conform to the formatting requirements of rule 10.4(a). The answer should not exceed 15 pages, exclusive of appendices and the title sheet.~~

(e) [Unchanged.]

RULE 4.3 DIRECT REVIEW OF DECISIONS OF COURTS OF LIMITED JURISDICTION

(a) - (b) [Unchanged.]

(c) Form of Statement of Grounds for Direct Review. The statement should be captioned "Statement of Grounds for Direct Review," contain the title of the case as provided in rule 3.4, conform to the formatting requirements of ~~rule 10.4(a)~~ RAP 18.17 and contain under appropriate headings and in the order here indicated:

(1) - (3) [Unchanged.]

(4) *Appendix*. A copy of the trial court's written statement under Rule 4.3 (a)(2).

The statement of grounds for direct review should comply with the length limitations of RAP 18.17. ~~not exceed 15 pages, exclusive of appendices and the title sheet.~~

(d) Answer to Statement of Grounds for Direct Review. A respondent may file an answer to the statement of grounds for direct review. The answer should be filed within 14 days after service of the statement on respondent. The answer should comply with the formatting requirements and length limitations of RAP 18.17. ~~conform to the formatting requirements of rule 10.4(a). The answer should not exceed 15 pages, exclusive of appendices and the title sheet.~~

(e) [Unchanged.]

RAP 10.4 PREPARATION AND FILING OF BRIEF BY PARTY

(a) ~~Typing or Printing~~ Format of Brief. Briefs shall comply with the formatting requirements of RAP 18.17. ~~conform to the following requirements:~~

~~(1) An original and one legible, clean, and reproducible copy of the brief must be filed with the appellate court. The original brief should be printed or typed in black on 20-pound substance 8-1/2 by 11-inch white paper. Margins should be at least 2 inches on the left side and 1-1/2 inches on the right side and on the top and bottom of each page. The brief shall not contain any tabs, colored sheets of paper, or binding and should not be stapled.~~

~~(2) The text of any brief typed or printed must appear double spaced and in print as 12 point or larger type in the following fonts or their equivalent: Times New Roman, Courier, CG Times, Arial, or in typewriter fonts, pica or elite. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as 10 point or larger type and be the equivalent of single spaced. Quotations may be the equivalent of single spaced. Except for material in an appendix, the typewritten or printed material in the brief shall not be reduced or condensed by photographic or other means.~~

(b) Length of Brief. Briefs shall comply with the length limitations of RAP 18.17. ~~A brief of appellant, petitioner, or respondent should not exceed 50 pages. Appellant's reply brief should not exceed 25 pages. An amicus curiae brief, or answer thereto, should not exceed 20 pages. In a cross-appeal, the brief of appellant, brief of respondent/cross appellant, and reply brief of appellant/cross respondent should not exceed 50 pages and the reply brief of the cross appellant should not exceed 25 pages. For the purpose of determining compliance with this rule appendices, the title sheet, table of contents, and table of authorities are not included. For compelling reasons the court may grant a motion to file an overlength brief.~~

(c) - (h) [Unchanged.]

RAP 10.7 SUBMISSION OF IMPROPER BRIEF

If a party submits a brief that fails to comply with the requirements of Title 10 ~~of these rules~~ and RAP 18.17, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief. The appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief that fails to comply with these rules.

RAP 10.8 ADDITIONAL AUTHORITIES

A party or amicus curiae may file a statement of additional authorities. The statement should not contain argument, but should identify the issue for which each authority is offered. The statement must be served and filed prior to the filing of the decision on the merits or, if there is a motion for reconsideration, prior to the filing of the decision on the motion. The statement should comply with the formatting requirements of RAP 18.17.

RAP 10.10 STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

(a) [Unchanged.]

(b) Length and Legibility. The statement~~, which shall be limited to no more than 50 pages,~~ may be submitted in handwriting so long as it is legible and can be reproduced by the clerk. The statement should comply with the formatting requirements and length limitations of RAP 18.17.

(c) - (f) [Unchanged.]

RAP 12.4 MOTIONS FOR RECONSIDERATION OF DECISION TERMINATING REVIEW

(a) Generally. A party may file a motion for reconsideration only of a decision by the judges (1) terminating review, or (2) granting or denying a personal restraint petition on the merits. The motion should be in the form and be served and filed as provided in rules 17.3(a), 17.4(a) and (g), ~~and~~ 18.5, and 18.17, except as otherwise provided in this rule. A party may not file a motion for reconsideration of an order refusing to modify a ruling by the commissioner or clerk, nor may a party file a motion for reconsideration of a Supreme Court order denying a petition for review.

(b) - (d) [Unchanged.]

(e) Length. The motion, answer, or reply should ~~not exceed 25 pages in length~~ comply with the length limitations in RAP 18.17.

(f) - (h) [Unchanged.]

(i) Amicus Curiae Memoranda. When a motion for reconsideration has been filed, the appellate court may grant permission to file an amicus curiae memorandum for the purpose of addressing the court regarding the soundness of legal principles announced in the course of the opinion. Absent a showing of particular justification, an amicus curiae memorandum should be received by the court and counsel of record for the parties and any other amicus curiae not later than 5 days after the motion for reconsideration has been filed. Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorandum, except that no answer to an amicus curiae memorandum should be filed unless requested by the court. An amicus curiae memorandum or answer should ~~not exceed 10 pages~~ comply with the length limitations in RAP 18.17.

RAP 13.4 DISCRETIONARY REVIEW OF DECISION TERMINATING REVIEW

(a) - (d) [Unchanged.]

(e) Form of Petition, Answer, and Reply. The petition, answer, and reply should comply with the requirements as to form for a brief as provided in rules 10.3, ~~and~~ 10.4, and 18.17, except as otherwise provided in this rule.

(f) Length. The petition for review, answer, or reply should comply with the length limitations of RAP 18.17. ~~not exceed 20 pages double spaced, excluding appendices, title sheet, table of contents, and table of authorities.~~

(g) [Unchanged.]

(h) Amicus Curiae Memoranda. The Supreme Court may grant permission to file an amicus curiae memorandum in support of or opposition to a pending petition for review. Absent a showing of particular justification, an amicus curiae memorandum should be received by the court and counsel of record for the parties and other amicus curiae not later than 60 days from the date the petition for review is filed. Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorandum. An amicus curiae memorandum or answer thereto should ~~not exceed 10 pages~~ comply with the length limitations of RAP 18.17.

(i) [Unchanged.]

RAP 13.5 DISCRETIONARY REVIEW OF INTERLOCUTORY DECISION

(a) - (b) [Unchanged.]

(c) Motion Procedure. The procedure for and the form of the motion for discretionary review is as provided in Title 17. A motion for discretionary review under this rule, and any response, should comply with the formatting requirements and length limitations of RAP 18.17. ~~not exceed 20 pages double spaced, excluding appendices, title sheet, table of contents, and table of authorities.~~

(d) [Unchanged.]

RAP 13.7 PROCEEDINGS AFTER ACCEPTANCE OF REVIEW

(a) - (d) [Unchanged.]

(e) Supplemental Briefs, Special Requirements.

(1) *Form*. Except as to length, a supplemental brief should conform to rules 10.3, ~~and~~ 10.4, and 18.17 and should be captioned "supplemental brief of (petitioner/respondent--name of party)."

(2) *Length*. A supplemental brief should comply with the length limitations in RAP 18.17. ~~not exceed 20 double spaced pages. The title sheet, appendices, table of contents and table of authorities are not included in this page limitation. For compelling reasons the court may grant a motion to file an over-length brief.~~

(3) *Filing and Service*. A supplemental brief should be filed in the Supreme Court and served in accordance with rule 10.2(h).

References [Unchanged.]

RAP 16.7 PERSONAL RESTRAINT PETITION—FORM OF PETITION

(a) - (b) [Unchanged.]

(c) Length of Petition. The petition should ~~not exceed 50 pages.~~ comply with the length limitations of RAP 18.17.

References [Unchanged.]

RAP 16.10 PERSONAL RESTRAINT PETITION—BRIEFS

(a) - (c) [Unchanged.]

(d) Content, Format, and Length and Style of Briefs. The content, format, and length ~~and style~~ of briefs is governed by rules 10.3, ~~and~~ 10.4, and 18.17.

(e) [Unchanged.]

RAP 16.16 QUESTION CERTIFIED BY FEDERAL COURT

(a) - (d) [Unchanged.].

(e) Briefs.

(1) [Unchanged.]

(2) *Form and Reproduction of Briefs*. Briefs should be in the form provided by rules 10.3, ~~and~~ 10.4, and 18.17. Briefs will be reproduced by the clerk in accordance with rule 10.5.

(f) - (g) [Unchanged.]

Reviser's note: The typographical 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.

RAP 16.17 OTHER RULES APPLICABLE

Rules 1.1, 1.2, 18.1, 18.3 through 18.10, 18.17, and 18.21 through 18.24 are applicable to the special proceedings in this title.

RAP 16.21 CLERK'S CONFERENCE IN CAPITAL CASES

(a) - (b) [Unchanged.]

(c) Attendance at Clerk's Conference. The attorneys for each party, if the notice requires it, shall attend the clerk's conference on the date, time, and place specified in the clerk's notice. Those in attendance should be ready to seriously consider the procedural issues attendant upon the case, including, but not limited to, settlement of the record, the briefing schedule, the ~~page~~ length limitations for briefs, oral argument, and other matters which may promote the prompt and fair disposition of the appeal.

(d) [Unchanged.]

RAP 16.22 FILING OF BRIEFS IN CAPITAL CASES

(a) - (b) [Unchanged.]

(c) A brief of appellant or respondent, ~~or~~ a brief in support of or opposition to a personal restraint petition, ~~shall not exceed 250 pages. A~~a reply brief, a pro se supplemental brief, or the response to a pro se supplemental brief, shall ~~not exceed 75 pages~~ comply with the length limitations in RAP 18.17.

(d) If legal arguments are included in a personal restraint petition or ~~if~~ in the response to a personal restraint petition, no separate brief may be filed. A petition or response that contains legal arguments may not exceed ~~300 pages~~ the length limitations in RAP 18.17. The petition or response shall comply with RAP 10.4(a) and 18.17.

(e) The clerk will retain but not formally file a brief, petition, or response that exceeds ~~these page limits~~ the length limitations of RAP 18.17, except on prior order of the court. Such an order will only be granted for compelling reasons. The clerk will not file a brief, petition, or response that violates the format requirements of RAP 10.4(a) and 18.17, if a properly formatted brief would violate the ~~page limits~~ length limitations. The clerk shall direct the party whose document has been rejected for formal filing to correct the deficiencies within a specified time period.

~~**(f)** For the purpose of determining compliance with this rule, appendices, the title sheet, table of contents, and table of authorities are not included.~~

RAP 17.4 FILING AND SERVICE OF MOTION—ANSWER TO MOTION

(a) - (f) [Unchanged.]

(g) Length of Motion, Answer and Reply; Form of Papers and Number of Copies.

(1) A motion, ~~and~~ answer or reply should not exceed the length limitations in RAP 18.17. ~~20 pages, not including supporting papers. A reply should not exceed 10 pages, not including supporting papers, title sheets, table of contents, and table of authorities.~~ For compelling reasons, the court may grant a motion to file an over-length motion, answer, or reply.

(2) All papers relating to motions or answers should comply with the formatting requirements of RAP 18.17 ~~be filed in the form provided for briefs in rule 10.4(a)~~, provided an original only and no copy should be filed. The appellate court commissioner or clerk will reproduce additional copies that may be necessary for the appellate court and charge the appropriate party as provided in rule 10.5(a).

RAP 18.13A ACCELERATED REVIEW OF JUVENILE DEPENDENCY DISPOSITION ORDERS, ORDERS TERMINATING PARENTAL RIGHTS, DEPENDENCY GUARDIANSHIP ORDERS, AND ORDERS ENTERED IN DEPENDENCY AND DEPENDENCY GUARDIANSHIP PROCEEDINGS

(a) - (g) [Unchanged.]

(h) Briefing. Unless directed otherwise in a ruling granting discretionary review of an interim order entered in dependency and dependency guardianship cases, parties shall file briefs in accordance with rules 10.3, ~~and~~ 10.4, and 18.17.

(i) - (k) [Unchanged.]

RAP 18.14 MOTION ON THE MERITS

(a) - (b) [Unchanged.]

(c) Content, Filing, and Service; Response. A motion on the merits should be a separate document and should not be included within a party's brief on the merits. The motion should comply with rule 17.3(a), except that material contained in a brief may be incorporated by reference and need not be repeated in the motion. A motion on the merits should not exceed the length limitations of RAP 18.17. ~~25 pages, excluding attachments.~~ The motion should be filed and served as provided in rule 17.4. A response may be filed and served as provided in rule 17.4(e) and may incorporate material in a brief by reference. Requests for attorney fees are governed by rule 18.1.

(d) - (k) [Unchanged.]

[NEW] **RAP 18.17**
WORD LIMITATIONS, PREPARATION, AND FILING OF DOCUMENTS SUBMITTED TO THE COURT OF APPEALS AND SUPREME COURT

(a) Formatting Requirements. All documents covered by these rules, such as briefs, motions, petitions, responses, replies, answers, objections, statements of grounds for direct review and answers thereto, or statements of additional grounds for review, should conform to the following requirements:

(1) All documents filed with the appellate court should be printed or typed with margins of at least 2 inches on the left side and 1-1/2 inches on the right side and on the top and bottom. Documents submitted in electronic format should be submitted in .pdf format and follow the electronic filing instructions published by the court. Documents submitted in hard copy should be printed on 20-pound substance, 8-1/2-by-11-inch, white paper. Documents should not contain tabs, colored sheets of paper, or binding and should not be stapled.

(2) The text of all documents filed with the appellate court should be double spaced, except footnotes and block quotations, which may be single spaced. In a document produced using word processing software, all text, including footnotes and block quotations, should appear in 14 point serif font equivalent to Times New Roman or sans serif font equivalent to Arial. A document produced using a typewriter should appear in 12 point font or larger.

(b) Certificate of Compliance. All documents filed with the appellate court and produced using word processing software should contain a short statement above the signature line certifying the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits). The signor may rely on the word count calculation of the word processing software used to prepare the brief.

(c) Length Limitations. All documents filed with the appellate court should conform to the following length limitations unless the appellate court has granted permission to file an overlength document. The following length limitations are expressed as word limitations for documents produced using word processing software and as page limitations for documents produced by typewriter or written by hand. The word limitations exclude words in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits).

(1) Statements of grounds for direct review and answers to statements of grounds for direct review (RAP 4.2 or RAP 4.3): 4,000 words (word processing software) or 15 pages (typewriter or handwritten).

(2) Briefs of appellants, petitioners, and respondents (RAP 10.4): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

(3) Reply briefs of appellants (RAP 10.4): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).

(4) In cross appeals, briefs of appellants, briefs of respondents/cross appellants, and reply briefs of appellants/cross respondents (RAP 10.4): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

(5) In cross-appeals, reply briefs of the cross appellants (RAP 10.4): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).

(6) Amicus briefs and answers to amicus briefs (RAP 10.4): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(7) Statements of additional grounds for review (RAP 10.10): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

(8) Motions to reconsider a decision terminating review and answers and replies thereto (RAP 12.4): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).

(9) Amicus curiae memoranda and answers thereto (RAP 12.4 or RAP 13.4): 2,500 words (word processing software) or 10 pages (typewriter or handwritten).

(10) Petitions for review, answers, and replies (RAP 13.4): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(11) Motions for discretionary review and responses thereto (RAP 13.5): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(12) Supplemental briefs (RAP 13.7): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(13) Personal restraint petitions (RAP 16.7): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

(14) Briefs of appellants or respondents, and briefs in support of or opposition to a personal restraint petition submitted in capital cases (RAP 16.22): 60,000 words (word processing software) or 250 pages (typewriter or handwritten).

(15) Personal restraint petitions that contain legal argument filed in capital cases (RAP 16.22): 72,000 words (word processing software) or 300 pages (typewriter or handwritten).

(16) Reply briefs, pro se supplemental briefs, and responses to pro se supplemental briefs filed in capital cases (RAP 16.22): 18,000 words (word processing software) or 75 pages (typewriter or handwritten).

(17) Motions and answers (RAP 17.4): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

(18) Replies to answers to motions (RAP 17.4): 2,500 words (word processing software) or 10 pages (typewriter or handwritten).

Motions on the merits (RAP 18.14): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).

Proposed Amendments to:
RAP Form 3
RAP Form 4
RAP Form 6
RAP Form 9
RAP Form 17
RAP Form 18
RAP Form 20
RAP Form 23

FORM 3. Motion for Discretionary Review

Title Page: [Unchanged.]

A. - E. [Unchanged.]
F. CONCLUSION
[*State the relief sought if review is granted. For example: "This court should accept review for the reasons indicated in Part E and modify the restraining order to permit defendant to use her assets to pay fees and costs incurred in defending plaintiff's suit for conversion."*]
[If the petition is prepared using word processing software, include the following statement: This document contains ____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]
[Date]

Respectfully submitted,

_____
Signature
[Name of petitioner's attorney]

APPENDIX

[Unchanged.]

FORM 4. Statement of Grounds for Direct Review

[Rule 4.2(b)]

No. [Supreme Court]

SUPREME COURT OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in rule 3.4*]	)))))	STATEMENT OF GROUNDS FOR DIRECT REVIEW BY THE SUPREME COURT

[*Name of party*] seeks direct review of the [*describe the decision or part of the decision that the party wants reviewed*] entered by the [*name of court*] on [*date of entry*]. The issues presented in the review are: [*State issues presented for review. See Part II of Form 6 for suggestions for framing issues presented for review.*]

The reasons for granting direct review are: [*Briefly indicate and argue grounds for direct review. See rule 4.2.*]

[If the petition is prepared using word processing software, include the following statement: This document contains ____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]
[*Date*]

Respectfully submitted,

_____
Signature

[*Name, address, telephone number, and Washington State Bar Association membership number of attorney*]

FORM 6. Brief of Appellant

[Title Page] [Unchanged.]
TABLE OF CONTENTS [Unchanged.]
TABLE OF AUTHORITIES [unchanged.]
I. - V. [Unchanged.]
VI. CONCLUSION
[*Here state the precise relief sought.*]
[If the petition is prepared using word processing software, include the following statement: This document contains ____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]
[*Date*]

Respectfully submitted,

_____
Signature
[*Name of Attorney*]
Attorney for [*Appellant, Respondent, or Petitioner*]
Washington State Bar Association membership number

VII. [Unchanged.]

FORM 9. Petition for Review

[Title Page]: [Unchanged.]
TABLE OF CONTENTS [Unchanged.]
TABLE OF AUTHORITIES [Unchanged.]
A. - E. [unchanged.]
F. CONCLUSION
[*State the relief sought if review is granted. See Part F of Form 3.*]
[If the petition is prepared using word processing software, include the following statement: This document contains ____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]
(*Date*)

Respectfully submitted,

_____
Signature
[*Name of attorney*]

Attorney for [*Petitioner or Respondent*]
Washington State Bar Association membership number

APPENDIX
[Unchanged.]

FORM 17. Personal Restraint Petition for Person Confined by State or Local Government

[Title and Caption] [Unchanged.]
A. - D. [Unchanged.]
E. OATH OF PETITIONER

THE STATE OF WASHINGTON)
) ss.
County of _____)

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

_____
[*sign here*]
SUBSCRIBED AND SWORN to before me this ___ day of_____.

_____
Notary Public in and for the State of Washington, residing at _____

If a notary is not available, explain why none is available and indicate who can be contacted to help you find a notary:

_____
_____
_____
_____
_____
_____

Then sign below:
I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.
[If the petition is prepared using word processing software, include the following statement: This petition contains ____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]
_____[*date*].

_____
[*sign here*]

FORM 18. Motion

[Title Page]: [Unchanged.]
1. - 3. [Unchanged.]
4. GROUNDS FOR RELIEF AND ARGUMENT
[*Here state the grounds for the relief sought with authority and supporting argument. For example: "RAP 3.2(a) authorizes substitution of parties when the interest of a party in the subject matter of the review has been transferred. Substitution should be granted here as defendant has no claim against plaintiff-respondent and respondent no longer has an interest in the judgment which is the subject matter of this appeal".*]
[If the petition is prepared using word processing software, include the following statement: This document contains ____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]

[*Date*]

Respectfully submitted,

_____
Signature
Attorney for [*Appellant, Respondent, or Petitioner*]
[*Name, address, telephone number, and Washington State Bar Association membership number of attorney*]

FORM 20. Motion To Modify Ruling

[Caption and Header] [Unchanged.]
1. - 3. [Unchanged.]
4. GROUNDS FOR RELIEF AND ARGUMENT
[*Here state the grounds for relief sought with authority and supporting argument. The grounds for relief set forth in the original motion may be incorporated by reference.*]
[If the petition is prepared using word processing software, include the following statement: This document contains ____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]

[*Date*]

Respectfully submitted,

_____
Signature
Attorney for [*Appellant, Respondent, or Petitioner*]
[*Name, address, telephone number, and Washington State Bar Association membership number of attorney*]

Form 23

[Header and Caption] [Unchanged.]
Additional Ground 1 [Unchanged.]
Additional Ground 2 [Unchanged.]
If there are additional grounds, a brief summary is attached to this statement.
[If the petition is prepared using word processing software, include the following statement: This statement contains ____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]

Date:_____ Signature:_____

WSR 21-04-087
RULES OF COURT
STATE SUPREME COURT
[December 11, 2020]

IN THE MATTER OF THE SUGGESTED NEW RULE CLASSIFICATION: RULES FOR DISCIPLINE AND INCAPACITY (RDI), AMENDMENTS TO GR 1—CLASSIFICATION SYSTEM FOR COURT RULES, AND RESCISSION OF RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELCS), ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT (ELPOCS), AND ENFORCEMENT OF LIMITED LICENSE LEGAL TECHNICIAN CONDUCT (ELLLTCS), CONFORMING AMENDMENTS TO GR 12.4, GR 12.5, GR 24, RPC l.0B, RPC 1.6, RPC 1.15A, RPC 5.4, RPC 5.6, RPC 5.8, RPC 8.1, RPC 8.4, RPC 8.5, LLLT RPC l.0B, LLLT RPC 1.15A, LLLT RPC 5.4, LLLT RPC 5.8, LLLT RPC 8.4, LPORPC 1.0, LPORPC 1.8, LPORPC 1.10, LPORPC 1.12A, APR 1, APR 5, APR 8, APR 9, APR 12, APR 14, APR 15, APR 15 PROCEDURAL REGULATIONS 6, 22.1, 23, 24.1, 24.2, 25.1, 25.5, 28, NEW SUGGESTED RULES APR 29 AND APR 30	ORDER NO. 25700-A-1328

The Washington State Bar Association Executive Director, having recommended the suggested new rule classification: Rules for Discipline and Incapacity (RDI), amendments to GR 1—Classification System for Court Rules, and rescission of Rules for Enforcement of Lawyer Conduct (ELCs), Enforcement of Limited Practice Officer Conduct (ELPOCs), and Enforcement of Limited License Legal Technician Conduct (ELLLTCs), conforming amendments to GR 12.4, GR 12.S, GR 24, RPC 1.0B, RPC 1.6, RPC l.lSA, RPC 5.4, RPC 5.6, RPC 5.8, RPC 8.1, RPC 8.4, RPC 8.5, LLLT RPC l.0B, LLLT RPC 1.15A, LLLT RPC 5.4, LLLT RPC 5.8, LLLT RPC 8.4, LPORPC 1.0, LPORPC 1.8, LPORPC 1.10, LPORPC 1.12A, APR 1, APR 5, APR 8, APR 9, APR 12, APR 14, APR 15, APR 15 Procedural Regulations 6, 22.1, 23, 24.1, 24.2, 25.1, 25.5, 28, and new suggested rules APR 29 and APR 30, and the Court having approved the suggested amendments, rescissions, and new rules for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments, rescissions, and new rules as shown below are to be published for comment in the WashingtonReports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2021.

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

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2021. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 11th day of December, 2020.

For the Court

Stephens, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET
Suggested
RULES FOR DISCIPLINE AND INCAPACITY

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C. Purpose

The proponent recommends adoption of procedural rules for Washington State's discipline and incapacity system, to be known as the Rules for Discipline and Incapacity (RDI). If adopted, the suggested RDI would supersede and rescind the current disciplinary procedural rules, the Rules for Enforcement of Lawyer Conduct (ELC). The rules would also supersede and rescind the Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC)[1] and the Rules for Enforcement of Limited Practice Officer Conduct (ELPOC).

1 The ELLLTC were adopted by the Court not as published rules but as an interim provision until a set of disciplinary procedural rules was drafted to replace it. See *In re the Matter of—Enforcement of Limited License Legal Technician Conduct*, Order No. 25700-A-1136 (Jan. 7, 2006). If the Court elects to adopt these suggested rules, Order No. 25700-A-1136 would likely need to be rescinded.

I. OVERVIEW

The ELC have been in effect since October 1, 2002; they replaced the Rules for Lawyer Discipline, adopted in 1983. The ELC have been amended from time to time since 2002, with the most substantial amendments effective on January 1, 2014.[2] The suggested RDI represent the most substantial reexamination of the functioning of the discipline system in Washington State since enactment of the ELC in 2002.

2 The 2014 amendments were prepared by the WSBA ELC Drafting Task Force, which was tasked with implementing recommended discipline-system changes based on the 2006 ABA Report on the Washington Lawyer Regulation System.

The suggested RDI were drafted by staff from the Washington State Bar Association's (WSBA) Office of Disci-

plinary Counsel (ODC), Office of General Counsel (OGC), and Regulatory Services Department (RSD), with the goal of identifying and recommending modifications to the discipline system intended to create efficiencies and improve outcomes.

As approved in concept by the Washington Supreme Court in June 2017, the WSBA drafting work group developed a model of a single-portal, multi-license-type discipline and appeals system. During the preliminary drafting phase of the project, substantial effort was made to streamline the rules and create system efficiencies while retaining meaningful volunteer involvement in disciplinary procedures. Key drafting objectives included establishing a professionalized adjudicative system[3] and creating one set of disciplinary procedural rules for all license types.[4] The ELC served as the template for rule drafting, and much of the language and structure of the suggested RDI is drawn from the ELC. However, the rules have been substantially rewritten to improve efficiency of processes and ease of use. During development of the RDI, the drafting work group met with and updated regulatory boards and discipline-system entities, including the Disciplinary Board, the hearing officer panel, the Limited License Legal Technician Board, the Limited Practice Board, the Character and Fitness Board, and the Disciplinary Advisory Round Table. A first comprehensive draft RDI was completed by the WSBA drafting work group in early February 2020.

3 Under the ELC, the adjudicative functions are carried out by volunteer hearing officers who oversee disciplinary and incapacity proceedings, and by the Disciplinary Board, which conducts review of recommendations for proceedings and disputed dismissals and serves as the intermediate appellate body.

4 Three different sets of disciplinary procedural rules currently govern the different license types in Washington: for lawyers, the ELC; for limited practice officers (LPOs), the ELPOC; and for limited license legal technicians (LLLTs), the ELLLTC.

Shortly thereafter, the WSBA drafting work group convened discipline-system stakeholder representatives to review and provide feedback on the RDI draft. The volunteer reviewers were selected from among stakeholder groups and entities involved in the discipline process in Washington, including the Washington Supreme Court, the Disciplinary Board, hearing officers, the Board of Governors, the Disciplinary Advisory Round Table, the Limited Licensee Legal Technician Board, the Limited Practice Board, conflicts review officers, and lawyers who represent respondents. During the months of March to June 2020 and over the course of three meetings, the stakeholders provided substantive feedback both in person and in writing. The drafting work group then considered and incorporated that feedback into the final draft of the suggested RDI.

This purpose statement is a high-level overview of the RDI. A comprehensive, rule-by-rule explanation of the rule set is provided in Appendix A, which includes citations to specific provisions in the ELC from which the rule was drawn, if applicable, and explanation of any deviations from the ELC.

II. SUGGESTED RULES: KEY CONCEPTS AND INNOVATIONS

The suggested RDI reflect the key concepts and innovations summarized below. This summary is intended to serve as a roadmap for many of the substantive rule revisions and departures from the ELC.

1. Creating a comprehensive adjudicative entity composed of both professional and volunteer adjudicators.

The suggested RDI create an adjudicative entity—the Office of the Regulatory Adjudicator (ORA)—staffed by one or more professional adjudicators who would conduct disciplinary hearings for licensed legal professionals. Transitioning to professional adjudication is consistent with developments in a number of other jurisdictions, such as Arizona, Colorado, and Oregon. The current Washington lawyer discipline hearings system includes approximately 44 volunteers, including hearing officers and members of the Disciplinary Board, acting in various adjudicative capacities. For LLLTs and LPOs, hearing officers and each license type's respective all-volunteer regulatory board is responsible for carrying out the adjudicative functions for that license.[5] The RDI system would instead create a single, smaller pool of volunteers, the Volunteer Adjudicator Pool, who would perform meaningful, though more limited, adjudicative roles. The Volunteer Adjudicator Pool would include members from all license types and public members. Members of the pool, administered by the professional ORA adjudicator(s), would serve on two types of adjudicative panels:

5 The respective regulatory boards are as follows: for LLLTs, the Limited License Legal Technician Board and for LPOs, the Limited Practice Board.

Authorization Panel. Authorization panels would consider ODC requests, following an investigation, that disciplinary or incapacity proceedings commence by the ordering of the matter to hearing. Under the RDI, these are called requests for an order authorizing "the filing of a statement of charges" or "the initiation of incapacity proceedings," respectively.

Appeal Panel. Appeal panels would hear and decide intermediate disciplinary and incapacity appeals and matters on interlocutory review.

The ORA panels would be composed of a single professional adjudicator and two to four volunteers drawn from the pool. This approach is designed to (1) ensure that volunteer members of the matching license type are assigned to the adjudicative panels (when practicable), (2) include public participation, and (3) create efficiencies over the current all-volunteer system.

2. Simplifying disposition and dismissal-review options.

To create additional efficiencies within the discipline system, the suggested RDI eliminate certain grievance disposition and review options, as follows:

Review/Discipline Committee Admonitions. As described below, the RDI would sunset committees of the three regulatory boards for the three license types in favor of ORA Authorization Panels. The authority of regulatory boards to issue admonitions without a hearing is eliminated. Admonitions under the RDI may be imposed following a hearing or by stipulation.

Advisory Letters. ODC routinely includes educational language in dismissal letters in an effort to bring problematic but not necessarily unethical conduct to the attention of a

licensee. This approach serves the same purpose and achieves the same result as advisory letters currently issued by a review or discipline committee, but the latter requires a far more cumbersome process. The suggested RDI would therefore eliminate review and discipline committee advisory letters.

External/Adjudicative Dismissal Review. Review of dismissal decisions (called "closures" in the suggested RDI) by review or discipline committees rarely results in a different outcome,[6] yet the current review process consumes an extraordinary amount of staff and volunteer time to administer and carry out. Elimination of the current dismissal review process would not materially impair the public protection function of discipline, but it would save substantial resources, which, from a public protection standpoint, would be more productively spent pursuing provable and serious cases of ethical misconduct. ODC would still have the internal authority to reopen a grievance in appropriate circumstances, such as when a grievant provides additional, significant information.

6 In 2019, for example, review committees upheld 357 dismissals, ordering more investigation in only 13 matters. Of those 13 matters ordered for further investigation, all were subsequently dismissed after further investigation, with one dismissed after diversion, one dismissed with a cautionary letter from disciplinary counsel, and six upheld on second review by a review committee.

3. Maintaining the distinction between confidential versus public disciplinary information but reorganizing the ELC Title 3 rules for clarity.

In an effort to clarify and simplify what has become a balkanized and difficult-to-comprehend area of disciplinary procedure, the drafting work group reorganized and consolidated ELC Title 3 into a number of provisions; it also severed certain components into separate, stand-alone rules. In particular, ELC Title 3 in its current form contains multiple independent provisions scattered throughout the title regarding releases of information, each with its own terminology and applicable processes. A major innovation in the RDI redraft of Title 3 is the consolidation of those provisions into two rules: one regarding release without notice, and another regarding release with notice.

Notably, however, the basic distinction between what is confidential disciplinary information and what is public disciplinary information is unchanged. Instead, RDI Title 3 is designed to make it easier to identify public versus confidential information. In general, most grievance information will remain confidential, and a matter will only become public after an Authorization Panel authorizes the filing of a statement of charges.

4. Reframing the role of grievants.

Under current disciplinary procedural rules, grievants are the equivalent of parties to the investigative stage of the process, with express rights to intercede during the course of an investigation, obtain confidential disciplinary information, and object to the dismissal of grievances. Experience and statistics show that this has created an overabundance of process, incentivized submission of voluminous, unsolicited documentation, and prolonged the final disposition of grievances. To ameliorate these lengthy, resource-intensive processes, the RDI reorient the role of a grievant (called a "complainant" in the suggested rules). Under the RDI, a complainant is simply an individual who brings information about potential misconduct to the attention of ODC and sometimes serves as a witness during the course of a proceeding. The role of complainants under the RDI would be analogous to the role of consumer complainants who submit complaints to the Attorney General's Office.

5. Improving and clarifying processes for incapacity proceedings.

The rules governing disability proceedings have been revised and restructured substantially for clarity and to streamline procedures. The suggested rules replace the term "disability" with "incapacity," as the latter more accurately describes the inability to perform the functions of a licensed legal professional. The suggested rules further simplify the decision matrix for the hearing adjudicator following an incapacity hearing and make clear that an incapacity determination is not a form of discipline.

6. Requiring Supreme Court review and approval of all adjudicated matters.

Currently, if a matter is not appealed, the Supreme Court reviews only suspension and disbarment recommendations; other adjudicated dispositions, such as reprimands, admonitions, and dismissals, are sent to the Court informationally. In light of the Court's plenary authority and its role as final arbiter of disciplinary and incapacity matters, under the suggested RDI, the Supreme Court would conduct final review of all matters in which there is a recommendation for or stipulation to a disciplinary sanction or the placement of a legal professional's license in incapacity inactive status. This proposed change in the RDI better reinforces the Court's status as the state actor actively supervising disciplinary processes.[7]

7 *Cf. N.C. Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101, 1114 (2015) (dental board controlled by active market participants not afforded antitrust protection under state-action immunity where it did not receive active supervision by the state).

III. SUGGESTED RDI SYSTEM

In the RDI system, a matter would proceed as follows:

ODC Intake and Investigation. ODC would review and/or investigate all grievances (called "complaints" in the RDI) involving all license types. Disposition options would include closure, diversion, or recommendation for the filing of a statement of charges. Closure decisions would not be subject to adjudicative review. Upon receipt of new or additional post-closure information from a complainant, ODC would have the authority to reopen a complaint in appropriate circumstances.

Authorization Panels. An ODC request that a matter be ordered to a hearing would be considered by a three-person ORA Authorization Panel, composed of a professional adjudicator accompanied by volunteers from the pool, including one public member and, where practicable, one practitioner of the same license type. An Authorization Panel would have authority to order the filing of a statement of charges or the initiation of incapacity proceedings or to deny such requests.

Hearing Stage. An ORA hearing adjudicator would conduct and preside over all disciplinary and incapacity hearings. ORA adjudicators would also approve all stipulations, subject to final Supreme Court approval. Volunteer lawyers on the Volunteer Adjudicator Pool may also serve as settle-

ment officers to assist in the resolution of matters by stipulation.

Appeal Panel. An intermediate appeal from a hearing adjudicator's recommendations, as well as matters on interlocutory review, would be reviewed by a joint ORA adjudicator-volunteer panel. Five-person ORA Appeal Panels would be composed of a professional adjudicator accompanied by volunteers from the pool, including at least one public member and, where practicable, at least one practitioner of the same license type.

Final Appellate Review/Supreme Court Orders. The Supreme Court would consider final appeals and order discipline for all license types.

A flow chart with more detail about the structure of the new disciplinary and incapacity system model is attached as Appendix B (Structure of the new Discipline and Incapacity System).

IV. CONFORMING AMENDMENTS TO OTHER COURT RULES

If the suggested RDI are adopted, the proponent recommends adoption of suggested conforming amendments to other sets of rules that either cross-reference or give effect to the ELC or other rules rendered obsolete by the new system. These amendments are largely technical in nature, although some are substantive, and are submitted for adoption simultaneously by separate GR 9.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is not requested.

Reviser's note: The typographical 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.

SUGGESTED NEW RULES FOR DISCIPLINE AND INCAPACITY

Redline Version

TITLE

RULES FOR DISCIPLINE AND INCAPACITY (RDI)

Table of Rules

TITLE 1 - SCOPE, JURISDICTION, DEFINITIONS, AND DUTIES

RDI 1.1 SCOPE OF RULES

(a) Purpose. These Rules are adopted by the Washington Supreme Court to govern the discipline and incapacity procedures and related processes for licensed legal professionals.

(b) Persons Subject to These Rules. The following persons are subject to these Rules regardless of the person's residency or authority to practice law in this jurisdiction:

(1) any licensed legal professional admitted, licensed, or authorized to practice law in this jurisdiction regardless of where the licensed legal professional's conduct occurs;

(2) any licensed legal professional admitted, licensed, or authorized to practice law in any other jurisdiction who provides or offers to provide any legal services in this jurisdiction; and

(3) any person previously admitted, licensed, or authorized to practice law as a licensed legal professional in this jurisdiction if the conduct occurred while admitted, licensed, or authorized to practice law.

(c) Exception for Judges. A lawyer serving as a judge or justice is subject to these Rules only to the extent provided by Rule 8.5(c) of the Rules of Professional Conduct.

(d) Disciplinary Authority. A licensed legal professional is subject to discipline for violations of the rules of professional conduct applicable to that licensed legal professional's license type.

(e) Authority; Multiple Jurisdictions. A licensed legal professional may be subject to the rules governing disciplinary and incapacity matters of both this jurisdiction and another jurisdiction for the same conduct.

RDI 1.2 NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts submitting a complaint, initiating an investigation, or commencing a proceeding under these Rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any sanction or remedy is warranted.

RDI 1.3 DEFINITIONS

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

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

(b) "Bar counsel" means a staff lawyer, other than disciplinary counsel, employed by the Bar.

(c) "Clerk" when used alone means the Clerk to the Office of the Regulatory Adjudicator.

(d) "Clerk's file" means the pleadings, motions, rulings, decisions, and other documents filed with or by the Clerk in a proceeding or investigation under these Rules, which may include public and nonpublic information.

(e) "Complainant" means a person or entity who submits a complaint under Title 5 of these Rules, except for a confidential source under Rule 5.2(d).

(f) "Conviction" means a finding of a defendant's guilt of a crime in any jurisdiction, regardless of the pendency of an appeal, either (1) upon entry of a plea of guilty or nolo contendere, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn; or (2) upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(g) "Counsel" when used as a noun means a lawyer authorized to practice law in Washington State.

(h) "Hearing transcript" means a verbatim report of proceedings from a disciplinary or incapacity hearing.

(i) "Licensed legal professional" means a lawyer, limited license legal technician, limited practice officer, or other individual, who is admitted, licensed, or authorized to practice law in Washington State or any other jurisdiction.

(j) "Party" means the Office of Disciplinary Counsel or respondent, unless these Rules specify otherwise.

(k) "Supreme Court" or "Court" when used alone means the Washington Supreme Court.

(*l*) "Suspension" means a court-ordered temporary loss of authorization to practice law.

RDI 1.4 ACRONYMS

Acronyms used in these Rules have the following meanings:

(a) "APR" means the Admission and Practice Rules adopted by the Washington Supreme Court.

(b) "CR" means the Superior Court Civil Rules adopted by the Washington Supreme Court.

(c) "GR" means the General Rules adopted by the Washington Supreme Court.

(d) "LLLT" means limited license legal technician.

(e) "LLLT RPC" means the Limited License Legal Technician Rules of Professional Conduct adopted by the Washington Supreme Court.

(f) "LPO" means limited practice officer.

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

(h) "ORA" means the Office of the Regulatory Adjudicator.

(i) "RAP" means the Rules of Appellate Procedure adopted by the Washington Supreme Court.

(j) "RCW" means the Revised Code of Washington.

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

RDI 1.5 WORDS OF AUTHORITY

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

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

(c) "Should" means recommended but not required.

RDI 1.6 DUTIES IMPOSED BY THESE RULES

A licensed legal professional must comply with the duties imposed by these Rules. Failure to comply may subject the licensed legal professional to discipline for violating RPC 8.4(*l*), LLLT RPC 8.4(*l*), or LPORPC 1.10(f) or may be considered an aggravating factor in determining the appropriate sanction for misconduct in any disciplinary proceeding. Duties imposed by these Rules include but are not limited to the following duties:

(a) furnish authorization for release of medical records, Rule 2.12(d);

(b) comply with orders, Rule 2.12(c), 10.1(d);

(c) maintain confidentiality, Rule 3.1(d);

(d) respond to any inquiries or requests made under Title 5, including subpoenas issued under Title 5;

(e) pay noncooperation costs, Rule 5.9;

(f) report being convicted of a felony, Rule 7.2(d);

(g) comply with conditions of a stipulation, Rule 9.1(j);

(h) report being disciplined, placed in incapacity inactive status or its equivalent, or resigning in lieu of discipline or its equivalent, in another jurisdiction, Rule 9.3(a);

(i) file an answer to a statement of charges or to an amended statement of charges, Rule 10.5(a);

(j) cooperate with discovery, Rule 10.10(f);

(k) attend a hearing and bring materials requested by disciplinary counsel, Rule 10.12;

(*l*) respond to subpoenas and comply with orders enforcing subpoenas, Rule 10.12(g);

(m) comply with conditions of probation, Rule 13.6;

(n) pay restitution, Rule 13.7;

(o) pay costs and expenses, Rule 13.8;

(p) notify clients and others of inability to act, Rule 14.1;

(q) discontinue practice, Rule 14.2;

(r) serve a declaration of compliance, Rule 14.3;

(s) cooperate with an examination of books and records, Rule 15.2; and

(t) notify the Office of Disciplinary Counsel of a trust account overdraft, Rule 15.4(d).

TITLE 2 - ORGANIZATION AND STRUCTURE

RDI 2.1 WASHINGTON SUPREME COURT

The Washington Supreme Court has exclusive responsibility to administer the Washington discipline and incapacity system for licensed legal professionals and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual discipline and incapacity cases. Persons carrying out the functions set forth in these Rules act under the Supreme Court's authority and supervision.

RDI 2.2 WASHINGTON STATE BAR ASSOCIATION

(a) Function. The Washington State Bar Association:

(1) through the Bar's Executive Director, provides administrative and managerial support to enable the Office of Disciplinary Counsel, the Office of the Regulatory Adjudicator, and other Bar staff and appointees under these Rules to perform the functions specified by these Rules; and

(2) performs other functions and takes other actions necessary and proper to carry out the duties specified in these Rules or delegated by the Supreme Court.

(b) Limitation of Authority.

(1) The Bar officers, Executive Director of the Bar, Board of Governors, LLLT Board, and Limited Practice Board have no authority to direct the investigations, prosecutions, appeals, or discretionary decisions made under these Rules, or to alter the decisions or recommendations of regulatory adjudicators or adjudicative panels.

(2) The Chief Disciplinary Counsel or Chief Regulatory Adjudicator must report a violation or attempted violation of this section to the Chief Justice of the Supreme Court. If the person is a licensed legal professional, the violation may also be grounds for discipline.

(c) Restrictions. Bar officers, the Executive Director, and Board of Governors members cannot serve as regulatory adjudicators or special conflicts disciplinary counsel during their terms or until three years have expired after departure from office.

(d) Independence. In discharging their responsibilities under this Rule and in carrying out duties specified elsewhere in these Rules, the Bar and its Executive Director ensure that the Bar's discipline and incapacity systems are organized and structured to:

(1) safeguard the decision-making independence of the Office of the Regulatory Adjudicator and to appropriately separate its adjudicative processes from the investigative and prosecutorial functions delegated to the Office of Disciplinary Counsel and

(2) ensure the limitations of authority set forth in section (b)(1) are respected.

RDI 2.3 OFFICE OF THE REGULATORY ADJUDICATOR

(a) Function. The Office of the Regulatory Adjudicator (ORA) performs the adjudicative functions set forth in these Rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Regulatory Adjudicator. Regulatory adjudicators, or regulatory adjudicators pro tempore, are lawyer members of the Bar who act as adjudicators on all matters under these Rules and perform other duties as authorized by these Rules or as delegated by the Chief Regulatory Adjudicator.

(c) Chief Regulatory Adjudicator and Staff. The Bar must employ or contract with a suitable lawyer member of the Bar to serve as the Chief Regulatory Adjudicator and employ or contract with other suitable individuals, including regulatory adjudicators pro tempore or settlement officers, as necessary to carry out the functions of the ORA.

(d) Emergency Orders. In the event of an emergency affecting the discipline system, as a result of a natural or other major disaster, the Chief Regulatory Adjudicator may issue sua sponte emergency administrative orders relating to discipline and incapacity matters, except for those matters before the Washington Supreme Court, to ensure the continued administration of lawyer discipline and incapacity systems while protecting the health and safety of participants.

(e) Hearing Adjudicator. A regulatory adjudicator is referred to as the hearing adjudicator when assigned to preside over disciplinary hearings under Title 10 or incapacity hearings under Title 8.

(f) Volunteer Adjudicator. Volunteer adjudicators are members of the Bar or the public appointed to the volunteer adjudicator pool under Rule 2.6. Individual volunteer adjudicators are selected to serve, without compensation and as needed, on the adjudicative panels or as settlement officers in specific matters.

RDI 2.4 ADJUDICATIVE PANELS

(a) Panels in General. The Chief Regulatory Adjudicator convenes and administers adjudicative panels and assigns adjudicative matters under these Rules to the appropriate panel as required by these Rules. A regulatory adjudicator must serve as chair of each adjudicative panel. The Chief Regulatory Adjudicator assigns volunteer adjudicators from the volunteer adjudicator pool to fill the remaining positions of each panel.

(b) Authorization Panel. An Authorization Panel considers, and orders appropriate action on, matters assigned to it under these Rules including but not limited to requests for orders authorizing disciplinary counsel to file a statement of charges or to initiate incapacity proceedings. An Authorization Panel consists of the chair and two individuals assigned from the volunteer adjudicator pool, including an individual who has never been licensed to practice law and one member of the Bar. When practicable, the Chief Regulatory Adjudicator should assign to the Authorization Panel a member of the Bar who has the same license type as the respondent.

(c) Appeal Panel. An Appeal Panel adjudicates appeal and review proceedings as specified in these Rules. An Appeal Panel consists of the chair and four individuals assigned from the volunteer adjudicator pool, including an individual who has never been licensed to practice law and three members of the Bar. When practicable, the Chief Regulatory Adjudicator should assign to the at least one member of the Bar who has the same license type as the respondent.

RDI 2.5 VOLUNTEER SELECTION BOARD

(a) Duties. The Volunteer Selection Board makes recommendations to the Supreme Court for the appointment and removal of volunteer adjudicators, and special conflicts disciplinary counsel. Information about the conduct or performance of a volunteer adjudicator, or special conflicts disciplinary counsel received by the Volunteer Selection Board, and deliberations of the Volunteer Selection Board, are confidential.

(b) Composition. The Volunteer Selection Board consists of five voting members and the Chief Regulatory Adjudicator as a non-voting member. The voting members are appointed by the Supreme Court and must include four active members of the Bar and one individual who has never been licensed to practice law. Voting members serve staggered three-year terms ending on September 30 of the applicable year. The Supreme Court appoints one of the voting members of the Board to serve as chair. No member may be appointed to serve more than two consecutive full terms.

(c) Restrictions. Volunteer Selection Board members cannot serve as regulatory adjudicators or special conflicts disciplinary counsel until three years have expired after departure from office.

(d) Expenses. The Bar reimburses Volunteer Selection Board members for actual, necessary, and reasonable expenses according to the Bar's expense policy.

RDI 2.6 VOLUNTEER ADJUDICATOR POOL

(a) Function. The volunteer adjudicator pool consists of volunteers who perform the functions of the adjudicative panels and of settlement officers as set forth in these Rules.

(1) *Adjudicative Function*. The Chief Regulatory Adjudicator assigns volunteer adjudicators to one or more of the adjudicative panels.

(2) *Settlement Officer Function*. The Chief Regulatory Adjudicator may assign volunteer adjudicators to serve as settlement officers under Rule 10.11(h).

(b) Composition. The volunteer adjudicator pool consists of at least 15 lawyer members of the Bar, three LLLT members of the Bar, three LPO members of the Bar, and three individuals who have never been licensed to practice law. The Supreme Court, upon recommendations from the Volunteer Selection Board, appoints individuals to the volunteer adjudicator pool.

(c) Terms. Appointments to the volunteer adjudicator pool are for staggered three-year terms ending on September 30 of the applicable year.

(d) Qualifications. Members of the Bar serving as volunteer adjudicators must be active members of the Bar, have no record of public discipline, have no disciplinary or incapacity proceeding pending, have no disciplinary proceedings pending or imminent, and have no other active role in Washington's discipline and incapacity system.

(e) Expenses. The Bar reimburses volunteer adjudicators for actual, necessary, and reasonable expenses according to the Bar's expense policy.

RDI 2.7 DIVERSITY

Individuals and entities making appointments under these Rules must consider principles of diversity, equity, and inclusion and must promote the full and equal participation in the discipline and incapacity systems by persons historically underrepresented in the legal profession, including women, persons of color, persons with disabilities, and persons who identify as LGBTQ. Diversity in geography, area of practice, and practice experience may also be considered.

RDI 2.8 REGULATORY ADJUDICATOR CONDUCT

(a)Application of Code of Judicial Conduct. The integrity and fairness of the adjudicative system established by these Rules requires that regulatory adjudicators, including volunteer adjudicators, observe high standards of conduct. The Code of Judicial Conduct (CJC) applies to a regulatory adjudicator and volunteer adjudicator to the same extent as the CJC applies to a judge pro tempore as set forth in the CJC Application section III, except that a regulatory adjudicator must comply with CJC 3.3 (Acting as a Character Witness), and need not comply with CJC 2.14 (Disability and Impairment) or CJC 2.15 (Responding to Judicial and Lawyer Misconduct).

(b) Restriction on Reviewing Own Decision. A regulatory adjudicator is prohibited from reviewing the regulatory adjudicator's own decision or order in any matter under these Rules, except for motions for reconsideration permitted under these Rules.

RDI 2.9 OFFICE OF DISCIPLINARY COUNSEL

(a) Definition and Function. The Office of Disciplinary Counsel consists of the Chief Disciplinary Counsel and other staff employed under section (c) of this Rule. The Office of Disciplinary Counsel and its staff perform investigative, prosecutorial, and other functions under these Rules.

(b) Disciplinary Counsel. Disciplinary counsel acts as counsel on all matters under these Rules and performs other duties as authorized by these Rules or as delegated by the Chief Disciplinary Counsel.

(c) Chief Disciplinary Counsel and Staff. The Bar must employ a suitable lawyer member of the Bar as Chief Disciplinary Counsel, suitable lawyer members of the Bar as disciplinary counsel, and other suitable staff as necessary to perform the functions and duties set forth in these Rules.

RDI 2.10 SPECIAL CONFLICTS DISCIPLINARY COUNSEL

(a) Function. When a matter is referred to special conflicts disciplinary counsel, special conflicts disciplinary counsel performs the duties of disciplinary counsel under these Rules.

(b) Referral of Matters.

(1) The Chief Disciplinary Counsel refers a matter to be handled by a special conflicts disciplinary counsel when the respondent is one of the following: a licensed legal professional employed by the Bar; a judicial officer of, or licensed legal professional employed by, the Supreme Court; a governor or governor-elect of the Board of Governors; a regulatory adjudicator; a volunteer adjudicator; an adjunct disciplinary counsel; a special conflicts disciplinary counsel; or counsel appointed under Title 8.

(2) The Chief Disciplinary Counsel may refer a matter to be handled by a special conflicts disciplinary counsel when in the Chief Disciplinary Counsel's discretion it appears appropriate to promote the appearance of impartiality or to serve the ends of justice.

(c) Appointment, Qualifications, and Assignments.

(1) The Supreme Court, upon recommendation from the Volunteer Selection Board, appoints individuals to a pool to serve as special conflicts disciplinary counsel but does not assign matters to special conflicts disciplinary counsel in particular cases except as specified in section (3) of this Rule. Special conflicts disciplinary counsel are appointed for staggered three-year terms ending on September 30 of the applicable year.

(2) Special conflicts disciplinary counsel must be active lawyer members of the Bar, have no record of public discipline, have no disciplinary or incapacity proceedings pending or imminent, and have no other active role in Washington's discipline and incapacity system or regulatory system.

(3) When a matter is referred to special conflicts disciplinary counsel under section (b) of this Rule, the Chief Regulatory Adjudicator has discretion to select a particular individual from the pool of special conflicts disciplinary counsel to handle the matter. If the Chief Regulatory Adjudicator is unable to make the assignment or elects not to because of a disqualifying conflict or another legal or ethical restriction, the assignment is made by the Chief Justice or the Chief Justice's designee.

(d) Independence. It is the responsibility of a special conflicts disciplinary counsel to make decisions about the objectives for and appropriate disposition of an assigned matter, independently of the Office of Disciplinary Counsel and the Bar. A special conflicts disciplinary counsel may consult

with disciplinary counsel or bar counsel about disciplinary and incapacity processes and procedural matters.

(e) Access to Disciplinary Information. Special conflicts disciplinary counsel have access to any confidential disciplinary information necessary to perform the duties required by these Rules. Special conflicts disciplinary counsel must return any files and documents to the Bar promptly upon completion of the duties required by these Rules and must not retain copies.

(f) Expenses. The Bar reimburses special conflicts disciplinary counsel for actual, necessary, and reasonable expenses according to the Bar's expense policy.

(g) Compensation. The Bar may provide compensation to special conflicts disciplinary counsel at a level established by the Bar.

(h) Restriction on Representing or Advising Respondents or Complainants. Special conflicts disciplinary counsel are subject to the restrictions set forth in Rule 2.14(c).

RDI 2.11 ADJUNCT DISCIPLINARY COUNSEL

(a) Function. When a matter is assigned to adjunct disciplinary counsel, adjunct disciplinary counsel performs the duties of disciplinary counsel under these Rules as directed by disciplinary counsel.

(b) Assignment of Matters. The Chief Disciplinary Counsel assigns adjunct disciplinary counsel to any matter under these Rules when in the Chief Disciplinary Counsel's discretion it appears the appointment will assist the Office of Disciplinary Counsel in performing its duties under these Rules.

(c) Appointment and Qualifications.

(1) Upon the recommendation of the Chief Disciplinary Counsel, the Executive Director appoints individuals to a pool to serve as adjunct disciplinary counsel. Adjunct disciplinary counsel are appointed for staggered three-year terms ending on September 30 of the applicable year.

(2) The Chief Disciplinary Counsel has discretion to appoint an individual to serve as an adjunct disciplinary counsel pro tempore for purposes of a particular matter when it would advance the just and efficient administration of the discipline system.

(3) Adjunct disciplinary counsel must be active lawyer members of the Bar, have no record of public discipline, have no disciplinary or incapacity proceedings pending or imminent, and have no other active role in Washington's discipline and incapacity system or regulatory system.

(d) Access to Disciplinary Information. Adjunct disciplinary counsel have access to any confidential disciplinary information necessary to perform the duties required by these Rules. Adjunct disciplinary counsel must return any files and documents to the Bar promptly upon completion of the duties required by these Rules and must not retain copies.

(e) Expenses. The Bar reimburses adjunct disciplinary counsel for actual, necessary, and reasonable expenses according to the Bar's expense policy.

(f) Restriction on Representing or Advising Respondents or Complainants. Adjunct disciplinary counsel are subject to the restrictions set forth in Rule 2.14(d).

RDI 2.12 RESPONDENT

(a) Respondent. A respondent is a licensed legal professional who is the subject of a complaint, investigation, or proceeding under these Rules.

(b) Representation by Counsel. A respondent may be represented by counsel during any stage of a complaint, investigation, or proceeding under these Rules.

(c) Duty to Comply with Orders. A respondent must comply with all orders issued by the ORA or the Court.

(d) Duty to Provide Authorization for Release of Medical Records. If requested, a respondent must provide written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the investigation or proceedings, subject to a motion to the ORA to limit the scope of the requested releases and authorizations for good cause shown. In proceedings under Title 8, this duty is governed by Rules 8.2(d), 8.3(f), 8.4(e), and 8.11(a)(2).

(e) Restriction on Charging Fee to Respond to Complaint. A respondent may not seek to charge a complainant a fee or recover costs from a complainant for responding to a complaint.

RDI 2.13 PRIVILEGES

(a) Communications Privileged. Communications to the Court, Bar, Board of Governors, adjudicative panels, regulatory adjudicators, Clerk, disciplinary counsel, special conflicts disciplinary counsel, adjunct disciplinary counsel, Bar staff, or any other individual or entity acting under authority of these Rules are absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant, witness, or other person providing information.

(b) Attorney-Client Privilege and Duty of Confidentiality. A licensed legal professional may not assert the attorney-client privilege or other prohibitions on revealing information relating to the representation of a client as a basis for refusing to provide information that the licensed legal professional is obligated to provide under these Rules, including information made confidential by any applicable rules of professional conduct, except as permitted by Rules 5.6(b) and 5.7(c). Providing information to disciplinary counsel or a regulatory adjudicator under these Rules is not prohibited by RPC 1.6 or 1.9 or LLLT RPC 1.6 or 1.9 and does not waive any attorney-client privilege.

(c) Bar's Duty of Confidentiality.

(1) If a licensed legal professional provides and identifies specific information that is privileged and requests that it be treated as confidential under these Rules, the Bar must maintain the confidentiality of the information.

(2) Disciplinary counsel receives, reviews, and holds attorney-client privileged and other confidential client information provided by a licensed legal professional under and in furtherance of the Supreme Court's authority to regulate the practice of law.

(3) No information identified as confidential under this Rule may be disclosed or released under Title 3 absent authorization under section (f) of this Rule unless the client or former client consents, which includes consent under Rule 5.2(a).

(d) Licensed Legal Professional's Own Confidential Information. Nothing in these Rules waives or requires waiver of a licensed legal professional's own privilege or

other protection as a client against the disclosure of information relating to the representation.

(e) Privilege Against Self-Incrimination. A licensed legal professional's duty to cooperate and testify under these Rules is subject to the licensed legal professional's proper exercise of the privilege against self-incrimination.

(f) Disclosure of Confidential Information.

(1) Disciplinary counsel may move for authorization to disclose information identified as confidential client information under this Rule or Rule 3.1(b). The motion must clearly state the information that has been identified as confidential and the use for which disciplinary counsel seeks authorization. The procedures set forth in Rule 10.8 apply to motions under this Rule.

(2) In considering a motion to authorize disciplinary counsel to disclose information identified as confidential client information under this Rule, the regulatory adjudicator should consider factors including:

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

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

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

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

(E) the expressed desires of the client.

(3) When deemed necessary by the regulatory adjudicator considering the motion, the regulatory adjudicator may conduct an in camera review of confidential client information.

(4) The regulatory adjudicator may grant or deny the motion in whole or in part, and may establish terms or conditions for the use of specific information. A ruling may take the form of, or may accompany, a protective order under Rule 3.4.

(5) Review of a ruling under this Rule may be sought under Rule 11.10.

RDI 2.14 RESTRICTIONS ON REPRESENTING OR ADVISING INDIVIDUALS UNDER THESE RULES

(a) Current Bar Officials and Adjudicators. Bar officers, the Bar Executive Director, Board of Governors members, regulatory adjudicators, and volunteer adjudicators cannot knowingly advise or represent individuals regarding pending or likely matters under these Rules, other than advising a person of the availability of complaint procedures or to secure the services of a lawyer.

(b) Former Bar Officials. After leaving office, Bar officers, the Bar Executive Director, and Board of Governors members cannot represent individuals in pending or likely matters under these Rules until three years have expired after departure from office.

(c) Special Conflicts Disciplinary Counsel. Special conflicts disciplinary counsel are subject to the restrictions on advising and representing individuals set forth in this Rule during the term of their appointment.

(d) Adjunct Disciplinary Counsel. Adjunct disciplinary counsel are subject to the restrictions on advising and representing individuals set forth in this Rule only while assigned to a matter under Rule 2.11.

RDI 2.15 REMOVAL OF APPOINTEES

The power granted by this Title to any person or entity to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform the duties of the appointment, or for any other cause, and to fill the resulting vacancy.

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

TITLE 3 - DISCIPLINARY AND INCAPACITY INFORMATION

RDI 3.1 CONFIDENTIALITY

(a) General. Matters and information made confidential under these Rules are held by the Bar under the authority of the Supreme Court. Confidential information must not be disclosed or released except as authorized by these Rules. The complainant, respondent, or any witness may disclose any information in their possession regarding a disciplinary or incapacity matter except as prohibited by Rule 3.4, court order, or other law.

(b) Client Information. When a licensed legal professional provides information to the Bar and identifies that information as privileged or confidential client information under Rule 2.13(c), that information may not be released under this Title unless the client consents, including consent under Rule 5.2(a), or disciplinary counsel obtains an order authorizing such disclosure under Rule 2.13(f).

(c) Information Not Subject to Subpoena. Information made confidential under these Rules is not subject to a subpoena or order requiring disclosure in any civil, criminal, or other proceeding except by leave of the Supreme Court upon a showing of compelling need.

(d) Wrongful Release. Disclosure or release of information made confidential by these Rules, except as permitted by these Rules, is strictly prohibited. If the person is a licensed legal professional, wrongful disclosure or release may be grounds for discipline.

RDI 3.2 PUBLIC AND CONFIDENTIAL EVENTS

(a) Open to the Public. Except as otherwise provided in these Rules or as ordered by a regulatory adjudicator or the Supreme Court, the following events in disciplinary proceedings are open to the public:

(1) hearings and motion hearings; and

(2) oral arguments before an Appeal Panel.

(b) Closed to the Public. Except as otherwise provided in these Rules or as ordered by the Supreme Court, all events that are not open to the public under section (a) of this Rule are closed to the public, including but not limited to the following:

(1) ORA adjudicative panel deliberations;

(2) Volunteer Selection Board deliberations;

(3) hearings, motions, and conferences before a regulatory adjudicator in incapacity proceedings;

(4) oral arguments before an Appeal Panel in incapacity proceedings;

(5) motion hearings and oral arguments on interlocutory review prior to an order authorizing the filing of statement of charges;

(6) review of material breach determination in diversion matters;

(7) oral presentations regarding a stipulation;

(8) motion hearings appointing custodian;

(9) settlement conferences; and

(10) any event or portion of an event subject to a protective order.

(c) Supreme Court Proceedings. Except as otherwise provided in these Rules or by order of the Supreme Court, Supreme Court proceedings are public to the same extent as other Supreme Court proceedings. Upon motion of a party in an incapacity proceeding under Title 8, the Supreme Court may take additional measures to ensure the confidentiality of information.

RDI 3.3 PUBLIC AND CONFIDENTIAL INFORMATION

(a) Public Information. The following information is public, subject to limitation by protective order, other provisions in these Rules, other applicable laws, order of a regulatory adjudicator, or court order:

(1) statements of concern and any related filed documents made public under Rule 3.7;

(2) orders of an Authorization Panel authorizing the filing of a statement of charges;

(3) pleadings, orders, notices, and documents filed with the Clerk in disciplinary proceedings;

(4) after a stipulation under Title 9 is approved by the ORA, (A) the record submitted to the ORA, (B) the order approving the stipulation, and (C) the stipulation;

(5) resignations in lieu of discipline under Rule 9.2;

(6) pleadings, orders, and documents filed with the Supreme Court, except in incapacity proceedings or information identified as confidential under Rules 7.3(c) and 7.4;

(7) orders appointing and discharging custodians under Rule 16.1, including the appointed custodian's name and contact information;

(8) the fact that a complainant has been determined to be a vexatious complainant and the order under Rule 5.5(g);

(9) the fact that a proceeding under Title 8 is pending or that a disciplinary proceeding has been stayed pending the outcome of a proceeding under Title 8;

(10) the fact that a licensed legal professional's license has been placed in incapacity inactive status or interim incapacity inactive status;

(11) the fact that a licensed legal professional's license has been suspended on an interim basis under Title 7;

(12) the fact that a matter has been diverted from disciplinary proceedings after an Authorization Panel has authorized the filing of a statement of charges; and

(13) the fact that a sanction or remedy has been imposed under Title 13.

(b) Confidential Information. All information not defined as public under section (a) of this Rule is confidential, including but not limited to:

(1) information made confidential by a protective order, other provisions in these Rules, other applicable laws, an order of a regulatory adjudicator, or a court order;

(2) discipline imposed under prior rules of this state that was confidential when imposed. A record of confidential discipline may be kept confidential during proceedings under these Rules, or in connection with a stipulation under Rule 9.1, through a protective order under Rule 3.4;

(3) information identified by a licensed legal professional under Rule 2.13(c) to the Bar as privileged or confidential client information, unless disciplinary counsel obtains an order authorizing disclosure under Rule 2.13(f) or the client consents;

(4) information regarding matters under Title 5, except as identified in section (a) of this Rule;

(5) information regarding incapacity proceedings under Title 8, except as identified in section (a) of this Rule; and

(6) information regarding vexatious complainant proceedings under Rule 5.5, except as identified in section (a) of this Rule.

RDI 3.4 PROTECTIVE ORDERS

(a) Purpose. To protect a compelling interest and for good cause shown, upon motion, a regulatory adjudicator may enter a protective order prohibiting or limiting disclosure or release of specific information, documents, or pleadings and directing other actions necessary to implement the order.

(b) Motion. A motion for a protective order must comply with the procedures for written motions under Rule 10.8.

(c) Review. An Appeal Panel reviews decisions granting or denying a protective order or relief from a protective order if a written request for review is filed and served within five days of service of the decision. When a written request for review is filed, the Chief Regulatory Adjudicator assigns the matter to an Appeal Panel and establishes the timeline and terms for any additional briefing and oral argument.

(d) Relief from a Protective Order. A regulatory adjudicator may grant specific relief from a protective order on a showing of compelling need, provided the individual seeking relief establishes that reasonable efforts have been made to notify any person affected by the order.

(e) Disclosure Prohibited While Motion Pending. The filing of a motion for a protective order prohibits disclosure or release of the materials or information sought to be protected until an order deciding the motion is final. An order deciding the motion is final after the time for filing a request for review has expired or after a decision on review is filed and served.

RDI 3.5 RELEASE OF CONFIDENTIAL INFORMATION WITHOUT NOTICE

(a) Release upon Written Waiver. Upon written waiver by the licensed legal professional, the Bar may, without further notice to the licensed legal professional, release confidential disciplinary or incapacity information to any person or entity authorized by the licensed legal professional to receive the information.

(b) Investigative Release. Except as otherwise prohibited by these Rules, an order entered under Rule 3.4, court order, or other applicable law, the Bar may, without notice to a licensed legal professional, release confidential disciplinary and incapacity information as reasonably necessary to conduct an investigation, recruit counsel, or to keep a complainant advised of the status of a matter. When providing information to a complainant about the status of an incapacity matter, the information must be limited to the fact that a matter is under investigation or has been stayed or deferred.

(c) Other Release. Except as otherwise prohibited by these Rules, an order entered under Rule 3.4, court order, or other applicable law, when it appears the information will assist the recipient in performing the recipient's duties, the Bar may release confidential disciplinary or incapacity information related to a licensed legal professional or respondent without notice to that person as follows:

(1) to the Client Protection Board;

(2) to the Practice of Law Board;

(3) to the Character and Fitness Board;

(4) to other counsel performing duties under these Rules, including special conflicts disciplinary counsel, adjunct disciplinary counsel, and appointed incapacity counsel;

(5) to custodians appointed under Rule 16.1;

(6) to the Volunteer Selection Board;

(7) to the Bar's Board of Governors or officers, as deemed reasonably necessary by Chief Disciplinary Counsel;

(8) to any state, federal, or tribal court judicial officer if the information is relevant to the licensed legal professional's conduct before the court or to a judicial officer's reporting obligation under the Code of Judicial Conduct or other law;

(9) to authorities in any jurisdiction authorized to investigate alleged unlawful activity;

(10) to authorities in any jurisdiction authorized to investigate judicial or licensed legal professional misconduct or incapacity; or

(11) to any lawyer representing the Bar in any matter.

(d) Duty to Maintain Confidentiality. Any recipient of information under sections (c)(1)-(7) of this Rule must maintain the confidentiality of that information. Any recipient of information under sections (c)(8)-(11) must be notified of the Bar's confidentiality obligations under these Rules.

RDI 3.6 RELEASE OF CONFIDENTIAL INFORMATION WITH NOTICE

(a) Discretionary Release. Except as prohibited by Rule 3.4, the Chief Disciplinary Counsel may authorize the general or limited release of any confidential information when it appears necessary to:

(1) protect the interests of clients or other persons, the public, or the integrity of the disciplinary process or the Bar;

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

(3) correct a false or misleading public statement.

(b) Notice. A respondent must be given notice of a decision to release information under this Rule before its release unless the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public or would be detrimental to the integrity of the disciplinary process or the Bar. Notice must be given seven days before release and must include a description of the information that will be released.

(c) Finality. A respondent may serve and file a motion for protective order under Rule 3.4 before the information is released. Otherwise, a decision to release information under this Rule is not subject to further review.

(d) Inability to Act. When the Chief Disciplinary Counsel is unable to act, or upon the request of the Chief Disciplinary Counsel, decisions under this Rule will be made by the Executive Director or a special conflicts disciplinary counsel assigned to the matter.

RDI 3.7 PUBLIC STATEMENT OF CONCERN

(a) Authority. To protect members of the public from a substantial threat, the Chief Disciplinary Counsel may file a proposed statement of concern with the Clerk based on information from a pending investigation into a respondent's apparent ongoing serious misconduct not otherwise made public by these Rules. The proposed statement must not disclose information protected by Rule 3.4.

(b) Procedure.

(1) A copy of the proposed statement of concern must be served on the respondent who is the subject of the statement of concern.

(2) The respondent may file an objection with the Clerk within seven days of the service of the proposed statement of concern. The respondent must serve the objection on the Office of Disciplinary Counsel.

(3) If a timely objection is filed, the Chief Regulatory Adjudicator determines the procedure for prompt consideration of the objection. The proposed statement of concern becomes a public statement of concern only if the Chief Regulatory Adjudicator so orders. The Chief Regulatory Adjudicator's decision is not subject to further review.

(4) If no timely objection is filed, the proposed statement of concern becomes a public statement of concern seven days after service.

(c) Withdrawal. The Chief Disciplinary Counsel may withdraw a public statement of concern at any time by filing a notice of withdrawal with the Clerk. The respondent may at any time request that the Chief Regulatory Adjudicator order the public statement of concern withdrawn. The Chief Regulatory Adjudicator determines the procedure for prompt consideration of the request. If withdrawn, the public statement of concern is removed from the website maintained by the Bar for public information.

(d) Confidentiality. A proceeding under this Rule, including a proposed statement of concern and any documents filed in the proceeding, is confidential unless the proposed statement of concern is made public under section (b)(3) or (b)(4).

RDI 3.8 NOTICE OF DISCIPLINARY ACTION, RESIGNATION IN LIEU OF DISCIPLINE, INTERIM SUSPENSION, OR PLACEMENT IN INCAPACITY INACTIVE STATUS

(a) Notices. The Clerk must notify and send appropriate documentation to the following entities of the imposition of a disciplinary sanction, a placement of the respondent's license in incapacity inactive status, a resignation in lieu of discipline, or the filing of a statement of concern made public under Rule 3.7:

(1) the Supreme Court and the discipline authority or highest court in any jurisdiction where the licensed legal professional is believed to be admitted to practice law;

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

(3) the presiding judge of the superior court of the county in which the licensed legal professional maintained a practice, as appropriate for the license type; and

(4) the American Bar Association National Lawyer Regulatory Data Bank.

(b) Bar Publication and Website Notice.

(1) *Notice*. Notice of the imposition of any disciplinary sanction, resignation in lieu of discipline, interim suspension, information ordered published under Rule 9.3 (b)(3), placement of a respondent's license in incapacity inactive status, or a statement of concern made public under Rule 3.7 must be published in the official publication of the Bar and on a website maintained by the Bar for public information. Notices should include sufficient information to adequately inform the public and the members of the Bar about any misconduct found, rules violated, and disciplinary sanction imposed. For a placement of a respondent's license in incapacity inactive status, no reference may be made to the specific incapacity. For an interim suspension, the basis of the interim suspension must be stated. Bar counsel must serve a copy of the draft notice under this section on respondent and disciplinary counsel under Rule 4.1. Disciplinary counsel or respondent may provide Bar counsel with comments on the draft notice, which must be received within ten days of service. Bar counsel must review comments timely received, but Bar counsel's decision about the content of the notice is not subject to further review.

(2) *Publication*. Notices published in the official publication of the Bar and posted on the Bar website may not be removed following publication, unless ordered by the Supreme Court or otherwise set forth in these Rules.

RDI 3.9 MAINTENANCE OF RECORDS

(a) Permanent Records. The Clerk's file, admitted exhibits, and transcripts of the proceedings are permanent records in any matter in which:

(1) the filing of a statement of charges was authorized,

(2) an incapacity proceeding was authorized or commenced,

(3) a sanction was imposed,

(4) a placement of a respondent's license in incapacity inactive status was ordered,

(5) the respondent resigned in lieu of discipline under Rule 9.2,

(6) a statement of concern was made public under Rule 3.7, or

(7) a custodian was appointed under Rule 16.1.

(b) Retention and Destruction of Complaint and Investigative Files. Except as specified below, file materials that are not permanent records under section (a) of this Rule may be destroyed three years after the matter is closed. File materials on a matter closed after a diversion may be destroyed no sooner than five years after the closure. File materials that are not permanent records must be destroyed on the schedule set forth above on the respondent's request unless the file materials are being used in an ongoing investigation or other good cause exists for retention. File materials related to records made permanent under section (a) of this Rule, including investigative files, may be retained indefinitely in disciplinary counsel's discretion.

(c) Retention and Destruction of Random Examination Files. In any random examination matter under Rule 15.1 that was concluded without an investigation being ordered, the file materials relating to the matter may be destroyed three years after the matter was concluded. For any random examination matter resulting in an ordered investigation, the materials related to the random examination matter will be made part of the disciplinary investigative file. A record, limited to the name of the lawyer, LLLT, LPO, law firm, or closing firm examined or re-examined under Rule 15.1, together with the date the examination or re-examination was concluded, will be maintained for a period of seven years for the purpose of determining prior examinations under Rule 15.1(c).

RDI 3.10 NO RETROACTIVE EFFECT

These Rules do not modify the public or confidential nature of information or pleadings made public or confidential under disciplinary or incapacity procedural rules in effect prior to enactment of these Rules.

TITLE 4 - GENERAL PROCEDURAL RULES

RDI 4.1 SERVICE OF PAPERS

(a) General. Whenever these Rules require service of papers or documents, service must be accomplished as provided in this Rule.

(b) Methods of Service.

(1) *Electronic Service*.

(A) The parties may consent in writing to electronic service of all papers or documents unless these Rules specifically provide for a different means of service. Electronic service is complete on transmission when made prior to 5:00 p.m. Pacific Time on a day that is not a Saturday, Sunday, or legal holiday. Service made on a Saturday, Sunday, legal holiday, or after 5:00 p.m. Pacific Time on any other day is deemed complete on the first day thereafter that is not a Saturday, Sunday, or legal holiday. If properly made, electronic service is presumed effective.

(B) The address for electronic service is as follows:

(i) If service is on the Office of Disciplinary Counsel, to the assigned disciplinary counsel's email address on file with the Bar, unless a different email address is designated by disciplinary counsel;

(ii) If service is on respondent or any lawyer representing the respondent, to the email address on file with the Bar, unless a different email address is provided in an answer to a statement of charges or in a notice of appearance by counsel.

(C) If a party agrees to electronic service under this Rule, the email address specified in section (b)(1)(B) of this Rule must be sufficient to receive electronic transmission of information and electronic documents.

(D) Consent to electronic service does not preclude service by other means.

(2) *Service by Mail*.

(A) If the parties do not consent to electronic service under section (b)(1) of this Rule, all papers and documents must be served by mail unless these Rules specifically provide for a different means of service. Service by mail may be accomplished by postage-prepaid mail. If properly made, service by mail is complete on the date of mailing. Service by mail is effective regardless of whether the person to whom it is addressed actually receives it.

(B) Service by mail may be by first class mail or by certified or registered mail, return receipt requested.

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

(i) If service is on the Office of Disciplinary Counsel, directed to the assigned disciplinary counsel at the address of the Bar, unless a different address is designated;

(ii) If service is on respondent or any lawyer representing the respondent, to the address on file with the Bar, unless a different address is provided in an answer to a statement of charges or in a notice of appearance by counsel.

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

(4) *Personal Service*. If personal service is required under these Rules, it must be accomplished as follows:

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

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

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

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at the respondent's last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Bar, or to the respondent's resident agent whose name and address are on file with the Bar under APR 13(f).

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

(c) Service on Guardian. If there is a court-appointed guardian or guardian ad litem for a respondent, service under sections (a) and (b) of this Rule above must also be made on the guardian or guardian ad litem.

(d) Proof of Service.

(1) If service is accomplished electronically or by mail, proof of service may be made by a certificate of service.

(2) If personal service is required, proof of service may be made by affidavit or declaration of service, sheriff's return of service, or a signed acknowledgment of service.

(3) Proof of service in all cases must be filed but need not be served.

RDI 4.2 FILING; ORDERS

(a) Filing Generally. Except in matters before the Supreme Court, whenever filing is required under these Rules, the document must be filed with the Clerk. Filing of documents for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

(1) *Timing*. Any document is timely filed only if it is received by the Clerk within the time permitted for filing. A document received by the Clerk after 5:00 p.m. Pacific Time or on a Saturday, Sunday, or legal holiday is deemed filed on the first day thereafter that is not a Saturday, Sunday, or legal holiday.

(2) *Signing*. Documents filed with the Clerk must be signed by the party or person filing the document or the attorney of record for the party or person filing the document.

(3) *Electronic Filing*. The parties should file electronically. Electronic filing may be accomplished by email or an electronic system approved by the Clerk.

(4) *Refusal by Clerk*. The Clerk may refuse to accept for filing any document not in compliance with these Rules and must notify the parties of the refusal and the reason for the refusal.

(b) Filing of Orders. Any written order, decision, or ruling of the ORA must be filed with the Clerk.

(c) Service of Orders. The Clerk must serve any written order, decision, or ruling of the ORA on disciplinary counsel and the respondent or any lawyer representing the respondent. Unless the ORA orders otherwise, service by the Clerk should be made electronically as set forth in Rule 4.1 (b)(1)(B).

(d) Respondents Who Are Not Bar Members. If a respondent is not licensed to practice law in Washington and does not have a mailing address or an email address on file with the Bar, the respondent must provide the disciplinary counsel or the Clerk with a mailing address and an email address to receive service of papers. In the absence of a mailing address or email address provided by the respondent, disciplinary counsel or the Clerk may serve the respondent at any reasonably ascertainable address where it appears the respondent receives mail or email.

RDI 4.3 PAPERS AND DOCUMENTS IN PROCEEDINGS

Except as otherwise provided in Titles 11 or 12, all pleadings, documents, or other papers filed in proceedings must be legibly written or typed using no smaller than 12-point font and prepared on 8 1/2 by 11 inch paper or the electronic equivalent.

RDI 4.4 COMPUTATION OF TIME

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

RDI 4.5 EXTENSION OR REDUCTION OF TIME IN PROCEEDINGS

In any proceeding, except for notices of appeal or matters pending before the Supreme Court, the ORA may, on its own initiative or on motion of a party, enlarge or shorten the time within which an act must be done in a particular case for good cause.

RDI 4.6 SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION

Upon a showing of good cause, disciplinary counsel or a regulatory adjudicator may issue a subpoena to compel the attendance of witnesses or production of documents in this state for use in disciplinary or incapacity proceedings in another jurisdiction. The person seeking the subpoena must certify that the subpoena has been approved or authorized under the law or disciplinary rules of the other jurisdiction. Service, enforcement, and challenges to a subpoena issued under this Rule are governed by the provisions of these Rules.

RDI 4.7 ENFORCEMENT OF SUBPOENAS

Any person who fails, without adequate excuse, to obey a subpoena served upon that person under these Rules may be deemed in contempt of the Washington Supreme Court. To enforce subpoenas issued under these Rules, a party must file a petition for an order to show cause with the Supreme Court. The petition must (1) be accompanied by a copy of the subpoena and proof of service; (2) state the specific manner of the lack of compliance; and (3) specify the relief sought. The person subject to the subpoena may file an answer to the petition within seven days of service. The Court considers the petition and any answer and issues an order granting or denying the relief sought.

RDI 4.8 SERVICE AND FILING BY AN INMATE CONFINED IN AN INSTITUTION

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

RDI 4.9 REDACTION OR OMISSION OF PERSONAL IDENTIFIERS

The filing party is responsible for redacting or omitting from all publicly filed exhibits, documents, and pleadings the following personal identifiers: social security numbers, financial account numbers, and driver's license numbers. When it is not feasible to redact or omit a personal identifier, the filing party must seek a protective order under Rule 3.4 to have the document filed under seal.

TITLE 5 - REVIEW, INVESTIGATION, AND COMPLAINT PROCEDURES

RDI 5.1 INVESTIGATIVE AUTHORITY

(a) Authority. Disciplinary counsel may take appropriate steps to investigate any alleged or apparent misconduct by, or incapacity to practice law of, a licensed legal professional whether disciplinary counsel learns of it by complaint or otherwise.

(b) Submitting a Complaint. Any person or entity may submit to the Office of Disciplinary Counsel a written complaint concerning the misconduct or incapacity to practice law of a licensed legal professional. Disciplinary counsel must review the information to determine whether an investigation or further action is warranted.

RDI 5.2 COMPLAINANT CONSENT TO DISCLOSURE AND EXCEPTIONS

(a) Consent to Disclosure. By submitting a complaint, the complainant consents to the following:

(1) all information the complainant submits may be disclosed to the respondent or to any person eligible to receive information under these Rules; and

(2) the respondent or any other licensed legal professional contacted by the complainant may disclose to disciplinary counsel any information relevant to the investigation.

(b) Consent Does Not Extend to Other Forums. Consent to disclosure under this Rule does not constitute a waiver of any privilege or restriction against disclosure in any other forum.

(c) Withholding Information. Disciplinary counsel has discretion to withhold information in whole or in part from the respondent or an individual otherwise eligible to receive it when disciplinary counsel deems it necessary to protect a privacy, safety, or other compelling interest of a complainant or other person.

(d) Confidential Source. If a person or entity submits a complaint and asks to be treated as a confidential source, the person's identity may not be disclosed during an investigation or proceeding unless ordered by a regulatory adjudicator as necessary for the respondent to conduct a proper defense. A confidential source is not entitled to the notification required under Rule 5.12.

RDI 5.3 REQUEST FOR PRELIMINARY RESPONSE

Disciplinary counsel may request a written preliminary response from a respondent to information obtained under Rule 5.1. If disciplinary counsel requests only the respondent's written preliminary response and does not request specific information or specific records, files, or accounts, the request is not subject to objection under Rule 5.6(b).

RDI 5.4 DEFERRAL BY DISCIPLINARY COUNSEL

(a) Deferral. Disciplinary counsel may defer action under Rule 5.1(b) or investigation under this Title:

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

(2) if it appears that the respondent lacks the physical or mental capacity to respond;

(3) if an incapacity proceeding under Title 8 is pending; or

(4) for other good cause.

When making a deferral decision, disciplinary counsel considers whether deferral will endanger the public.

(b) Notice and Review. Disciplinary counsel must inform the respondent and may inform the complainant of a deferral decision. A deferral decision is not subject to review.

RDI 5.5 VEXATIOUS COMPLAINANTS

(a) Definition. A "vexatious complainant" is a complainant who has engaged in a frivolous or harassing course of conduct relating to the submission of complaints that so departs from a reasonable standard of conduct as to render the complainant's conduct abusive to the disciplinary system or participants in the disciplinary system.

(b) Motion. Either disciplinary counsel or a respondent may file a motion with the ORA to declare the complainant vexatious. The filing of a motion does not suspend a respondent's duties under these Rules. The moving party may request a temporary order stating that disciplinary counsel need not accept, acknowledge, review, or investigate complaints from the alleged vexatious complainant.

(c) Requirements of Motion. The motion must set forth with particularity the facts establishing that the complainant's conduct is vexatious and identify the relief sought.

(d) Service. The moving party must serve a copy of the motion on the complainant. If the motion is filed by a respondent, the motion must also be served on disciplinary counsel. Disciplinary counsel may notify any current or former respondent against whom a complaint has been filed by the alleged vexatious complainant of the motion.

(e) Response to Motion. The complainant or disciplinary counsel may file a written response no later than 20 days after service of the motion.

(f) Temporary Order. During the pendency of the motion, the ORA may issue a temporary order stating that disciplinary counsel need not accept, acknowledge, review, or investigate complaints from the alleged vexatious complainant.

(g) Order. If the ORA finds that the complainant's conduct is vexatious, the ORA must issue findings of fact and a separate order relieving disciplinary counsel of the obligation to accept, acknowledge, review, or investigate complaints from the vexatious complainant and any other necessary and proper relief. The relief ordered must be no broader than necessary to prevent the harassment and abuse found. If the ORA finds that the complainant's conduct is not vexatious, the ORA must issue an order denying the motion.

(h) Confidentiality. The fact that a complainant has been determined to be a vexatious complainant and the order are public information. All other proceedings and documents related to a motion under this Rule are confidential.

(i) Review by Court. The moving party, the complainant, or disciplinary counsel may seek review of the ORA's order by filing a petition for discretionary review under the procedures set forth in Rule 12.4. No other appeal of the order is allowed. Information made confidential under these Rules remains confidential in any Supreme Court proceeding.

RDI 5.6 INVESTIGATIVE INQUIRIES AND OBJECTIONS

(a) General Investigative Inquiries. Upon inquiry or request by disciplinary counsel, any licensed legal professional must:

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

(2) permit inspection and copying of requested records, files, and accounts;

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

(4) furnish written releases or authorizations if needed to obtain documents or information from third parties, including requests directed to a respondent under Rule 2.12(d); and

(5) comply with investigatory subpoenas under Rule 5.7.

(b) Objections. Within 30 days of service of a written investigative inquiry or request under section (a) of this Rule, a licensed legal professional may serve a written objection on disciplinary counsel. An objection is reviewed by the ORA under Rule 5.8.

RDI 5.7 INVESTIGATIVE SUBPOENAS AND DEPOSITIONS

(a) Procedure. Before filing a statement of charges, disciplinary counsel may issue a subpoena for a deposition or to obtain documents without a deposition. CR 30 and 31 provide guidance for depositions under this Rule. The respondent need not be given notice of a subpoena issued under section (b) of this Rule.

(b) Subpoenas. Disciplinary counsel may issue a subpoena to compel a respondent or a witness to (1) attend a deposition; (2) produce books, documents, or other evidence at a deposition; or (3) produce books, documents, or other evidence without a deposition. CR 45 provides guidance for subpoenas issued under this Rule, but the notice required by CR 45 (b)(2) need not be given. Subpoenas may be enforced as set forth in Rule 4.7.

(c) Objections to Subpoenas and Deposition Requests or Inquiries.

(1) *Objections*. For good cause, the subject of a subpoena may object to an investigative subpoena or a request or inquiry by disciplinary counsel during a deposition under this Rule. Any such objection must be in writing or on the record and is reviewed under Rule 5.8.

(2) *Timeliness of Objections*. An objection to a subpoena under this Rule is timely if made prior to the date specified for production or the date of the deposition. An objection to a request or inquiry made by disciplinary counsel during the course of a deposition is timely only if made in response to the request or inquiry during the deposition. A timely objection suspends any duty to respond to the subpoena or to the request or inquiry until a ruling has been made.

RDI 5.8 REVIEW OF OBJECTIONS

(a) Review Authorized. On motion, the ORA may hear the following matters:

(1) Objections to written investigative inquiries under Rule 5.6 and

(2) Objections to investigative subpoenas or disciplinary counsel inquiries or requests made at a deposition under Rule 5.7.

(b) Procedure.

(1) The person objecting must file a motion seeking review of the objection within 15 days of the date of the objection. If no motion is filed within 15 days, the objection is deemed abandoned.

(2) A motion seeking review of an objection must clearly and specifically set out what is being objected to and the basis for the objection.

(3) In considering an objection to a written investigative inquiry, subpoena, or disciplinary counsel inquiry or request made at a deposition under this Rule, the ORA should consider the following factors:

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

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

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

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

(E) the expressed desires of a client;

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

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

(4) In ruling on an objection under this Rule, the ORA may deny the objection, or sustain the objection in whole or in part, and may establish terms or conditions under which specific information may be withheld, provided, maintained, or used. When appropriate, a ruling may take the form of, or may accompany, a protective order under Rule 3.4.

(5) Review of a ruling under this Rule may be sought under Rule 11.10.

RDI 5.9 COOPERATION

(a) Duty to Respond. A licensed legal professional, whether or not a respondent as defined in Rule 2.12(a), must promptly respond to requests, inquiries, and subpoenas from disciplinary counsel, subject to Rules 2.13, 5.3, 5.6, and 5.7.

(b) Noncooperation Deposition. If a licensed legal professional has not complied with any request made under this Title for more than 30 days from the date of the request, disciplinary counsel may notify the licensed legal professional that failure to comply within 10 days may result in the licensed legal professional's deposition or subject the licensed legal professional to interim suspension under Rule 7.2. Ten days after this notice, disciplinary counsel may serve the licensed legal professional with a subpoena for a deposition. Any deposition conducted after the 10-day period and necessitated by the licensed legal professional's continued failure to cooperate may be conducted at any place in Washington State.

(c) Costs and Expenses.

(1) A licensed legal professional who has been served with a subpoena under this Rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, the cost of transcribing the deposition if ordered by disciplinary counsel, and a reasonable attorney fee of $750.

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

(A) Disciplinary counsel applies to the ORA by itemizing the costs and expenses and stating the reasons for the deposition.

(B) The licensed legal professional has 10 days to respond to disciplinary counsel's application.

(C) The ORA by order assesses appropriate costs and expenses. The order assessing costs and expenses is not subject to further review.

(d) Grounds for Discipline. A licensed legal professional's failure to cooperate fully and promptly with any requests, inquiries, or subpoenas as required by these Rules is also grounds for discipline.

RDI 5.10 REPORTING INVESTIGATIONS TO AN AUTHORIZATION PANEL

(a) Request to an Authorization Panel. Disciplinary counsel may file a request for an order authorizing the filing of a statement of charges or the initiation of incapacity proceedings. The request must set forth the basis for the disciplinary or incapacity proceeding. Disciplinary counsel must file the request with the Clerk and serve the request on the respondent.

(b) Response. A respondent may file with the Clerk a written response to disciplinary counsel's request within 15 days of service of the request. The respondent must serve any response on disciplinary counsel.

(c) Reply. Disciplinary counsel may file with the Clerk a reply to the respondent's response within five days of service of the response. Disciplinary counsel must serve any reply on the respondent.

(d) Standard. An Authorization Panel must authorize the filing of a statement of charges if, based on existing law or a good faith argument for an extension of existing law, sufficient information exists whereby a reasonable trier of fact could find one or more of the alleged rule violations by a clear preponderance of the evidence, even if that evidence is disputed. The standard for authorization to initiate incapacity proceedings is set forth in Rule 8.2(a).

(e) Order. After considering materials filed by disciplinary counsel and the respondent under this Rule, an Authorization Panel issues an order:

(1) authorizing the filing of a statement of charges or the initiation of incapacity proceedings, as requested by disciplinary counsel;

(2) denying the request to file a statement of charges, with prejudice; or

(3) denying the request to file a statement of charges or to initiate incapacity proceedings, without prejudice to the filing of a subsequent request based on the presentation of additional information.

An order denying the request must include an explanation of the reasons for the denial and the determination on prejudice. Any order denying the request with prejudice must be transmitted by the Clerk to the Court, where it will be circulated among the justices for informational purposes.

(f) Finality. The Authorization Panel's order is not subject to review.

RDI 5.11 CLOSURE BY DISCIPLINARY COUNSEL

(a) Closure Without Investigation. Disciplinary counsel may close a complaint after a determination that no investigation or further action is warranted.

(b) Closure of Investigation. Disciplinary counsel may close an investigation and any related complaints after a determination that no further action is warranted.

(c) Finality. Closure under section (a) or (b) of this Rule is not subject to review. If disciplinary counsel receives information about a closed matter, disciplinary counsel may consider that information to determine what, if any, action is appropriate.

(d) Closure Not Required. None of the following alone requires disciplinary counsel to close a complaint or investigation: the unwillingness of a complainant to cooperate with disciplinary counsel, the withdrawal of a complaint, a compromise between the complainant and the respondent, or restitution by the respondent.

RDI 5.12 NOTIFICATION

(a) Closing. Disciplinary counsel must notify the respondent and complainant after a complaint or an investigation has been closed under Rule 5.11.

(b) Other Notification. Disciplinary counsel must notify the respondent and complainant after the results of an investigation have been reported to an Authorization Panel under Rule 5.10(a). Disciplinary counsel must notify the respondent and may notify the complainant that a matter has been deferred under Rule 5.4. Disciplinary counsel must notify the complainant after a matter has been diverted under Title 6 or resolved without a hearing under Title 9.

TITLE 6 - DIVERSION

RDI 6.1 GENERAL

(a) Definition. Diversion is a process that may resolve a matter without further investigation or proceedings and without a public disciplinary sanction. Disciplinary counsel may offer diversion to a respondent who commits a less serious violation of the applicable rules of professional conduct. Disciplinary counsel and respondent enter into a contract setting forth conditions that respondent must satisfy. Successful completion of a diversion contract results in closure of a matter with no further action.

(b) Timing. Disciplinary counsel may offer diversion to a respondent at any time but no later than 60 days after serving a statement of charges.

RDI 6.2 LESS SERIOUS MISCONDUCT

Less serious misconduct is conduct not warranting a sanction that restricts a respondent's license to practice law. Conduct is not ordinarily considered less serious misconduct if the misconduct:

(a) involves the misappropriation of funds;

(b) results in or is likely to result in substantial prejudice to a client or other person;

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

(d) involves dishonesty, deceit, fraud, or misrepresentation;

(e) constitutes a felony as defined in Rule 1.3(f);

(f) is part of a pattern of similar misconduct; or

(g) involves knowing and repeated practice outside the scope of the respondent's license to practice law.

RDI 6.3 FACTORS FOR DIVERSION

If the misconduct is less serious misconduct under Rule 6.2, disciplinary counsel considers the following factors in determining whether to offer diversion to a respondent:

(a) whether the sanction for the alleged violations is likely to be no more severe than a reprimand;

(b) whether participation in diversion is likely to improve the respondent's future professional conduct and protect the public; and

(c) whether the respondent previously participated in diversion.

RDI 6.4 DIVERSION CONTRACT

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

(b) Requirements. A diversion contract must:

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

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

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

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

(5) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the matter to be diverted;

(6) include a specific acknowledgment that a material violation of a term of the contract may result in termination of the contract under Rule 6.7(b); and

(7) include a specific acknowledgment that the diversion contract and the supporting declaration are subject to release under Rule 3.6.

(c) Optional Terms. Diversion may include:

(1) fee arbitration;

(2) arbitration;

(3) mediation;

(4) office management assistance;

(5) assistance programs for licensed legal professionals;

(6) psychological and behavioral counseling;

(7) monitoring;

(8) restitution;

(9) continuing legal education programs;

(10) a plan for the respondent to transition out of practice;

(11) ethics consultation; or

(12) any other program or corrective course of action agreed to by disciplinary counsel and the respondent to address the respondent's misconduct.

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

(e) Amendment. The contract may be amended at any time by written agreement of the respondent and disciplinary counsel.

RDI 6.5 DECLARATION SUPPORTING DIVERSION

A diversion contract must be supported by a declaration approved by disciplinary counsel and signed by the respondent setting forth the respondent's misconduct related to the matter or matters to be diverted.

RDI 6.6 STATUS OF INVESTIGATION OR PROCEEDINGS DURING DIVERSION

After the respondent and disciplinary counsel execute a diversion contract, the investigation or proceeding is stayed pending completion of diversion.

RDI 6.7 COMPLETION OR TERMINATION OF DIVERSION

(a) Successful Completion. Upon disciplinary counsel's determination that diversion has been successfully completed, any investigation that was stayed pending completion of diversion must be closed under Rule 5.11. Any proceeding that was stayed pending completion of diversion must be dismissed by order of a regulatory adjudicator upon notice from disciplinary counsel that the diversion was successfully completed. A proceeding dismissed under this Rule becomes final without entry of a final order under Rule 13.1(a). A respondent who successfully completes diversion cannot be disciplined based solely on the same facts and violations set forth in the diversion contract and respondent's declaration.

(b) Termination for Material Breach. If disciplinary counsel determines that a respondent has materially breached the contract, disciplinary counsel may terminate the diversion. Disciplinary counsel must notify the respondent of termination from diversion. Unless review is sought under section (c) of this Rule, disciplinary counsel resumes any matter that was stayed.

(c) Review by the ORA. A regulatory adjudicator reviews disputes about fulfillment or material breach of the terms of the contract on the request of the respondent or disciplinary counsel. The request must be filed with the Clerk within 15 days of notice to the respondent of the determination for which review is sought. A timely request for review stays further action on the matter until the regulatory adjudicator rules on the request. Determinations by a regulatory adjudicator under this section are not subject to further review.

RDI 6.8 CONFIDENTIALITY

Absent consent of the respondent, the fact of diversion and the diversion documents are confidential and must not be disclosed except as follows:

(a) Notification to Complainant. After disciplinary counsel and the respondent execute a diversion contract, dis-

ciplinary counsel must notify the complainant that a matter has been diverted.

(b) Notification to Persons Providing Services under the Contract. The diversion contract and declaration may be disclosed to individuals or entities who will provide services or administration in connection with the diversion contract.

(c) Following Material Breach. If diversion is terminated due to a material breach, the diversion contract and declaration are admissible into evidence in any disciplinary or incapacity proceeding regarding the matter that had been diverted.

(d) Discretionary Release. Release of the diversion contract and supporting declaration may be authorized under Rule 3.6 provided that the respondent is given notice of the decision to make a discretionary release and a reasonable opportunity to seek a protective order under Rule 3.4.

TITLE 7 - INTERIM SUSPENSION

RDI 7.1 DEFINITION

An interim suspension is a suspension for an indefinite period of time for one or more of the reasons set forth in Rule 7.2. An interim suspension remains in effect until terminated as provided in Rule 7.5. An interim suspension is not a disciplinary sanction.

RDI 7.2 GROUNDS FOR INTERIM SUSPENSION

(a) Risk to Public. During the pendency of any disciplinary investigation or proceeding, disciplinary counsel may petition the Court for, and the Court may order, an interim suspension if it appears that a respondent's continued practice of law poses a substantial threat of serious harm to the public.

(b) Recommendation for Disbarment. Following entry of an Appeal Panel decision recommending a respondent's disbarment, disciplinary counsel must petition the Court for an interim suspension. However, if the decision recommending disbarment is not appealed and becomes final or if the respondent is otherwise suspended, disciplinary counsel need not file the petition or may withdraw a petition already filed. In ruling on the petition, the Court must order an interim suspension unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public.

(c) Failure to Cooperate. When a licensed legal professional has failed, without good cause, to comply with an obligation to appear or provide information or documents under Rules 5.3, 5.6, 5.7, 5.9, 8.2(d), 8.2 (f)(6), 8.4(e), 8.4 (f)(6), or 15.2, disciplinary counsel may petition the Court for an interim suspension. The Court may order an interim suspension if it finds that the respondent has so failed to comply. If a timely objection under Rule 5.8 to an inquiry, request, or subpoena has been asserted or a timely motion for review of an objection is pending, a petition for interim suspension under this section may not be filed until the decision is final.

(d) Conviction of a Felony. If a licensed legal professional is convicted of a felony, disciplinary counsel must petition the Court for an interim suspension. A petition to the Supreme Court for interim suspension under this Rule must include a copy of any available document establishing the fact of the conviction. The Court must order an interim suspension unless the Court finds that the crime did not constitute a felony or that the respondent is not the individual convicted.

(1) *Definition of Conviction*. Conviction for the purposes of this section is defined in Rule 1.3(f).

(2) *Definition of Felony*. Felony means (A) any crime denominated as a felony in the jurisdiction in which it is committed or (B) any crime that would be classified as a felony in Washington State even if not denominated as a felony in the jurisdiction where the crime was committed.

(3) *Reporting of Felony Conviction*. When a licensed legal professional is convicted of a felony, the licensed legal professional must report the conviction to the Office of Disciplinary Counsel within 30 days of the conviction.

(4) *Statement of Charges*. Disciplinary counsel must also file a statement of charges regarding the licensed legal professional's felony conviction. A petition for interim suspension under this section may be filed before the statement of charges.

(e) Failure to Comply with Probation. When a licensed legal professional has failed, without good cause, to comply with an obligation imposed by a probation order under Rule 13.6, disciplinary counsel may petition the Court for an interim suspension. The Court may order an interim suspension if it finds that the respondent has so failed to comply.

RDI 7.3 INTERIM SUSPENSION PROCEDURE

(a) Petition. An interim suspension proceeding commences when disciplinary counsels files a petition for interim suspension with the Court. A petition must set forth the grounds for the interim suspension and may be supported by argument, documents, and declarations filed with the petition. A petition may be based on one or more of the grounds set forth in Rule 7.2. A copy of the petition must be personally served on the respondent and proof of service filed with the Court.

(b) Answer to Petition and Reply. The respondent may file an answer to the petition. An answer may be supported by argument, documents, and declarations filed with the answer. The answer must be filed with the Court and served on disciplinary counsel within 10 days of service of the petition. Disciplinary counsel's reply, if any, must be filed with Court and served on the respondent within seven days of service of the answer. Proof of service must be filed with the Court.

(c) Confidentiality. When a party identifies information or documents that are otherwise confidential under these Rules, the Court must take measures to maintain the confidentiality of the information or documents in accordance with the confidentiality provisions of Rule 3.3(b).

(d) Consideration. The Supreme Court decides a petition without oral argument, unless the Court orders otherwise. Either party may request oral argument at the time the petition or answer is filed. If a request for oral argument is granted, the Supreme Court Clerk will notify disciplinary counsel and the respondent. The argument will be held on the date and time directed by the Supreme Court Clerk.

(e) Expedited Review. Petitions seeking interim suspension under this Title receive expedited consideration, ordinarily no later than seven days from the deadline for filing of a reply or, if oral argument is ordered under section (d) of this Rule, the date set for an oral argument.

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

(g) Order. The Court decides a petition by an order granting or denying an interim suspension. An order granting interim suspension must state the section of Rule 7.2 that forms the basis for the interim suspension. An interim suspension is effective on the date set by the Supreme Court's order, which will ordinarily be seven days after the date of the order. If no date is set, an interim suspension is effective seven days after the date of the Court's order.

(h) Duties on Interim Suspension. A licensed legal professional whose license is suspended under this Rule is subject to all the duties and restrictions in Title 14 of these Rules.

RDI 7.4 STIPULATION TO INTERIM SUSPENSION

At any time, a respondent and disciplinary counsel may stipulate to an interim suspension of the respondent's license during the pendency of any investigation or proceeding. A stipulation must set forth a factual basis for the interim suspension for one or more of the reasons set forth in Rule 7.2. A stipulation is filed with the Supreme Court for expedited consideration and entry of an appropriate interim suspension order. Stipulations under this Rule are public upon filing with the Court except that information or documents identified as confidential under these Rules remain so and the Court must take measures to maintain the confidentiality of the information or documents.

RDI 7.5 TERMINATION OF INTERIM SUSPENSION

(a) Motion by Respondent.

(1) *Motion and Answer*. A respondent may at any time file a motion to terminate an interim suspension. The motion should make a showing that the basis for the interim suspension no longer exists or for other good cause to terminate the interim suspension.

(2) *Court Action*. The procedures for filing, service, and consideration of a motion to terminate an interim suspension are governed by RAP 17.4.

(b) Notification from Disciplinary Counsel. Upon notice from disciplinary counsel that the conditions for termination of the interim suspension have been satisfied or that the basis for the interim suspension no longer exists, the Court may issue an order terminating the interim suspension.

(c) Agreed Terminations. If the respondent and disciplinary counsel agree to termination of an interim suspension, the Court may issue an order terminating the interim suspension upon the filing of a joint motion for termination.

(d) Order of Termination. The Court's order terminating an interim suspension must state that reinstatement is conditioned upon compliance with the procedures for reinstatement from suspension as set forth in the Bar's Bylaws or applicable court rules.

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

TITLE 8 - INCAPACITY PROCEEDINGS

RDI 8.1 INCAPACITY INACTIVE STATUS

(a) Definition. A respondent's license may be placed in incapacity inactive status following an adjudicative determination that a respondent lacks the mental or physical capacity to practice law, respond to a disciplinary investigation, or defend a disciplinary proceeding, or for any of the reasons specified in Rule 8.5. Placement in incapacity inactive status is not discipline.

(b) Supreme Court Final Order. The Supreme Court's final order in an incapacity proceeding is an order or opinion that places a respondent's license in incapacity inactive status, dismisses the matter, or otherwise concludes the proceeding. Except as otherwise provided in these Rules, upon entry of the Court's final order, the matter is not subject to further review under these Rules. A placement of a respondent's license on incapacity inactive status is effective on the date of the Supreme Court's order or opinion. After the final order is issued, the ORA or the Court may hear and decide post-judgment issues authorized by these Rules. A motion for reconsideration under Rule 12.9 does not stay the judgment or delay the effective date of a final order unless the Court enters a stay.

RDI 8.2 INCAPACITY PROCEEDINGS BASED ON DISCIPLINARY COUNSEL'S INVESTIGATION

(a) Incapacity Proceedings Ordered by Authorization Panel. Unless Rule 8.5 applies, when disciplinary counsel obtains information that a licensed legal professional may lack the mental or physical capacity to practice law, disciplinary counsel reviews and may investigate the matter. If, after an investigation, there is evidence sufficient to warrant an adjudicative determination of the respondent's capacity to practice law, then disciplinary counsel reports the matter to an Authorization Panel using the procedures set forth in Rule 5.10. Subject to Rules 5.2(d) and 3.4, the respondent and any guardian or guardian ad litem appointed for the respondent must be provided with a complete copy of disciplinary counsel's report. The Authorization Panel must issue an order authorizing disciplinary counsel to initiate an incapacity proceedings if it appears there is reasonable cause to believe that the respondent lacks the mental or physical capacity to practice law. Any pending disciplinary investigations may be deferred under Rule 5.4.

(b) Initial Pleadings.

(1) *Statement of Alleged Incapacity*. Disciplinary counsel files a statement of alleged incapacity with the Clerk after the Authorization Panel issues an order authorizing the initiation of incapacity proceedings. The statement of alleged incapacity must set forth facts sufficient to inform the respondent of the basis for the allegation of incapacity and state that the issue to be decided is whether the respondent lacks the mental or physical capacity to practice law. The incapacity proceedings commence upon the filing of the statement of alleged incapacity. The statement of alleged incapacity must be personally served on the respondent or any guardian or guardian ad litem.

(2) *Response to Statement of Alleged Incapacity*. Any response to the statement of alleged incapacity must be filed within 30 days after service or after counsel is appointed under Rule 8.6, whichever is later.

(c) Placement in Interim Incapacity Inactive Status.

(1) *Procedure*. When an Authorization Panel authorizes the initiation of incapacity proceeding, disciplinary counsel must file with the Supreme Court a petition to place the respondent's license in interim incapacity inactive status unless the respondent's license has already been placed in this status. The procedures of Rule 7.3 govern the proceedings under this section, except that the respondent must be represented by counsel as provided by Rule 8.6.

(2) *Standard*. The Court must order that the respondent's license be placed in interim incapacity inactive status unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public.

(3) *Duration of Interim Incapacity Inactive Status*. Unless the Supreme Court orders otherwise, when a respondent's license is placed in interim incapacity inactive status under this Rule, the license remains in that status until a hearing decision becomes final under Rule 8.1(b) or until after all appellate proceedings have concluded, whichever is later.

(d) Health Records, Releases, and Examination.

(1) *Duty to Provide Release and Records*. Within 30 days of a request by disciplinary counsel, the respondent must provide disciplinary counsel with (A) relevant medical, psychological, or psychiatric records, and (B) written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the incapacity proceeding.

(2) *Order Limiting Scope or Extending Time*. Upon motion by respondent, the hearing adjudicator may issue an order limiting the scope of the releases or authorizations or extend the time for providing the releases or authorizations for good cause shown.

(3) *Independent Medical Examination*. Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses, to disciplinary counsel and the respondent's counsel. The report is admissible at the incapacity hearing. The Bar pays the expenses of independent medical examinations and reports ordered under this Rule.

(e) Failure to Appear or Cooperate. If a respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may petition the Supreme Court for the respondent's interim suspension under Rule 7.2(c). The procedures of Title 7 apply subject to the confidentiality provisions of Rule 3.3 (b)(5).

(f) Procedures for Incapacity Hearing.

(1) *Not Disciplinary Proceedings*. Incapacity proceedings under this Title are not disciplinary proceedings.

(2) *Procedural Rules*. Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.

(3) *Case Caption*. The respondent's initials are to be used in the case caption rather than the respondent's full name.

(4) *Scheduling Conference*. By order entered on the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.

(5) *Burden and Standard of Proof*. Disciplinary counsel has the burden of proof by a clear preponderance of the evidence.

(6) *Duty to Appear*. The respondent must appear at the incapacity hearing. Failure to attend the hearing, without good cause, may be grounds for interim suspension.

(g) Hearing Decision. A hearing adjudicator's decision must be in the form of written findings of fact, conclusions of law, and recommendation. If the hearing adjudicator finds that the respondent lacks the capacity to practice law, the hearing adjudicator recommends that the respondent's license be placed in incapacity inactive status. If the hearing adjudicator finds the evidence is insufficient to prove the respondent lacks the capacity to practice law, the hearing adjudicator recommends dismissal of the incapacity proceeding. Except as specified in this Rule, the hearing decision is governed by the procedures of Rule 10.15.

(h) Transmittal to the Court. If no party files a notice of appeal of a hearing decision under section (g) within the time permitted by Rule 8.7, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

RDI 8.3 INCAPACITY PROCEEDINGS BASED ON RESPONDENT'S ASSERTION

(a) Incapacity Proceeding Ordered after Respondent's Assertion. If, during the course of a disciplinary investigation or proceeding, a respondent asserts a lack of mental or physical capacity to respond to the disciplinary investigation or defend the disciplinary proceeding, or to assist counsel in responding to the disciplinary investigation or defending the disciplinary proceeding, a regulatory adjudicator or the Supreme Court must order the initiation of incapacity proceedings. If the Court issues the order, it refers the matter to the ORA for further proceedings under this Rule.

(b) Method of Assertion. The respondent must serve a written assertion on disciplinary counsel or make the assertion on the record at a deposition or hearing. The assertion must be filed with the Clerk or, if the matter is pending before the Supreme Court, with the Court.

(c) Contents of Order; Advisement; Effective Date; Notice.

(1) *Contents of Order*. The order under section (a) of this Rule must state that the issues to be determined are whether the respondent has the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding.

(2) *Advisement*. The order must include a written advisement substantially in the following form:

(A) that making the assertion will result in placement of the respondent's license in interim incapacity inactive status on the effective date of the order and the respondent will be ineligible to practice law;

(B) that the respondent will be required to provide medical documentation to support the assertion within 30 days of the effective date of the order for incapacity proceedings;

(C) that the respondent may be required to furnish written releases and authorizations for additional medical, psychological, or psychiatric records relevant to the assertion;

(D) that the respondent may be required to submit to an independent medical examination;

(E) that the respondent will have the burden of proving by a preponderance of the evidence the incapacity in the proceeding;

(F) that any disciplinary proceeding pending against the respondent will be stayed during the incapacity proceeding;

(G) that disciplinary counsel has the discretion to defer any pending disciplinary investigation;

(H) that counsel will be appointed for the respondent for the incapacity proceeding and any disciplinary investigation that is not deferred while incapacity proceedings are pending, and that the respondent will be deemed to have consented to appointment of counsel at the Bar's expense; and

(I) that the respondent's failure to appear or cooperate with any order or duty under this Rule, or failure to cooperate with counsel, may result in disciplinary counsel filing a dismissal motion as provided in Rule 8.3(g).

(3) *Effective Date of Order*. An order commences the incapacity proceeding and is effective seven days after the date of the order, unless the Court or regulatory adjudicator orders an earlier effective date.

(4) *Notice to Respondent*. The order serves as notice to respondent of the issues to be adjudicated. Disciplinary counsel need not file a statement of alleged incapacity.

(d) Effect of Incapacity Proceeding on Pending Disciplinary Matters. Pending the outcome of the incapacity proceeding, the regulatory adjudicator or the Supreme Court must stay any disciplinary proceeding pending against the respondent. Disciplinary counsel may defer action as provided in Rule 5.4.

(e) Interim Incapacity Inactive Status.

(1) *Immediate Placement*.

(A) Order Entered by Regulatory Adjudicator. When a regulatory adjudicator orders an incapacity proceeding, disciplinary counsel must transmit the order to the Supreme Court after the order becomes effective under section (c)(3) of this Rule. On receipt of the order, the Court must order that the respondent's license be placed in interim incapacity inactive status.

(B) Order Entered by Supreme Court. When the Supreme Court orders an incapacity proceeding, it also must order that the respondent's license be placed in interim incapacity inactive status as of the effective date of the order.

(2) *Duration of Interim Incapacity Inactive Status*. Unless the Supreme Court orders otherwise, a respondent whose license is placed in interim incapacity inactive status under this Rule remains in that status until the incapacity proceeding is terminated under section (g) of this Rule, a hearing decision becomes final under Rule 8.1(b).

(f) Health Records, Releases, and Examination.

(1) *Duty to Provide Records within 30 Days*. The respondent must provide disciplinary counsel with medical, psychological, or psychiatric records sufficient to reasonably support the assertion within 30 days of the effective date of the order for incapacity proceedings.

(2) *Duty to Provide Release and Records on Request*. Within 30 days of a request by disciplinary counsel, the respondent must provide disciplinary counsel with (A) relevant medical, psychological, or psychiatric records, and (B) written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the incapacity proceeding.

(3) *Order Limiting Scope or Extending Time*. Upon motion by respondent, the hearing adjudicator may issue an order limiting the scope of the releases or authorizations or extend the time for providing the releases or authorizations for good cause shown.

(4) *Independent Medical Examination*. Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses, to disciplinary counsel and the respondent's counsel. The report is admissible at the incapacity hearing. The Bar pays the expenses of independent medical examinations and reports ordered under this Rule.

(g) Failure to Appear or Cooperate. If the respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may file a motion to dismiss the incapacity proceeding and resume any disciplinary proceedings that have been stayed. The hearing adjudicator must grant the motion absent compelling justification for the failure to appear or cooperate. An order granting the motion is without prejudice to initiation of incapacity proceedings under Rules 8.2(a) or 8.4(a).

(h) Procedures for Incapacity Hearing.

(1) *Not Disciplinary Proceedings*. An incapacity proceeding under this Title is not a disciplinary proceeding.

(2) *Procedural Rules*. Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.

(3) *Case Caption*. The respondent's initials are to be used in the case caption rather than the respondent's full name.

(4) *Scheduling Conference*. By order entered on the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.

(5) *Burden and Standard of Proof*. Respondent has the burden of proof by a preponderance of the evidence.

(6) *Duty to Appear*. The respondent must appear at the incapacity hearing. Failure to attend the hearing, without good cause, may be grounds for dismissal of the incapacity proceeding under section (g) of this Rule.

(i) Hearing Decision. The hearing officer makes findings and recommendations as set forth in this section. Except

as specified in this Rule, the hearing decision is governed by the procedures of Rule 10.15.

(1) *Respondent Has Capacity to Respond or Defend*. If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding without the assistance of counsel, the hearing adjudicator recommends that the incapacity proceedings be dismissed and that any pending disciplinary investigations or proceedings resume without appointment of counsel.

(2) *Respondent Requires the Assistance of Counsel*. If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding but requires the assistance of counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary investigations or proceedings resume, and (C) counsel be appointed for any pending disciplinary investigation or proceedings.

(3) *Respondent Lacks Capacity to Respond or Defend and Lacks the Capacity to Assist Counsel*. If the hearing adjudicator finds that the respondent lacks the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding and lacks the capacity to assist counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary proceedings be stayed, and (C) any pending disciplinary investigations be deferred.

(j) Transmittal to the Court. If no party files a notice of appeal of a hearing decision under section (i) within the time permitted by Rule 8.7, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

RDI 8.4 INCAPACITY PROCEEDINGS BASED ON REGULATORY ADJUDICATOR OR SUPREME COURT ORDER

(a) Order by Regulatory Adjudicator or Supreme Court. Unless Rule 8.2 applies, on motion by disciplinary counsel or on its own initiative, the Supreme Court or a regulatory adjudicator must order an incapacity proceeding if it determines that there is reasonable cause to believe that the respondent lacks the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding. When a regulatory adjudicator is serving as a settlement officer, Rule 10.11 (h)(4)(D) rather than this Rule applies. If the Court issues the order, it refers the matter to the ORA for further proceedings under this Rule.

(b) Contents of Order; Statement of Alleged Incapacity; Response.

(1) *Contents*. The order must state that the issues to be determined are whether the respondent has the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding. It must also set forth the factual basis for the determination under section (a) of this Rule that an incapacity proceeding is warranted.

(2) *Statement of Alleged Incapacity*. Disciplinary counsel files a statement of alleged incapacity after the order under section (a) of this Rule. The statement of alleged incapacity must set forth facts sufficient to inform the respondent of the basis for the allegation of incapacity and state that the issue to be decided is whether the respondent has the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding. The incapacity proceeding commences upon the filing of the statement of alleged incapacity. The statement of alleged incapacity must be personally served on the respondent or any guardian or guardian ad litem.

(3) *Response to Statement of Alleged Incapacity*. Any response to the statement of alleged incapacity must be filed within 20 days after service or after counsel is appointed under Rule 8.6, whichever is later.

(c) Effect of Incapacity Proceeding on Pending Disciplinary Matters. Pending the outcome of the incapacity proceeding, the regulatory adjudicator or the Supreme Court must stay any disciplinary proceeding pending against the respondent. Disciplinary counsel may defer action as provided in Rule 5.4.

(d) Interim Incapacity Inactive Status.

(1) *Procedure*.

(A) Order Entered by Regulatory Adjudicator. When a regulatory adjudicator orders incapacity proceedings under this Rule, disciplinary counsel must file with the Supreme Court a petition to place the respondent's license in interim incapacity inactive status unless the respondent's license has already been placed in this status. Unless the Court orders otherwise, Rule 7.3 governs the proceedings under this section, except that the respondent must be represented by counsel as provided by Rule 8.6.

(B) Order Entered by Supreme Court. When the Supreme Court orders incapacity proceedings under this Rule, the Court must issue an order to show cause why respondent's license to practice law should not be placed in interim incapacity inactive status. The order will set the schedule for filing an answer and reply to the show cause order. The Supreme Court decides the matter without oral argument, unless the Court orders otherwise. Either party may request oral argument at the time the answer or reply is filed. If a request for oral argument is granted, the Supreme Court Clerk will notify disciplinary counsel and the respondent. The argument will be held on the date and time directed by the Supreme Court Clerk. The respondent must be represented by counsel in the show cause proceeding as provided by Rule 8.6.

(2) *Standard*. The Court must order that the respondent's license be placed in interim incapacity inactive status under this Rule unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public.

(3) *Duration of Interim Incapacity Inactive Status*. Unless the Supreme Court orders otherwise, a respondent's license that is placed in interim incapacity inactive status under this Rule remains in that status until a hearing decision becomes final under Rule 8.1(b).

(e) Health Records, Releases, and Examination.

(1) *Duty to Provide Release and Records*. Within 30 days of a request by disciplinary counsel, the respondent must provide disciplinary counsel with (A) relevant medical, psychological, or psychiatric records, and (B) written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the incapacity proceeding.

(2) *Order Limiting Scope or Extending Time*. Upon motion by respondent, the hearing adjudicator may issue an order limiting the scope of the releases or authorizations or extend the time for providing the releases or authorizations for good cause shown.

(3) *Independent Medical Examination*. Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses to disciplinary counsel and the respondent's counsel. The report is admissible at the incapacity hearing. The Bar pays the expenses of independent medical examinations and reports ordered under this Rule.

(f) Failure to Appear or Cooperate. If a respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may petition the Supreme Court for the respondent's interim suspension under Rule 7.2(c). The procedures of Title 7 apply subject to the confidentiality provisions of Rule 3.3 (b)(5).

(g) Procedures for Incapacity Hearing.

(1) *Not Disciplinary Proceedings*. An incapacity proceeding under this Title is not a disciplinary proceeding.

(2) *Procedural Rules*. Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.

(3) *Case Caption*. The respondent's initials are to be used in the case caption rather than the respondent's full name.

(4) *Scheduling Conference*. By order entered on the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.

(5) *Burden and Standard of Proof*. Disciplinary counsel has the burden of proof by a clear preponderance of the evidence.

(6) *Duty to Appear*. The respondent must appear at the incapacity hearing. Failure to attend the hearing, without good cause, may be grounds for interim suspension.

(h) Hearing Decision. The hearing officer makes findings and recommendations as set forth in this section. Except as specified in this Rule, the hearing decision is governed by the procedures of Rule 10.15.

(1) *Respondent Has Capacity to Respond or Defend*. If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding without the assistance of counsel, the hearing adjudicator recommends that the incapacity proceedings be dismissed and that any pending disciplinary investigations or proceedings resume without appointment of counsel.

(2) *Respondent Requires the Assistance of Counsel*. If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding but requires the assistance of counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary proceedings resume, and (C) counsel be appointed for any pending disciplinary investigation or proceedings.

(3) *Respondent Lacks Capacity to Respond or Defend and Lacks the Capacity to Assist Counsel*. If the hearing adjudicator finds that the respondent lacks the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding and lacks the capacity to assist counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary proceedings be stayed, and (C) any pending disciplinary investigations be deferred.

(i) Transmittal to the Court. If no party files a notice of appeal of a hearing decision under section (h) within the time permitted by Rule 8.7, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

RDI 8.5 PLACEMENT IN INCAPACITY INACTIVE STATUS BASED ON ADJUDICATED GROUNDS

(a) Adjudicated Grounds. The Court must order that a licensed legal professional's license to practice law be placed in incapacity inactive status upon receipt from the Bar of a certified copy of the judgment, order, or other appropriate document demonstrating that the licensed legal professional currently lacks the mental or physical capacity to practice law because the person:

(1) was found to be incapable of assisting in the person's own defense in a criminal action;

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

(3) has a guardian, but not a limited guardian, appointed for the person's estate or person on a judicial finding of incapacity; or

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

(b) Notice. The Court must notify the incapacitated licensed legal professional and any guardian or guardian ad litem of the order that the respondent's license be placed in incapacity inactive status. Notice must also be provided under Rule 3.8.

RDI 8.6 REPRESENTATION BY COUNSEL

(a) Representation by Counsel. All respondents in incapacity proceedings under Rules 8.2, 8.3, 8.4, and 8.11 must be represented by counsel throughout the proceeding and for purposes of compliance with Title 14.

(b) Appointment of Counsel. Upon entry of an order under Rule 8.2(a), 8.3(a), 8.4(a), or 8.11(b), the Chief Regulatory Adjudicator must promptly appoint an active lawyer member of the Bar as counsel for the respondent in any proceeding ordered under this Title and any disciplinary matters that are not deferred while the incapacity proceeding is pend-

ing. An order appointing counsel under this Rule constitutes authority to act on behalf of the respondent in any incapacity or related proceeding whether or not the respondent expressly consents to the representation. If other counsel appears, the appointment will be rescinded.

(c) Compensation of Counsel. The Bar administers compensation for counsel appointed under this Rule.

(d) Withdrawal of Appointed Counsel. Counsel appointed under this Rule may withdraw only upon authorization from the Chief Regulatory Adjudicator upon a showing of good cause, or when substitute counsel has appeared. If the Chief Regulatory Adjudicator authorizes appointed counsel to withdraw for good cause and substitute counsel has not appeared, the Chief Regulatory Adjudicator must appoint new counsel unless section (e) applies.

(e) When Appointment of New Counsel Found Futile.

(1) *Application*. This section applies to counsel appointed to represent respondents in proceedings under Rules 8.2 and 8.4.

(2) *Findings and Order Required*. If the Chief Regulatory Adjudicator determines that appointment of counsel would be futile because there is no reasonable chance that other counsel will be able to effectively represent the respondent, the Chief Regulatory Adjudicator may issue an order recommending that the respondent's license be placed in interim incapacity inactive status and that any proceeding under this Title be stayed. The proceeding will be stayed until such time as counsel appears or can be appointed. The order must be accompanied by findings with a factual basis to support the conclusion that appointment of counsel would be futile.

(3) *Review by Appeal Panel*. An Appeal Panel must review the Chief Regulatory Adjudicator's order without further briefing or argument based solely on the record before the Chief Regulatory Adjudicator. It may affirm the order, direct that new counsel be appointed and that the proceeding not be stayed, set conditions for the appointment of new counsel in the future, or enter any other appropriate order.

(4) *Transmittal to Supreme Court*. If the Appeal Panel affirms the order of the Chief Regulatory Adjudicator, the Clerk must transmit the order to the Supreme Court. On receipt of the order, if the respondent's license is not already in interim incapacity inactive status, the Court must order that the respondent's license be placed in interim incapacity inactive status.

(5) *Duration of Interim Incapacity Inactive Status*. Unless the Supreme Court orders otherwise, when a respondent's license is placed in interim incapacity inactive status under this Rule, the license remains in that status until the incapacity proceeding has been concluded.

(f) Protective Action under RPC 1.14. Nothing in this Title precludes respondent's counsel from taking reasonably necessary protective action under RPC 1.14.

RDI 8.7 APPEAL TO AN APPEAL PANEL

(a) Procedures for Appeal. Either party may appeal a hearing decision under Rule 8.2(g), 8.3(i), or 8.4(h) by filing a notice of appeal with the Clerk within 30 days of service of the hearing decision. There is no right of appeal of other orders or decisions entered under Title 8, except as specified in Rule 8.11. For procedural purposes, the provisions of Title 11 govern the appeal. Interlocutory review of orders or decisions not appealable as a matter of right under this Rule is governed by Rule 11.10.

(b) Transmittal to Court. If no party files a notice of appeal or petition for discretionary review of an appellate decision within the time permitted by Rule 8.8, or upon the Supreme Court's denial of a petition for discretionary review, the Clerk transmits a copy of the appellate and hearing decisions to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

RDI 8.8 APPEAL TO THE SUPREME COURT

(a) Procedures for Appeal. Either party may appeal an order of the Appeal Panel under Rule 8.7 to the Supreme Court within 30 days of service of the Appeal Panel's decision. There is no other right of appeal. The procedures of Title 12 that are applicable to an appeal of disciplinary suspension or disbarment recommendations govern the appeal.

(b) Petition for Interim Incapacity Inactive Status. If a respondent appeals the decision of the Appeal Panel, disciplinary counsel must petition the Supreme Court for an order that the respondent's license be placed in interim incapacity inactive status for the duration of the proceedings. The Court must order that the respondent's license be placed in interim incapacity inactive status unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public. If the Panel's decision is not appealed and becomes final, or if the respondent's license is already in interim incapacity inactive status, the petition need not be filed or, if filed, may be withdrawn. The procedures of Rule 7.3 govern such a petition, except that the respondent must be represented by counsel.

(c) Petition for Discretionary Review. Respondent or disciplinary counsel may seek discretionary review of Appeal Panel decisions under Rule 8.7 not subject to appeal under section (a) of this Rule. The procedures of Rule 12.4 apply to petitions under this Rule.

RDI 8.9 STIPULATIONS

(a) Parties May Stipulate. At any time, the parties may stipulate that the respondent's license be placed in incapacity inactive status. Stipulations to interim incapacity inactive status are governed by section (i) of this Rule. The parties should endeavor to include evidence sufficient for the regulatory adjudicator to make a determination regarding the existence of the incapacity.

(b) Respondent Must Be Represented by Counsel. Respondent must be represented by counsel to negotiate and enter into a stipulation under this Rule. If the respondent is not represented by counsel, disciplinary counsel must file a motion to appoint counsel for the respondent for the purpose of negotiating and entering into the stipulation. The provisions of Rule 8.6 apply to appointed counsel under this Rule.

(c) Requirements for Stipulations to Incapacity Inactive Status. Stipulations to placement of a respondent's license in incapacity inactive status must:

(1) state that the stipulation is not binding on the parties as a statement of all existing facts relating to the incapacity of the respondent and that any additional existing facts may be proved in a subsequent incapacity proceeding;

(2) fix any costs and expenses and any interest thereon to be paid by the respondent;

(3) include the signature of the respondent, respondent's counsel, and disciplinary counsel;

(4) state the nature of the respondent's incapacity, supported by medical, psychological, or psychiatric evidence; and

(5) state the nature of any pending disciplinary proceedings that will be stayed and any disciplinary investigation that will be deferred as a result of the placement of a respondent's license in incapacity inactive status.

(d) Review of Stipulations to Incapacity Inactive Status.

(1) *Process*. Stipulations to incapacity inactive status under this Rule must be reviewed by a regulatory adjudicator. A regulatory adjudicator reviews a stipulation based solely on the record agreed to by the parties and enters an appropriate order.

(2) *Standards*. A regulatory adjudicator must approve a stipulation where the stipulated facts provide a factual basis for the stipulated resolution.

(3) *Possible dispositions*. A regulatory adjudicator may approve or reject a stipulation. An order rejecting a stipulation must state the reason for the rejection.

(e) Reconsideration. Within 14 days of service of an order rejecting a stipulation, the parties may file a joint motion for reconsideration, which may include a request to make an oral presentation in support of the motion.

(f) Effect of Rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any proceeding under these Rules.

(g) Transmittal to Court. After the stipulation is approved by a regulatory adjudicator, the Clerk transmits the stipulation, together with all materials that were submitted to the regulatory adjudicator, to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

(h) Applicability to Respondents Only. This Rule applies only to respondents as defined by Rule 2.12(a). Placement in incapacity inactive status for licensed legal professionals who are not respondents as defined by Rule 2.12(a) is governed by APR 30.

(i) Stipulations to Interim Incapacity Inactive Status. At any time, a respondent and disciplinary counsel may stipulate to placement of the respondent's license in interim incapacity inactive status during the pendency of any incapacity proceeding. Stipulations to placement of a respondent's license in interim incapacity inactive status must state that an incapacity proceeding has been ordered and that the respondent's license will remain in interim incapacity inactive status until the incapacity proceeding is final absent other order from the Court. A stipulation to interim incapacity inactive status is filed with the Supreme Court for expedited consideration and entry of an appropriate order.

RDJ 8.10 COSTS IN INCAPACITY PROCEEDINGS

When a proceeding under this Title is final, costs and expenses may be assessed in accordance with the procedures set forth in Rule 13.8.

RDJ 8.11 RETURN FROM INCAPACITY INACTIVE STATUS

(a) Petition. To return to a different license status, a licensed legal professional whose license was placed in incapacity inactive status under this Title or APR 30 must file a petition with the Clerk and serve it on disciplinary counsel. This Rule does not apply to interim incapacity inactive status ordered under this Title.

(1) *Content of Petition*. The petition must be in writing and include the following information:

(A) a signed statement by a physician or by a mental health professional as defined by RCW Title 71 that specifically (i) identifies the basis for the placement of the respondent's license in incapacity inactive status and addresses how the incapacity has been resolved and (ii) expresses that the respondent has the current capacity to practice law. The statement must be signed by the physician or mental health professional no more than three months before the date the petition is filed;

(B) a list of all physicians and mental health professionals as defined by RCW Title 71 who have treated or evaluated the respondent for the incapacity since the date of the placement; and

(C) copies of the written authorizations referenced in section (a)(2) of this Rule.

(2) *Waiver of Privilege and Authorization for Release of Records*. By filing a petition, the respondent:

(A) waives any privilege as to any medical, psychological, or psychiatric treatment, information, or records reasonably related to the respondent's capacity or incapacity to practice law; and

(B) agrees to provide upon request a written authorization for each physician and mental health professional as defined by RCW Title 71 who treated or evaluated the respondent for the incapacity since the placement, or within the last five years, whichever is shorter, to provide information and records reasonably related to the respondent's capacity or incapacity to practice law.

(b) Appointment of Counsel. On receipt of a petition, the Chief Regulatory Adjudicator must appoint counsel for the respondent in accordance with the procedures set forth in Rule 8.6 unless counsel has already appeared.

(c) Review and Action by the Chief Regulatory Adjudicator. The Chief Regulatory Adjudicator reviews the petition to determine whether it contains the information required under section (a) of this Rule. If the petition does not contain the required information, the Chief Regulatory Adjudicator enters an order dismissing the petition or requesting additional information from respondent's counsel. If the petition does contain the required information, the Chief Regulatory Adjudicator:

(1) orders that a hearing be held on whether the respondent has the current capacity to practice law; and

(2) assigns a hearing adjudicator to conduct the hearing.

(d) Stipulation.

(1) *Parties May Stipulate*. After counsel appears or is appointed for the respondent, disciplinary counsel and the respondent may enter into a stipulation that the petition be granted. Any stipulation must be supported by medical, psychological, or psychiatric evidence that the respondent has the current capacity to practice law.

(2) *Review of Stipulations*.

(A) Review by a Regulatory Adjudicator. A regulatory adjudicator reviews the stipulation based solely on the record agreed to by the parties.

(B) Possible Dispositions. The regulatory adjudicator may either approve or reject the stipulation. An order rejecting a stipulation must state the reason for the rejection and should set forth any changes to the stipulation that would result in the stipulation's approval.

(C) Effect of Rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any proceeding under these Rules.

(3) *Transmittal to Court*. After the stipulation is approved by a regulatory adjudicator, the Clerk transmits the stipulation, together with all materials that were submitted to the regulatory adjudicator, to the Supreme Court for entry of an order approving or rejecting the stipulation or providing other appropriate relief.

(e) Hearing on Petition.

(1) *Not Disciplinary Proceedings*. A proceeding under this Title is not a disciplinary proceeding.

(2) *Procedural Rules*. Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.

(3) *Case Caption*. The respondent's initials are to be used in the case caption rather than the respondent's full name.

(4) *Scheduling Conference*. On the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.

(5) *Burden and Standard of Proof*. Respondent has the burden of proof by a preponderance of the evidence.

(6) *Independent Medical Examination*. Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses to disciplinary counsel and the respondent's counsel. The report is admissible at the hearing under this Rule. The Bar pays the expenses of an independent medical examination and reports ordered under this Rule.

(7) *Failure to Appear or Cooperate*. If the respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may file a motion to dismiss the proceedings on the petition. The hearing adjudicator must grant the motion absent compelling justification for the failure to appear or cooperate.

(8) *Hearing Decision*. The hearing adjudicator determines whether the respondent has the current capacity to practice law.

(A) Current Capacity Proven. If the hearing adjudicator finds that the respondent has the current capacity to practice law, the hearing adjudicator must enter an order recommending that the petition be granted.

(B) Current Capacity Not Proven. If the hearing adjudicator finds that the respondent does not have the current capacity to practice law, the hearing adjudicator must enter an order recommending that the petition be denied and the proceeding be dismissed.

(9) *Transmittal to the Court*. If no party files a notice of appeal of a hearing decision under this Rule within the time permitted by Rule 11.2, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of an order approving or rejecting the hearing decision or another appropriate order.

(f) Appeal to an Appeal Panel. Either party may appeal a hearing decision under section (e)(8) of this Rule by filing a notice of appeal with the Clerk within 30 days of service of the hearing decision. For procedural purposes, the provisions of Title 11 govern the appeal. Interlocutory review of orders or decisions not appealable as a matter of right under this Rule is governed by Rule 11.10.

(g) Appeal to the Court. Either party may appeal an order of the Appeal Panel under section (f) of this Rule to the Supreme Court within 30 days of service of the Appeal Panel's order. There is no right of appeal to the Supreme Court of other orders or decisions entered under this Rule. The procedures of Title 12 that are applicable to appeal of disciplinary suspension or disbarment recommendations govern the appeal.

(h) Transmittal to Court. If no party files a notice of appeal or petition for discretionary review of an appellate decision within the time permitted by Rules 12.3 and 12.4, or upon the Supreme Court's denial of a petition for discretionary review, the Clerk transmits a copy of the appellate and hearing decisions to the Supreme Court for entry of an order approving or rejecting the appellate decision or another appropriate order.

(i) Petition Granted. Following a final order granting a petition or approving a stipulation and the respondent's compliance with the procedures for status changes as set forth in the Bar's Bylaws, applicable court rules, and section (j) of this Rule, the Bar restores the respondent's license to its most recent status other than incapacity inactive status. If a respondent's most recent license status was active, then the license status may be changed to inactive status at the respondent's request. If a disciplinary proceeding has been stayed or a disciplinary investigation has been deferred because of the placement of the respondent's license in incapacity inactive status, the proceeding or investigation resumes.

(j) Client Protection Fund Certification. If the Client Protection Fund paid an applicant based on the respondent's conduct, the respondent must obtain a certification from Bar counsel that respondent has paid restitution to the Client Protection Fund or is current with a periodic payment plan. Disputes regarding payment plans are resolved under the procedures set forth in Rule 13.7 (c)(2).

Reviser's note: The typographical 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.

TITLE 9 - RESOLUTIONS WITHOUT HEARING

RDI 9.1 STIPULATIONS

(a) Scope and Timing. Any disciplinary matter or proceeding may be resolved by stipulation at any time subject to approval under section (d) or (g) of this Rule.

(b) Form. A stipulation must include the following:

(1) the respondent's current license status;

(2) sufficient stipulated facts about the respondent's particular acts or omissions to permit a regulatory adjudicator or the Court to make a determination under section (d) or (g) of this Rule;

(3) the respondent's prior record of discipline or its absence;

(4) an analysis of the sanction using the American Bar Association Standards for Imposing Lawyer Sanctions, including the presumptive sanction for the misconduct and the effect of any aggravating and mitigating factors;

(5) the stipulated disposition or discipline, and for stipulations to disciplinary suspension or disbarment, any conditions for reinstatement;

(6) a statement that the stipulation is not binding on either party as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding;

(7) any costs, expenses, and restitution and any interest thereon to be paid by the respondent; and

(8) terms of probation or other provisions, if appropriate.

The stipulation also may include other terms as agreed to by the parties.

(c) Stipulation to Allegations in Lieu of Admissions. With consent of disciplinary counsel, a respondent may agree to stipulate to alleged facts or violations in lieu of admitting to facts or violations. A respondent who enters into such a stipulation must agree that (1) there is a substantial likelihood that disciplinary counsel would be able to prove the alleged facts and violations by a clear preponderance of the evidence, and (2) the facts and violations will be deemed proved in any subsequent disciplinary proceeding in any jurisdiction.

(d) Review of Stipulations.

(1) *Process*. Except as provided in section (g) of this Rule, all stipulations under this Rule must be reviewed by a regulatory adjudicator. A regulatory adjudicator reviews a stipulation based solely on the record agreed to by the parties. The parties may jointly request, or the regulatory adjudicator may order, an oral presentation regarding the stipulation.

(2) *Standards*. A regulatory adjudicator must approve a stipulation where the stipulated facts provide a factual basis for the agreed violation(s) and the agreed sanction or resolution is consistent with the ABA Standards for Imposing Lawyer Sanctions and Rules 13.1-13.5.

(3) *Possible Dispositions*. A regulatory adjudicator may approve or reject a stipulation. An order rejecting a stipulation must state the reason for the rejection and should set forth any changes to the sanction or remedies that would result in the stipulation's approval.

(e) Reconsideration. Within 14 days of service of an order rejecting a stipulation, the parties may file a joint motion for reconsideration, which may include a request to make an oral presentation in support of the motion.

(f) Transmittal to Court. After the stipulation is approved by a regulatory adjudicator, the Clerk transmits the stipulation, together with all materials that were submitted to the regulatory adjudicator, to the Supreme Court for entry of a final order under Rule 13.1(a) or other appropriate order.

(g) Matters Pending Before the Supreme Court. When a matter is pending before the Court, any stipulation to resolve the matter must be submitted to the Court. The Court will consider the stipulation and enter an order approving or rejecting the stipulation.

(h) Effect of Rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any proceeding under these Rules.

(i) Costs. A final order approving a stipulation is deemed a final assessment of the costs and expenses agreed to in the stipulation for the purposes of Rule 13.8 and is not subject to further review.

(j) Failure to Comply. A respondent's failure to comply with the terms of an approved stipulation may be grounds for discipline.

RDJ 9.2 RESIGNATION IN LIEU OF DISCIPLINE

(a) Grounds. A respondent who chooses not to contest or defend against allegations of misconduct may, with disciplinary counsel's approval, permanently relinquish the respondent's license to practice law and permanently resign from the practice of law in Washington in lieu of further disciplinary proceedings. If a disciplinary investigation or proceeding is pending, resignation in lieu of discipline under this Rule is the only available means to resign from the practice of law.

(b) Process. Respondent notifies disciplinary counsel that the respondent seeks to resign in lieu of discipline. If disciplinary counsel approves, disciplinary counsel prepares a statement of alleged misconduct, a declaration of costs, and a proposed resignation form. After receiving the statement and the declaration of costs, if any, the respondent may resign by signing and submitting to disciplinary counsel the resignation form prepared by disciplinary counsel, sworn to or affirmed under oath, which must include the following:

(1) Disciplinary counsel's statement of alleged misconduct.

(2) Respondent's statement that the respondent is aware of the allegations in the statement of alleged misconduct and that, rather than defend against the allegations, the respondent chooses to relinquish permanently the respondent's license to practice law and permanently resign from the practice of law in Washington.

(3) Respondent's acknowledgment that the resignation is permanent, including the statement:

"I understand that my resignation is permanent and that I can never apply for admission or reinstatement to the practice of law in Washington. If the Washington Supreme Court changes this Rule or an application is otherwise permitted in the future, it will be treated as an application by one who has been disbarred for ethical misconduct, and that, if I submit an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this resignation was based."

(4) Respondent's agreement:

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

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

(C) to acknowledge that the resignation could be treated as a disbarment by all other jurisdictions;

(D) to refrain from seeking a license to practice law in any other jurisdiction;

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

(F) to seek to relinquish any professional license that is predicated on the respondent's license to practice law;

(G) to disclose the resignation in lieu of discipline when applying for any employment or license in response to any question regarding disciplinary action or the status of the respondent's license to practice law;

(H) to pay expenses under Rule 13.8(c) in the amount of $3,000 or consent to entry of an order assessing expenses in the amount of $3,000 under Rule 13.8(e);

(I) to pay any restitution or costs and any interest thereon as agreed or as ordered by a regulatory adjudicator under section (f) of this Rule;

(J) to be subject to all restrictions that apply to a disbarred licensed legal professional under Title 14; and

(K) to provide disciplinary counsel with copies of any notifications required under this Rule and any responses.

(c) Public Filing. A resignation that meets the requirements set forth above and that is approved by disciplinary counsel will be filed by disciplinary counsel with the Clerk as a public and permanent record of the Bar. The Clerk must notify the Supreme Court of a resignation under this Rule.

(d) Effect. A resignation under this Rule is effective upon its filing with the Clerk and becomes final without entry of a final order under Rule 13.1(a). Upon filing, the respondent's license to practice law is terminated. All disciplinary proceedings against the respondent terminate, although disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances in order to create a record of the respondent's conduct. Upon filing of the resignation, the respondent must comply with the same duties as a disbarred licensed legal professional under Title 14 and comply with all restrictions that apply to a disbarred licensed legal professional. The notices under Rule 3.8 must be made for resignations in lieu of discipline.

(e) Resignation Is Permanent. Resignation under this Rule is permanent. A respondent who has resigned under this Rule will never be eligible for any license to practice law in Washington.

(f) Order for Costs and Restitution. Within one year of filing of the resignation, disciplinary counsel or Bar counsel may file with the Chief Regulatory Adjudicator any claims for restitution or for costs not resolved by agreement under section (b) of this Rule. Within 30 days of service of the claim upon the respondent, a respondent may file a written objection and serve it on counsel who filed the claim. An objection is reviewed as provided in Rule 13.8(f). The Chief Regulatory Adjudicator's order is not subject to further review, is the final assessment of restitution or costs for the purposes of Rules 13.7 and 13.8, and may be enforced as any other order for restitution or costs. The record before the ORA is public information under Rule 3.3(a).

RDI 9.3 RECIPROCAL DISCIPLINE, RECIPROCAL RESIGNATION IN LIEU OF DISCIPLINE, AND RECIPROCAL PLACEMENT IN INCAPACITY INACTIVE STATUS

(a) Duty to Self-Report, Timing. Within 30 days of being publicly disciplined, resigning in lieu of discipline or its equivalent, placement of a license in incapacity inactive status or its equivalent in another jurisdiction, or revocation of military certification, a licensed legal professional admitted to practice in this state must inform the Office of Disciplinary Counsel of the public discipline, resignation in lieu of discipline, placement of the license in incapacity inactive status, or revocation of military certification. For purposes of this Rule:

(1) "Public discipline" means a public order of discipline or probation in another jurisdiction.

(2) "Jurisdiction" means any court or body authorized to conduct disciplinary proceedings against licensed legal professionals in the United States or any other country, including any state, province, territory, or commonwealth of the United States or any other country; any federal court; the District of Columbia; any administrative agency or tribal government; or the United States Armed Forces.

(b) Reciprocal Discipline, Reciprocal Placement of a License in Incapacity Inactive Status, or Publication.

(1) Reciprocal discipline may be imposed whenever a licensed legal professional has been disbarred or suspended in another jurisdiction unless the period of disciplinary suspension is fully stayed. For purposes of this Rule, resignation in lieu of discipline or its equivalent in another jurisdiction is treated as an order of disbarment from that jurisdiction. For purposes of this Rule, a disciplinary suspension is fully stayed when there is no period of actual suspension.

(2) Reciprocal placement of a license in incapacity inactive status may be imposed when a license has been placed in incapacity inactive status or its equivalent in another jurisdiction.

(3) For all other public discipline, including fully stayed suspensions or probation, the Court may order that information about the discipline in the other jurisdiction be published under Rule 3.8(b).

(c) Obtaining and Filing Order. Upon notification from any source that a licensed legal professional admitted to practice in Washington State was publicly disciplined or resigned in lieu of discipline or its equivalent, or whose license was placed in incapacity inactive status or its equivalent in another jurisdiction, disciplinary counsel must obtain a copy of the order or resignation. Disciplinary counsel files the order or resignation with the Supreme Court except in circumstances set forth in section (*l*) of this Rule.

(d) Consent to Reciprocal Discipline or Publication. Notwithstanding the procedures set forth below, a respondent may consent to the imposition of reciprocal discipline under section (b)(1) of this Rule or publication of information under section (b)(3) of this Rule without the need for an order to show cause under section (e). The respondent must communicate such consent to the Court and disciplinary counsel in writing and, if applicable, may include a motion for concurrent suspension under section (j)(2) of this Rule. If that occurs, the Court enters an appropriate order.

(e) Order to Show Cause. Upon receipt of a copy of an order demonstrating that a respondent has been subject to public discipline, a resignation in lieu of discipline or its equivalent, or an order of placement of the respondent's license in incapacity inactive status or its equivalent in another jurisdiction, the Court issues an order to show cause. Disciplinary counsel must personally serve the following on the respondent under Rule 4.1 (b)(4): the order to show cause, a copy of the order or resignation from the other jurisdiction, and a copy of this Rule.

(1) For disbarments, disciplinary suspensions other than fully-stayed suspensions, and placement of a respondent's license in incapacity inactive status or its equivalent in another jurisdiction, the order directs the respondent to show cause why the Court should not impose the same or equivalent sanction or suspension or placement of the respondent's license in incapacity inactive status.

(2) For resignations in lieu of discipline or its equivalent in another jurisdiction, the order directs the respondent to show cause why the Court should not impose the sanction of disbarment.

(3) For all other cases, the order directs the respondent to show cause why the Court should not order publication of information about the discipline under section (b)(3) of this Rule.

(4) Notwithstanding the above, on the request of disciplinary counsel, the order may direct disciplinary counsel to show cause why the sanction imposed should be greater than that imposed in the other jurisdiction.

(f) Response to Order to Show Cause. The party responding to the order to show cause must respond within 30 days of service of the order. If applicable, when a respondent is responding to an order to show cause regarding a sanction of suspension, the respondent may include a motion for concurrent suspension under section (j)(2) of this Rule.

(g) Reply. The other party may reply to the response to the order to show cause within 30 days of service of the response.

(h) Burden. The burden is on the party seeking a different result in Washington State to demonstrate that imposing the same or equivalent sanction or suspension under section (b)(1), ordering the equivalent placement in incapacity inactive status under section (b)(2) of this Rule, or ordering publication under section (b)(3) of this Rule, is not appropriate given the factors set forth in sections (i)(1) or (i)(2) of this Rule.

(i) Supreme Court Action.

(1) The Court must enter an order imposing reciprocal discipline or reciprocal placement of a respondent's license in incapacity inactive status, or order for publication as set forth in section (b) of this Rule, unless the Court finds that it clearly appears on the face of the record on which the public discipline or placement of a respondent's license in incapacity inactive status is based that:

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

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

(C) the imposition of the same or equivalent discipline or placement in incapacity inactive status would result in grave injustice;

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

(E) the reason for the original placement of the respondent's license in incapacity inactive status or its equivalent no longer exists; or

(F) appropriate discipline has already been imposed in Washington State for the misconduct.

(2) For resignations in lieu of discipline or their equivalent, the Court enters an order disbarring the respondent unless the Court finds that disbarment would result in grave injustice and a disposition other than disbarment will not place the public at risk.

(3) If the Court determines that any of the factors under sections (i)(1) or (i)(2) of this Rule exist, it enters an appropriate order.

(4) If the Court orders further proceedings to determine if the respondent's license should be placed in incapacity inactive status, the provisions of Rule 8.6 as to appointment of counsel will apply.

(j) Effective Date.

(1) *Generally*. The effective date of the reciprocal discipline or placement of the respondent's license in incapacity inactive status is the date set by the Court's order, which ordinarily will be seven days after the date of the order. If no date is set, the effective date is seven days after the date of the Court's order.

(2) *Motion for Concurrent Suspension*.

(A) When the reciprocal discipline sanction is suspension, a respondent may file a written motion, served on disciplinary counsel, asking the Court to order that the reciprocal suspension run concurrently with the suspension ordered by the other jurisdiction.

(B) The Court may grant such a motion only if the respondent timely self-reported the discipline under section (a) of this Rule and the motion is accompanied by the respondent's declaration, under penalty of perjury, that the respondent has not practiced law in Washington State at any time following the effective date of the suspension ordered by the other jurisdiction.

(C) When a motion under this section is granted by the Court, the effective date of the reciprocal suspension is the same as provided for under section (j)(1) of this Rule. Notwithstanding the effective date of the reciprocal suspension, the respondent is eligible for reinstatement under Rule 13.3 (c) at the conclusion of the term of suspension ordered in the other jurisdiction.

(k) Conclusive Effect. Except as this Rule otherwise provides or the Court orders, a final adjudication in another jurisdiction that a respondent committed misconduct or that the respondent's license should be placed in incapacity inactive status or its equivalent conclusively establishes the misconduct or the incapacity for purposes of a disciplinary or incapacity proceeding in Washington State.

(l) Prior Matter in Washington. No action will be taken against a licensed legal professional under this Rule when the licensed legal professional has been the subject of discipline, resignation in lieu of discipline, placement of the

licensed legal professional's license in incapacity inactive status, or other final disposition of a complaint, disciplinary proceeding, or incapacity proceeding in Washington State arising out of the same circumstances that are the basis for discipline, resignation in lieu of discipline, or placement of the licensed legal professional's license in incapacity inactive status in another jurisdiction.

(m) Expenses. In any matter under this Rule resulting in reciprocal discipline and requiring briefing at the Supreme Court, costs and expenses may be assessed in favor of the Bar under the procedures of RAP Title 14, except that "costs" as used in that Title means any costs and expenses allowable under Rule 13.8. Expenses assessed under this Rule may equal the actual expenses incurred by the Bar, but in any case cannot be less than $3,000.

TITLE 10 - HEARING PROCEDURES

RDI 10.1 GENERAL PROCEDURE

(a) Commencement of Proceedings. A disciplinary proceeding commences when the statement of charges is filed.

(b) Hearing Adjudicator Authority. In addition to the powers specifically provided in these Rules, the hearing adjudicator may make any ruling that appears necessary and appropriate to ensure a fair and orderly proceeding. In making any ruling, the hearing adjudicator should consider that disciplinary proceedings are neither civil nor criminal but are sui generis proceedings governed by these Rules. If appropriate and not inconsistent with these Rules, the Superior Court Civil Rules (CR) may provide guidance.

(c) Cooperation of the Parties. All parties and their counsel should reasonably cooperate with each other and the ORA in all matters. These Rules should be construed and administered consistently with this principle to secure the just, speedy, and inexpensive determination of every action.

(d) Failure to Comply with Hearing Adjudicator Orders. The parties must comply with all orders made by a hearing adjudicator. A hearing adjudicator may draw adverse inferences as appear warranted by any failure to comply.

RDI 10.2 HEARING ADJUDICATOR ASSIGNMENT

(a) Assignment. The Chief Regulatory Adjudicator assigns a hearing adjudicator from those eligible under Rule 2.3.

(b) Disqualification.

(1) *Disqualification for Cause*. Either party may move to disqualify any assigned hearing adjudicator for good cause. A motion under this section must be filed and served promptly after the party knows, or in the exercise of due diligence should have known, of the basis for the disqualification.

(2) *Decision*. The Chief Regulatory Adjudicator decides all disqualification motions unless the hearing adjudicator whose disqualification is sought is the Chief Regulatory Adjudicator. In such a case, another regulatory adjudicator decides the motion. The decision on a motion to disqualify is not subject to interlocutory review. After disqualification of the assigned hearing adjudicator, the adjudicator deciding the motion assigns a replacement.

RDI 10.3 FILING OF CHARGES

(a) Statement of Charges.

(1) *Filing*. Disciplinary counsel files a statement of charges with the Clerk after the Authorization Panel issues an order authorizing the filing of a statement of charges.

(2) *Service*. Disciplinary counsel must personally serve the statement of charges on the respondent with a notice to answer in the form prescribed by Rule 10.4.

(3) *Content*. The statement of charges must state the respondent's acts or omissions in sufficient detail to inform the respondent of the nature of the charges and counts of misconduct, which must include one or more charged rule violations. Disciplinary counsel must sign the statement of charges, but it need not be verified.

(b) Consolidation, Joinder, and Severance.

(1) *Consolidation*. After disciplinary counsel has filed statements of charges in two or more proceedings against the same respondent, a party may move for the proceedings to be consolidated.

(2) *Joinder*. After disciplinary counsel has filed statements of charges in proceedings against two or more respondents and the matters arise from the same or related underlying facts, a party may move for the proceedings to be joined into a single proceeding.

(3) *Severance.* After disciplinary counsel has filed a statement of charges, a party may move for separate hearings on counts of misconduct alleged in the statement of charges.

(4) *Consideration of Motion*. The Chief Regulatory Adjudicator considers motions for consolidation, joinder, or severance under this section and should grant a motion if, in the Chief Regulatory Adjudicator's discretion, it will promote a fair and efficient determination of the issues or is necessary to avoid prejudice to a party.

(5) *Effect of Order*. An amended statement of charges resulting from any consolidation, joinder, or severance ordered under this Rule is not subject to a motion to strike under Rule 10.7(c).

RDI 10.4 NOTICE TO ANSWER

The notice to answer must be substantially in the following form:

BEFORE THE OFFICE OF THE REGULATORY ADJUDICATOR
UNDER THE WASHINGTON SUPREME COURT'S
RULES FOR DISCIPLINE AND INCAPACITY

In re	)	NOTICE TO ANSWER;
	)	NOTICE OF DEFAULT PROCEDURE
_____,	)	
[license # and type].	)	

To: The above named respondent:

A[n] [amended] statement of charges has been filed against you, a copy of which is served on you with this notice. You are notified that you must file your answer to the [amended] statement of charges within 20 days of the date of service on you, by filing the original of your answer with the Clerk to the Office of the Regulatory Adjudicator, [insert address] and by serving a copy on disciplinary counsel at the address[es] given below. Requirements for the answer are set forth in Rule 10.5 of the Rules for Discipline and Incapacity (RDI). Failure to file an answer may result in the entry of an

order of default under RDI 10.6 and the imposition of disciplinary sanctions or remedies against you.

Notice of default procedure: Your default may be entered for failure to file a written answer to this [amended] statement of charges within 20 days of service as required by RDI 10.6. THE ENTRY OF AN ORDER OF DEFAULT WILL RESULT IN THE ALLEGED FACTS AND COUNTS OF MISCONDUCT IN THE [AMENDED] STATEMENT OF CHARGES BEING DEEMED ADMITTED AND ESTABLISHED and sanctions and remedies being imposed or recommended based on the admitted counts of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of default is vacated on motion timely made under RDI 10.6(c). The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by RDI 10.6 (b)(2).

Dated this _____ day of _____, 20___.

_____
Disciplinary Counsel, Bar No.
Address: _____
Telephone: _____
Email: _____

RDI 10.5 ANSWER; RESPONDENT'S MOTION TO DISMISS

(a) Time to Answer. Within 20 days of service of a statement of charges or amended statement of charges and a notice to answer, the respondent must file and serve an answer. Failure to file an answer to a statement of charges or amended statement of charges may be grounds for discipline or for an order of default under Rule 10.6. The filing of a motion to dismiss under section (d) of this Rule stays the time for filing an answer until the motion is decided.

(b) Content of Answer. The answer must contain:

(1) a specific denial or admission of each alleged fact and count of misconduct in the statement of charges in a manner similar to that described in CR 8(b). Alleged facts and counts of misconduct in the statement of charges are admitted when not denied in the answer;

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

(3) a statement as to whether respondent consents to service by email under Rule 4.1; and

(4) an address or, if respondent consents to service by email, an email address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent when personal service is not required under these Rules.

(c) Filing and Service of Answer. The answer must be filed and served under Rules 4.1 and 4.2.

(d) Motion to Dismiss on Face of Statement of Charges.

(1) *Grounds for Motion*. A respondent may move to dismiss one or more charged rule violations in a statement of charges on grounds that the facts alleged in the statement of charges, if deemed to be true, would be insufficient to establish the charged rule violations.

(2) *Timing*. A motion to dismiss under this section must be filed within the time for filing of the answer to a statement of charges or amended statement of charges, and may be filed in lieu of filing an answer.

(3) *Procedure*. Rule 10.8 applies to motions under this Rule. No factual materials outside the statement of charges may be presented or considered.

(4) *Partial Dismissal*. If the hearing adjudicator dismisses one or more but not all of the charged rule violations, either party may request review within 10 days of service of the order. If review is requested under this section, the Chief Regulatory Adjudicator must assign the matter to an Appeal Panel for review, specify the issue or issues as to which review is granted, and establish the timeline and terms for any additional briefing and oral argument.

(5) *Dismissal of All Counts*. If the hearing adjudicator dismisses all counts, the order of dismissal is treated as a hearing decision under Rule 10.15.

(6) *Filing Answer After Decision*. If the motion does not result in the dismissal of all counts of misconduct, the respondent must file and serve an answer to the remaining alleged facts and counts of misconduct within 10 days of service of the ruling on the motion, unless either party has requested review under section (d)(4) of this Rule or filed a motion for interlocutory review under Rule 11.10 of an order denying the motion. After review, the respondent must file and serve an answer to any remaining alleged facts and counts of misconduct within 10 days of service of the Appeal Panel's decision.

RDI 10.6 DEFAULT

(a) Entry of Default.

(1) *Timing*. If a respondent, after being served with a notice to answer as provided in Rule 10.4 or 10.7, fails to file an answer to a statement of charges or an amended statement of charges within the time provided by these Rules, disciplinary counsel may file a motion for an order of default.

(2) *Motion*. The motion for an order of default must be served on the respondent and must include the following:

(A) the dates of filing and service of the notice to answer, the statement of charges, and any amended statement of charges;

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

(C) notice that upon entry of an order of default, the alleged facts and counts of misconduct in the statement of charges and any amended statement of charges will be deemed admitted and established, and sanctions and remedies may be imposed or recommended based on the admitted facts and rule violations; and

(D) a copy of this Rule.

(3) *Entry of Order of Default*. If the respondent fails to file a written answer to the statement of charges or amended statement of charges within seven days of service of the motion for entry of an order of default, the hearing adjudicator, on proof of service of the motion, must enter an order finding the respondent in default.

(4) *Effect of Order of Default*. Upon entry of an order of default, the alleged facts and counts of misconduct in the

statement of charges and any amended statement of charges are deemed admitted and established for the purpose of imposing discipline, and the respondent may not participate further in the proceedings unless the order of default is vacated under this Rule.

(b) After Entry of an Order of Default.

(1) *Service*. The Clerk serves the order of default under Rule 4.2(c).

(2) *No Further Notices*. Notwithstanding any other provision of these Rules, after entry of an order of default, no further notices, motions, documents, papers, or transcripts need be served on the respondent except for copies of the decisions of the hearing adjudicator, the Appeal Panel, and the Court.

(3) *Hearing Adjudicator Decision on Default*. Within 20 days after entry of the order of default, disciplinary counsel may present additional evidence and briefing relevant to the sanction, restitution, or other remedies. Within 60 days of the filing of the order of default, the hearing adjudicator must enter findings of fact, conclusions of law, and recommendation based on the facts and rule violations established under section (a) of this Rule and any additional evidence submitted.

(c) Vacating the Order of Default.

(1) *Motion To Vacate Order of Default*. Subject to the limitations in section (c)(2) of this Rule, a respondent may move to vacate the order of default and any decision of the hearing adjudicator arising from the default on the following grounds:

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

(B) a proceeding against a respondent who was, at the time of the default, incapable of conducting a defense due to incapacity;

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

(D) fraud, misrepresentation, or other misconduct in connection with the underlying disciplinary proceeding;

(E) the order of default is void;

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

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

(2) *Time*. For grounds (c)(1)(A) and (C), the motion must be made within one year after entry of the default. For ground (c)(1)(B), the motion must be made within one year after the incapacity ceases. For all other grounds, the motion must be made within a reasonable time. If a matter is pending with or has been decided by the Supreme Court, the respondent must obtain leave from the Court before moving to vacate the order of default. A respondent seeking leave from the Court must provide notice to disciplinary counsel.

(3) *Burden of Proof*. The respondent bears the burden of proving the grounds for vacating the order of default by a clear preponderance of the evidence.

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

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

(B) the grounds for vacating the order of default; and

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

(5) *Response to Motion*. Within 10 days of filing and service of the motion to vacate the order of default, disciplinary counsel may file and serve a written response.

(6) *Decision*. A hearing adjudicator decides a motion to vacate the order of default on the written record without oral argument. Pending a ruling on the motion, the hearing adjudicator may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing adjudicator has discretion to order appropriate conditions. If the respondent proves that the order of default was entered as a result of a mental or physical incapacity that made the respondent incapable of conducting a defense, the order of default must be vacated.

(7) *Review of Decision*. A party may seek review of a decision under this Rule using the procedures of Rule 11.10. If review under Rule 11.10 is denied, there is no further review.

(d) Order of Default Not Authorized in Incapacity Proceedings. The default procedure in this Rule does not apply to incapacity proceedings under Title 8.

RDI 10.7 AMENDMENT OF STATEMENT OF CHARGES

(a) Amending the Statement of Charges. Disciplinary counsel may file an amended statement of charges at any time.

(b) Service. Disciplinary counsel serves an amended statement of charges and the notice to answer on the respondent as provided in Rule 4.1. An amended statement of charges need not be personally served.

(c) Motion to Strike. The respondent may, within 10 days of service of the amended statement of charges, file a motion to strike any amendments to the statement of charges. A hearing adjudicator will consider the motion under the procedure provided by Rule 10.8. Such motions should only be granted upon a clear showing of prejudice to the respondent.

(d) Answer. The respondent must file an answer to the amended statement of charges under the procedures of Rule 10.5. Any part of a previous answer may be incorporated by reference. A timely filed motion under section (c) of this Rule stays the time for filing the answer until the motion is decided. Regardless of whether the respondent has filed an answer to any previous statement of charges, failure to file an answer to an amended statement of charges may be grounds for discipline or for an order of default of the entire proceeding under Rule 10.6.

RDI 10.8 GENERAL RULES FOR MOTIONS

(a) Definition. A motion is an application to the hearing adjudicator for an order or other relief. The motion, unless made during a hearing, must be in writing and state with particularity the grounds for the motion and the relief sought.

(b) Filing and Service. Motions must be filed and served as required by Rules 4.1 and 4.2.

(c) Response. The opposing party has 10 days from service of a motion to respond, unless the time is altered by the hearing adjudicator for good cause.

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

(e) Consideration of Motion. Upon expiration of the time for reply, the hearing adjudicator should promptly rule on the motion, with or without argument at the hearing adjudicator's discretion. Argument on a motion may be heard by conference call or by other electronic means. At the request of a party or at the discretion of the hearing adjudicator, any hearing on the motion may be recorded as provided in Rule 10.12(h).

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

(g) Motion for Reconsideration. Either party may file a motion for reconsideration of a hearing adjudicator's ruling on a motion. The motion must be filed and served no later than 10 days after service of the ruling on the moving party. Sections (a) through (f) of this Rule apply to motions for reconsideration. A party may not file a motion for reconsideration of a ruling that has already been reconsidered at the request of that party.

(h) Chief Regulatory Adjudicator Authority. Before the assignment of a hearing adjudicator, the Chief Regulatory Adjudicator may rule on any prehearing motion.

RDJ 10.9 SPECIFIC MOTIONS

(a) Motion for Finding of Misconduct on the Pleadings. Within 30 days of the filing of the answer to a statement of charges or amended statement of charges, disciplinary counsel may move for an order finding misconduct based on the pleadings. No factual materials outside the statement of charges or amended statement of charges and the answer(s) may be presented or considered. In ruling on this motion, the hearing adjudicator may find that all or some of the charged rule violations in the statement of charges are established. A hearing will be held to determine any facts or violations not established and to determine the appropriate sanction.

(b) No Summary Judgment. A party may not move for summary judgment.

(c) Collateral Estoppel. Either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding.

(d) Voluntary Dismissal. Disciplinary counsel may move to dismiss the proceeding at any time. A hearing adjudicator must enter an order dismissing the proceeding without prejudice unless the hearing adjudicator finds good cause to dismiss with prejudice. An order of dismissal with prejudice is treated as a hearing decision under Rule 10.15.

(e) Procedure. Rule 10.8 applies to motions under this Rule.

RDJ 10.10 DISCOVERY AND PREHEARING PROCEDURES

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

(b) Discovery.

(1) *Requests for Admission*. After a statement of charges is filed, the parties may request admissions in the manner provided by CR 36. Under appropriate circumstances, the hearing adjudicator may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(2) *Other Discovery*. Formal discovery, other than requests for admission, is available only by order of the hearing adjudicator or stipulation of the parties. Absent a stipulation, after a statement of charges is filed either party may file a motion under Rule 10.8 seeking authorization to conduct one or more of the methods of discovery available under CR 27-31 and 33-35. The hearing adjudicator has discretion to grant or deny the motion and must consider the following factors:

(A) the necessity of the information sought and whether it is available by other means;

(B) the nature and complexity of the case;

(C) the seriousness of the charges;

(D) the formal and informal discovery that has already occurred;

(E) the burden on the party or witness from whom the information is sought;

(F) the possibility of unfair surprise;

(G) the risk of undue expense or delay;

(H) the effect of the requested discovery on the orderly and prompt conduct of the proceeding; and

(I) the interests of justice.

(3) *Limitations*. The hearing adjudicator may impose conditions or limitations on discovery or requests for admission to assure an expeditious, economical, and fair proceeding

(c) Discovery of Hearing Preparation Materials. When discovery has been authorized under section (b) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including a party's lawyer, investigator, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing adjudicator must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a lawyer or other representative of a party concerning the litigation. In interpreting the provisions of this section, CR 26 (b)(4) may be looked to for guidance.

(d) Subpoenas. When necessary to obtain discovery authorized under section (b) of this Rule, subpoenas may be issued as under CR 45. Subpoenas may be enforced under Rule 4.7.

(e) Depositions Outside of State. A certified copy of the order of a hearing adjudicator is sufficient to authorize a deposition outside Washington State.

(f) Duty to Cooperate. Parties must respond to authorized discovery requests and comply with the hearing adjudicator's orders regarding discovery. The hearing adjudicator may draw adverse inferences as appear warranted by the failure of either party to respond to authorized discovery.

RDJ 10.11 SCHEDULING OF HEARING

(a) Hearing Location. Absent agreement of all parties and the hearing adjudicator, all disciplinary hearings must be held in Washington State, with a presumption that hearings will be held at the Bar offices. The ORA must make the arrangements for the hearing facilities.

(b) Scheduling Conference. No later than 30 days after the filing of the respondent's answer, the hearing adjudicator must convene an initial scheduling conference of the parties to discuss:

(1) the hearing date, which must be within 180 days of the date of the initial scheduling conference unless good cause is shown to set the hearing at a later date or unless the hearing adjudicator has granted a motion under section (e) of this Rule;

(2) any necessary prehearing deadlines;

(3) the location of the hearing;

(4) the expected length of the hearing;

(5) the parties' expected discovery requests;

(6) whether a settlement conference would be useful in resolving the matter;

(7) whether the parties consent to electronic service; and

(8) any other relevant issues.

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

SETTLEMENT CONFERENCE DETERMINATION:

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

ELECTRONIC SERVICE:

[ ] The parties consent to electronic service of papers or documents under Rule 4.1(b).

IT IS ORDERED that the hearing is set to begin at [time] on [Hearing Date (H)] and each day thereafter until adjourned by the hearing adjudicator, at [location], and the parties must comply with prehearing deadlines as follows:

1. Witnesses. A preliminary list of primary witnesses, including addresses and phone numbers, and a designation of whether the witness is a fact witness, character witness, or expert witness, must be filed and served by [H-12 weeks].

2. Discovery. Discovery authorized under Rule 10.10 (b), if any, must be completed by [H-6 weeks].

3. Motions. Prehearing motions, other than motions to bifurcate under Rule 10.14, must be served by [H-4 weeks]. Absent agreement of the parties, an exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing adjudicator unless the motion concerns the exhibit's admissibility. The hearing adjudicator will advise the parties whether oral argument is necessary, and, if so, the date and time of the argument.

4. Exhibits. Lists of proposed exhibits must be exchanged by [H-3 weeks].

5. Service of Exhibits. Copies of proposed exhibits must be exchanged by [H-2 weeks]. The parties should redact the following personal identifiers from the proposed hearing exhibits: Social Security numbers, financial account numbers, and driver's license numbers

6. Final Witness List. A final witness list, including a final summary of the expected testimony of each witness, must be exchanged by [H-2 weeks]. A copy of the final witness list, excluding the summary of expected testimony, must be filed and served by [H-2 weeks].

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

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

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

(e) Motion for Hearing within 120 Days. A respondent may move for a hearing date within 120 days of the initial scheduling conference under section (b) of this Rule. Such a motion may be made no later than the date of the initial scheduling conference convened under section (b) of this Rule. A motion under this Rule must be granted unless disciplinary counsel shows good cause for setting the hearing at a later date. Rule 10.8 applies to motions under this Rule, except that the motion may be made orally during the initial scheduling conference.

(f) Notice. Service of an order setting a date, time, and place for the hearing constitutes notice of the hearing.

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

(h) Settlement Conference Process.

(1) *Order*. In all disciplinary proceedings under this Title, the hearing adjudicator should order a settlement conference unless it appears that such a conference would not be helpful. Settlement conferences may not be ordered in incapacity proceedings under Title 8.

(2) *Assignment of Settlement Officer*. Following a hearing adjudicator's order for a settlement conference, the Chief Regulatory Adjudicator must assign a settlement officer to conduct the settlement conference. The Chief Regulatory Adjudicator may assign a regulatory adjudicator under Rule 2.3 or volunteer adjudicator under Rule 2.6 (a)(2) to serve as a settlement officer. Following a settlement conference, the settlement officer who conducted the settlement conference may not serve as an adjudicator in the same disciplinary proceeding without the consent of all parties.

(3) *Timing*. Unless agreed to by the parties, a settlement conference if ordered must be held no later than 45 days prior to the hearing date.

(4) *Confidentiality*.

(A) Conference and Communications Confidential. Settlement conferences are closed to the public. Except as provided in section (h)(4)(C) of this Rule, all communications relating to the settlement conference, whether oral or written and including pre- and post-settlement conference conversations and exchanges of information, are confidential and may

not be disclosed or released unless specifically authorized by the Chief Regulatory Adjudicator on a showing of compelling need and following notice to the participants. Statements of child or elder abuse or threats to commit future crimes or cause serious bodily injury are not subject to the foregoing restrictions on disclosure or release.

(B) Evidentiary Use of Settlement Conference Information. Any statements or admissions made during the course of the settlement conference, or documents prepared solely for purposes of the settlement conference process, will not be admissible in evidence or used for impeachment in any disciplinary or other proceeding. Neither the parties nor the settlement officer may be subpoenaed or otherwise compelled to testify or produce information regarding the settlement conference in any disciplinary or other proceeding except as specifically authorized by the Chief Regulatory Adjudicator on a showing of compelling need and following notice to the participants.

(C) Settlement Agreement. Any stipulation resulting from a settlement conference is subject to approval under Rule 9.1 and, if approved, becomes public under Rule 3.3. If the parties agree to the respondent's resignation in lieu of discipline following a settlement conference, Rule 9.2 governs the resignation. A resignation in lieu of discipline is public under Rule 3.3.

(D) Information Indicating Potential Incapacity. Notwithstanding the provisions of sections (h)(4)(A) and (B), a settlement officer who has reasonable cause to believe that the respondent lacks the mental or physical capacity to defend a disciplinary proceeding or to assist counsel in defending a disciplinary proceeding must provide information from the settlement conference to the Chief Regulatory Adjudicator for further proceedings under Rule 8.4(a).

RDI 10.12 HEARING

(a) Representation. The respondent may be represented by counsel.

(b) Respondent Must Attend. A respondent given notice of a hearing under Rule 10.11(f) must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. A respondent who fails to attend the hearing, without good cause, forfeits any right to appeal the hearing decision except as to the issue of good cause.

(c) Procedures If Respondent Fails to Attend. If a respondent given notice of a hearing under Rule 10.11(f) fails to attend the hearing without good cause, the hearing may proceed, and the hearing adjudicator:

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

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

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

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

(C) the affidavit or declaration shows affirmatively that the witness could testify competently to the stated facts.

(d) Respondent Must Testify if Called.

(1) *Testimony Required*. A respondent given notice of a hearing under Rule 10.11(f) must testify if called as a witness by disciplinary counsel.

(2) *Consequences of Refusal*. If a respondent refuses to testify, the hearing adjudicator may:

(A) draw an adverse inference from the respondent's refusal to testify as to any questions that might have been asked of the respondent; and

(B) consider the refusal an aggravating factor in determining the appropriate sanction for any misconduct found.

(3) *Subpoena Optional*. Disciplinary counsel may, but is not required to, issue a subpoena to compel the respondent's testimony.

(4) *Privilege Against Self-Incrimination*. This rule does not preclude the respondent's proper exercise of any privilege against self-incrimination.

(e) Respondent Must Bring Requested Materials. Disciplinary counsel may request that the respondent bring to the hearing any documents, files, records, or other written materials or things previously requested in accordance with these Rules. The request must be in writing and served on the respondent at least three days before the hearing. Absent good cause, the respondent must comply with this request.

(f) Witnesses at Hearing. Except as provided in section (c)(2) of this Rule, witnesses must testify under oath. Testimony may be submitted by deposition, in the hearing adjudicator's discretion as guided by CR 32. If ordered by the hearing adjudicator, testimony may be taken by telephone or other contemporaneous electronic means. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(g) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this Rule and with all lawful orders made by the hearing adjudicator under this Rule. Subpoenas may be enforced under Rule 4.7.

(h) Hearing Record. Disciplinary hearings must be recorded in writing by a court reporter or recorded by electronic means. The ORA must make arrangements for recording the hearing. A court reporter must prepare and certify a hearing transcript and submit it to the Clerk. The Clerk files the hearing transcript and serves it on the parties. The hearing transcript is the official record of the hearing.

(i) Prior Disciplinary Record. The respondent's record of prior discipline, or the fact that the respondent has no prior discipline, must be made a part of the hearing record before the hearing adjudicator files a recommendation.

RDI 10.13 EVIDENCE AND BURDEN OF PROOF

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

(b) Burden of Proof. Disciplinary counsel has the burden of establishing a charged rule violation by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a statement of charges alleges an act of misconduct for which

the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing that (1) the respondent is guilty of the crime, (2) the respondent violated the statute on which the conviction was based, and (3) all essential elements of the crime of which the respondent was convicted have been established.

(d) Evidentiary Rules. Except as provided in section (d)(4) of this Rule, the Washington Rules of Evidence (ER) do not apply, but the hearing adjudicator may consider them as guidance in making evidentiary rulings. The following evidentiary rules apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs;

(2) evidence may be excluded if it is irrelevant, immaterial, or unduly repetitious;

(3) documents may be admitted in the form of copies or excerpts; and

(4) a hearing adjudicator may take judicial notice of adjudicative facts as described in ER 201.

RDI 10.14 BIFURCATED HEARINGS

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

(b) Procedure.

(1) *Violation Hearing*.

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

(B) Following the violation hearing, the hearing adjudicator files findings of fact and conclusions of law.

(i) If no violation is found, the hearing adjudicator enters findings of fact, conclusions of law, and a recommendation for dismissal, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under Rule 10.15(b), or after ruling on that motion, the findings of fact and conclusions of law as to those violations are not subject to reconsideration by the hearing adjudicator.

(2) *Sanction Hearing*. If any violation is found, a sanction hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings of fact and conclusions of law as to the violations found under section (b)(1)(B)(ii) of this Rule. At the conclusion of the sanction hearing, the hearing adjudicator files findings of fact and conclusions of law as to sanction and a recommendation, which, together with the previously filed findings of fact and conclusions of law, is the hearing decision of the hearing adjudicator.

(3) *Timing*. If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing adjudicator must set a date and place for the sanction hearing that should be no later than 60 days after the date set for the commencement of the violation hearing.

RDI 10.15 HEARING DECISION

(a) Hearing Decision. A hearing adjudicator's decision must be in the form of written findings of fact, conclusions of law, and recommendation. The hearing decision should be filed with the Clerk within 30 days after the hearing transcript is filed. Either party may file proposed findings of fact, conclusions of law, and recommendation within 20 days after the disciplinary hearing is concluded or as otherwise ordered by the hearing adjudicator.

(b) Amendment.

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

(A) In a proceeding not bifurcated, within 15 days of service of the hearing decision;

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

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

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

(2) *Procedure*. Rule 10.8 governs this motion. The hearing adjudicator should rule on the motion within 15 days after the filing of a timely reply or after the period to file a reply under Rule 10.8(c) has expired. The ruling may deny the motion or may amend, modify, or correct the hearing decision.

(3) *Effect of Failure to Move*. Failure to move for modification, correction, or amendment does not affect any subsequent appellate review.

(c) Appeal. Rule 11.2 governs notices of appeal of a hearing decision.

(d) Transmittal to Court. If no party files a notice of appeal of a hearing decision within the time permitted by Rule 11.2, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 13.1(a) or other appropriate order.

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

TITLE 11 - APPEAL TO THE APPEAL PANEL

RDI 11.1 SCOPE OF TITLE

This Title provides the procedure for appeals of a hearing decision and interlocutory review of acts or rulings of a regulatory adjudicator. For purposes of this Title, the term "party" includes individuals seeking or responding to review under Rule 3.4. The Rules of Appellate Procedure serve as

guidance for review under this Title except as to matters specifically dealt with in these Rules.

RDJ 11.2 DECISIONS SUBJECT TO APPEAL

(a) Decision. For purposes of this Title, "hearing decision" means:

(1) the hearing adjudicator's findings of fact, conclusions of law, and recommendation under Rules 8.2(g), 8.3(i), 8.4 (h), and 10.15. If either party properly files a motion to amend under Rule 10.15(b), the "hearing decision" includes the ruling on the motion;

(2) a decision dismissing all counts under Rule 10.5(d);

(3) a decision dismissing the proceeding with prejudice under Rule 10.9(d); or

(4) the hearing adjudicator's decision on a petition to return from incapacity inactive status under Rule 8.11 (e)(8).

(b) Time to File Notice. A notice of appeal must be filed with the Clerk within 30 days of service of the hearing decision on the parties.

(c) Cross Appeal. If a party files a timely notice of appeal and the other party wants relief from the hearing decision, the other party must file a notice of appeal with the Clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) within the time set forth in section (b) of this Rule for filing a notice of appeal.

RDJ 11.3 RECORD ON APPEAL, DESIGNATION, AND PREPARATION

(a) Terminology. By analogy to the RAP, the Appeal Panel is considered the appellate court, the Clerk is considered the trial court clerk, and documents in the Clerk's file are considered the clerk's papers.

(b) Record on Appeal. The record on appeal consists of documents from the Clerk's file designated by the parties, exhibits designated by the parties, the hearing decision, and the hearing transcript.

(c) Designation of Record. A party must file its designation at or before the time it files its first brief.

(d) No Additional Evidence. Evidence not presented to the hearing adjudicator must not be designated by the parties or presented to the Appeal Panel.

(e) Preparation of Record. The Clerk prepares the record on appeal and distributes it to the Appeal Panel. The Clerk provides the parties with a copy of the index of the Clerk's file documents and a cover sheet listing the exhibits.

RDJ 11.4 BRIEFS

(a) Caption of Briefs. The parties should caption briefs as follows:

[Name of Party] Opening Brief

[Name of Party] Response

[Name of Party] Reply

(b) Content of Briefs.

(1) *Opening Brief*. The opening brief should contain under appropriate headings and in the order here indicated:

(A) Title Page. A title page, which is the cover.

(B) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where cited.

(C) Introduction. A concise introduction. This section is optional. The introduction need not contain citations to the record or authority.

(D) Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.

(E) Argument. The argument section must identify the issues for review and present argument in support of the issues, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary. The parties should include a concise statement of the standard of review as to each issue.

(F) Conclusion. A short conclusion stating the precise relief sought.

(G) Appendix. An appendix to the brief if deemed appropriate by the party filing the brief. An appendix may not include evidence not presented to the hearing adjudicator.

(2) *Response*. The response should conform to section (b)(1) of this Rule and answer the opening brief.

(3) *Reply*. A reply brief should conform with sections (A), (B), (E), (F), and (G) of section (b)(1) of this Rule and be limited to a response to the issues in the response brief.

(c) Timing of Briefs.

(1) *Opening Brief*. The party filing the notice of appeal must file an opening brief within 45 days of service on the parties of a copy of the transcript by the Clerk or the filing of the notice of appeal, whichever is later. Failure to file an opening brief within the required period constitutes an abandonment of the appeal.

(2) *Response*. Any response of the opposing party must be filed within 30 days from service of the opening brief.

(3) *Reply*. Any reply of the appealing party must be filed within 30 days of service of the response.

(d) Procedure When Both Parties Appeal. When both parties file notices of appeal, the party filing first is considered the appealing party. In these situations, the responding party may raise its own issues on appeal, and the appealing party has an additional five days to file the reply permitted by section (b)(3) of this Rule.

(e) References to the Record. Briefs filed under this Rule must specifically refer to the record if available, using the designations TR for transcript, EX for exhibit, and CF for Clerk's file document.

(f) Formatting Requirements and Length of Briefs. Briefs must conform with the formatting requirements of RAP 18.17, except that (1) the opening and response briefs must not exceed 8,750 words (word processing software) or 35 pages (typewriter or hand-written), and (2) the reply brief must not exceed 2,500 words (word processing software) or 10 pages (typewriter or hand-written). For compelling reasons, the Appeal Panel may grant a motion to file an over-length brief. The Clerk must return over-length briefs presented for filing without a motion. The Clerk must provide a copy of this Rule to the party with the original unfiled brief.

RDJ 11.5 SUPPLEMENTING THE RECORD

The record on appeal may be supplemented in the following ways:

(a) As of Right. A party may supplement its designation of the record before or with the filing of the party's last brief.

(b) On Motion. After a party files its last brief, a party may file a motion with the Appeal Panel to supplement the

record. Leave to supplement the record should be freely granted.

(c) Sua Sponte. With notice to the parties, the Appeal Panel may supplement the record with any portion of the record before the hearing adjudicator.

RDI 11.6 REQUEST FOR THE TAKING OF ADDITIONAL EVIDENCE

(a) Timing and Content of Request. Any time prior to the deadline for filing of the party's last brief, a party by written motion may request the taking of additional evidence based on newly discovered evidence. The motion must be supported by a declaration describing in detail the additional evidence and any reasons why it was not presented at the hearing and must address the factors listed in section (b) of this Rule.

(b) Remedy Limited. The Appeal Panel may direct that additional evidence on the merits of the case be taken prior to the decision of the case on appeal if:

(1) additional proof of facts is needed to fairly resolve the issues on appeal,

(2) the additional evidence would probably change the hearing decision being appealed,

(3) it is equitable to excuse a party's failure to present the evidence to the hearing adjudicator,

(4) the appellate remedy of granting a new hearing is inadequate or unnecessarily expensive, and

(5) it would be inequitable to decide the case solely on the evidence already taken by the hearing adjudicator.

(c) Where Taken. The Appeal Panel will ordinarily direct the hearing adjudicator to take additional evidence and find the facts based on that evidence.

(d) Effect on Pending Appeal. The pending appeal will be stayed if the Appeal Panel directs that additional evidence be taken.

RDI 11.7 APPELLATE DECISION

(a) Basis for Appellate Decision. The Appeal Panel considers the hearing decision, the parties' briefs filed under Rule 11.4, and the record on appeal. Except as provided in section (b) of this Rule, the Appeal Panel will decide a case only on the basis of issues set forth by the parties in their briefs.

(b) Issues Raised by the Appeal Panel. If the Appeal Panel concludes that an issue that is not set forth in the briefs should be considered to properly decide a case, it may notify the parties and give them an opportunity to present written argument on the issue raised by the Appeal Panel.

(c) Standards of Review. The Appeal Panel reviews findings of fact for substantial evidence. It reviews conclusions of law and recommendations de novo. Evidence not presented to the hearing adjudicator cannot be considered by the Appeal Panel.

(d) Oral Argument.

(1) *Request by Party or Panel*. The Appeal Panel hears oral argument if requested by a party who has filed a brief or if ordered by the Panel.

(2) *Timing of Request*. A party's request must be filed no later than the deadline for that party to file its last brief, including a response or reply, under Rule 11.4.

(3) *Setting and Notice of Argument*. Notice of oral argument issued by the Clerk sets the date, time, place, and terms for oral argument. The Clerk serves notice on the parties no later than 30 days before the scheduled argument.

(4) *Rescheduling*. A request to reschedule oral argument must be made by motion filed with the Clerk within 15 days of receipt of the notice setting the date for oral argument, except upon a showing of good cause.

(5) *Procedure*. Each party has 15 minutes to present oral argument. For compelling reasons, the Appeal Panel may grant a motion for additional oral argument time. The motion should be filed with the request for oral argument. If either party fails to appear for argument at the scheduled time, the Appeal Panel may consider the case without oral argument.

(6) *Record*. Arguments before the Appeal Panel must be recorded in writing by a court reporter or by electronic means. The ORA must make arrangements for recording the argument. Within 15 days of the conclusion of the argument, a verbatim report of proceedings must be prepared and certified by a court reporter and filed with the Clerk, who will serve it on the parties. The verbatim report is the official record of the argument.

(e) Action by the Appeal Panel. Consistent with the standards of review in section (c) of this Rule, the Appeal Panel may reverse, affirm, or modify the hearing decision on appeal and take any other action as the merits of the case and the interest of justice may require.

(f) Appellate Decision. The Appeal Panel must file an appellate decision in the form of a written order or opinion stating the reasons for its decision. The appellate decision must set forth the result favored by each panel member. Any dissent must set forth the result favored by the dissenting panel member(s). The Clerk serves the appellate decision on the parties.

(g) Appeal or Review. Rules 12.3 and 12.4 govern notices of appeal or petitions for discretionary review of appellate decisions.

(h) Transmittal to Court. If no party files a notice of appeal or petition for discretionary review of an appellate decision within the time permitted by Rules 12.3 and 12.4, or upon the Supreme Court's denial of a petition for discretionary review, the Clerk transmits a copy of the appellate and hearing decisions to the Supreme Court for entry of a final order under Rule 13.1(a) or 8.1(b), or other appropriate order.

RDI 11.8 MODIFICATION OF REQUIREMENTS

Upon written motion filed with the Clerk by a party for good cause shown, or on its own initiative, the ORA may modify the time periods in Title 11 and make other orders as appear appropriate to ensure fair and orderly consideration of the appeal. However, the time period for filing a notice of appeal in Rule 11.2(b) may not be extended or altered.

RDI 11.9 MOTIONS

(a) Content of Motion. A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for the relief sought, with supporting argument.

(b) Filing and Service. Motions for matters pending with the Appeal Panel must be in writing and filed with the Clerk. The motion and any response or reply must be served as required by Rule 4.1.

(c) Response. A party may file a written response to the motion. A response must be served and filed within 10 days of service of the motion, unless the time is modified by the Chair of the Appeal Panel for good cause.

(d) Reply. The moving party may file a reply to a response. A reply must be served and filed within seven days of service of the response, unless the time for reply is modified by the Chair of the Appeal Panel for good cause.

(e) Length of Motion, Response, and Reply. A motion, response, and reply must conform with the formatting requirements of RAP 18.17, except that (1) the motion and response must not exceed 2,500 words (word processing software) or 10 pages (typewriter or hand-written), and (2) the reply must not exceed 1,250 words (word processing software) or 5 pages (typewriter or hand-written). For good cause, the Chair of the Appeal Panel may grant a motion to file an over-length motion, response, or reply.

(f) Consideration of Motion. Upon expiration of the time for reply, the Chair of the Appeal Panel must promptly rule on the motion or refer the motion to the full Panel for decision. A motion will be decided without oral argument, unless the Chair of the Appeal Panel directs otherwise.

(g) Ruling. A motion is decided by written order filed with and served by the Clerk under Rule 4.2.

(h) No Appeal Panel Convened. When a motion is filed before an Appeal Panel is convened, the Chief Regulatory Adjudicator may perform all functions of the Chair under this Rule.

RDI 11.10 INTERLOCUTORY REVIEW

(a) General. Unless these Rules provide otherwise, a party may file a motion seeking interlocutory review by the Appeal Panel of any act or ruling of a regulatory adjudicator that is not appealable as a matter of right.

(b) Considerations Governing Acceptance of Review. Interlocutory review may be granted only in the following circumstances:

(1) A regulatory adjudicator has committed an obvious error that would render further proceedings useless;

(2) A regulatory adjudicator has committed probable error and the ruling of the regulatory adjudicator substantially alters the status quo or substantially limits the freedom of a party to act;

(3) A regulatory adjudicator has so far departed from the accepted and usual course of disciplinary proceedings as to call for review by the Appeal Panel; or

(4) A regulatory adjudicator has certified, or all the parties have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate resolution of the proceedings.

(c) Procedure.

(1) *Motion*. A party seeks interlocutory review by motion under the procedures of Rule 11.9, except that the Chief Regulatory Adjudicator decides the motion. The motion must include a copy of the ruling that the party wants reviewed, a copy of any order granting or denying motions made with respect to that ruling, and a copy of parts of the record relevant to the act or ruling.

(2) *Timing and Service*. The motion must be filed with the Clerk and served on the opposing party within the later of (A) 15 days of the act or ruling that the party wants reviewed, or (B) 15 days of entry of an order deciding a timely motion for reconsideration under Rule 10.8(g).

(3) *Proceedings Not Stayed*. A party's motion for interlocutory review does not stay the regulatory adjudicator's act or ruling, any proceedings, or any pre-hearing deadlines unless the regulatory adjudicator or the Chief Regulatory Adjudicator issues a stay or the Chief Regulatory Adjudicator grants review.

(d) Effect of Denial of Interlocutory Review. The denial of interlocutory review does not affect the right of a party to obtain later review of the act or ruling or the issues pertaining to it.

(e)Acceptance of Review. Upon accepting interlocutory review, the Chief Regulatory Adjudicator assigns the matter to an Appeal Panel, specifies the issue or issues as to which review is granted, and establishes the timeline and terms for any additional briefing and oral argument.

TITLE 12 - REVIEW BY SUPREME COURT

RDI 12.1 APPLICABILITY OF RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure serve as guidance for review under this Title except as to matters specifically dealt with in these Rules. For purposes of this Title, the term "party" includes individuals seeking or responding to review under Rule 3.4.

RDI 12.2 METHODS OF SEEKING REVIEW

(a) Two Methods for Seeking Review of Appeal Panel Decision. The methods for seeking Supreme Court review of an Appeal Panel decision entered under Rule 11.7(f) are: (1) review as a matter of right, called "appeal," and (2) review with Court permission, called "discretionary review." Both "appeal" and "discretionary review" are called "review."

(b) Power of Court Not Affected. This Rule does not affect the Court's power to review any decision by an Appeal Panel or regulatory adjudicator and to exercise its inherent and exclusive jurisdiction over the discipline and incapacity system.

RDI 12.3 APPEAL

(a) Right to Appeal. The respondent or disciplinary counsel has the right to appeal an Appeal Panel decision recommending disciplinary suspension or disbarment. There is no other right of appeal except as specified in Title 8.

(b) Notice of Appeal; Timing. The appealing party must file a notice of appeal within 30 days of service of the Appeal Panel's decision.

(c) Where to File Notice of Appeal; Service. A party files the notice of appeal with the ORA Clerk and must serve the other party.

(d) Filing Fee. A party filing a notice of appeal must, at the time the notice is filed, either pay the statutory filing fee to the ORA Clerk by check made payable to the Washington Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(e) Cross Appeal. If a party files a timely notice and the other party wants relief from the Appeal Panel decision, the

other party must file a notice of appeal with the ORA Clerk within 14 days after service of the first notice of appeal. A party filing a cross notice of appeal must serve the other party but need not pay a filing fee.

RDJ 12.4 DISCRETIONARY REVIEW

(a) Decisions Subject to Discretionary Review. Respondent or disciplinary counsel may seek discretionary review of Appeal Panel decisions or orders not subject to appeal under Rule 12.3. The Court accepts discretionary review only if:

(1) the Appeal Panel's decision or order is in conflict with a Supreme Court decision;

(2) a significant question of law is involved;

(3) there is no substantial evidence in the record to support a material finding of fact on which the Appeal Panel's decision or order is based; or

(4) the petition involves an issue of substantial public interest that the Court should determine.

(b) Petition for Discretionary Review; Timing. A party may seek discretionary review by filing a petition for discretionary review with the ORA Clerk within 30 days of service of the Appeal Panel's decision or order.

(c) Where to File Petition for Discretionary Review; Service. A party files a petition for discretionary review with the ORA Clerk and must serve the other party.

(d) Filing Fee. A party filing a petition for discretionary review must, at the time the petition is filed, either pay the statutory filing fee to the ORA Clerk by check made payable to the Washington Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(e) Content of Petition; Answer; Service; Decision. A petition for discretionary review should conform substantially to RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in RAP 13.4 to the Court of Appeals are considered references to the Appeal Panel. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4 (d) - (h) governs answers and replies to petitions for discretionary review and related matters including service and decision by the Court.

(f) Form and Length. The petition for review, answer, or reply must comply with the form requirements of RAP 13.4(e) and the length limits of RAP 13.4(f).

(g) Cross Petition. If a party files a timely petition for discretionary review and the other party wants relief from the Appeal Panel's decision, the other party must file a petition for discretionary review with the ORA Clerk within the later of (1) 14 days after service of the first petition, or (2) the time for filing a petition under section (b) of this Rule. A party filing a cross petition must serve the other party but need not pay a filing fee. The form and length requirements of RAP 13.4(e) and RAP 13.4(f) apply.

(h) Acceptance of Review. The Court accepts discretionary review of an Appeal Panel decision by granting a petition for discretionary review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

RDJ 12.5 RECORD TO SUPREME COURT

(a) Transmittal. The ORA Clerk should transmit the record, including the filing fee, to the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the transcript of oral argument before the Appeal Panel, if any. Notwithstanding these deadlines, the ORA Clerk should not transmit the record to the Supreme Court prior to payment of the filing fee or receipt of proof that the Supreme Court has waived the filing fee.

(b) Content. The record transmitted to the Court consists of:

(1) the notice of appeal, if any;

(2) the Appeal Panel's decision or order;

(3) the record before the Appeal Panel;

(4) the transcript of any oral argument before the Appeal Panel; and

(5) any other portions of the record before the ORA, including the Clerk's file or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The ORA Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within 10 days of entry of an order assessing costs under Rule 13.8(e), the ORA Clerk should transmit the order to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under Rule 13.8(d).

(e) Additions to Record. A party may request that the ORA Clerk transmit additional portions of the record to the Court prior to or with the filing of the party's last brief. The party must file a copy of any such request with the Court. Thereafter, a party may move the Court for an order directing the transmittal of additional portions of the record to the Court.

(f) Confidentiality. When a party identifies information or documents that are otherwise confidential under these Rules, the Court must take measures to maintain the confidentiality of the information or documents.

RDJ 12.6 BRIEFS

(a) Brief Required. The party seeking review must file a brief stating the party's objections to the Appeal Panel's decision or order.

(b) Time for Filing. The brief of the party seeking review must be filed with the Supreme Court within 30 days of service under Rule 12.5(c) of the list of portions of the record transmitted to the Court, unless the Court directs otherwise.

(c) Answering Brief. Any answering brief of the other party must be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. Any reply brief of a party seeking review must be filed with the Court 20 days after service of the answering brief. A reply brief must be limited to a response to the issues in the answering brief.

(e) Briefs When Both Parties Seek Review. When both the respondent and disciplinary counsel seek review of an Appeal Panel decision or order, the respondent is deemed the party seeking review for the purposes of this Rule. In that case, disciplinary counsel may file a surreply to the respondent's reply brief. The surreply brief must be filed with the

Court within 20 days after service of the respondent's reply brief.

(f) Form of Briefs. Unless otherwise ordered by the Court, briefs filed under this Rule must conform to the requirements of RAP 10.3 and 10.4. Documents filed with the ORA Clerk are known as Clerk's file documents and should be abbreviated CF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Supreme Court Clerk. The Supreme Court Clerk reproduces and distributes briefs as provided in RAP 10.5.

RDI 12.7 ARGUMENT

(a) Rules Applicable. Oral argument before the Supreme Court is conducted under RAP Title 11, unless the Court directs otherwise.

(b) Priority. Disciplinary and incapacity proceedings have priority and are set upon compliance with the above Rules.

RDI 12.8 ENTRY OF ORDER OR OPINION

Following consideration of a matter by the Court, the Court enters a final order under Rule 13.1(a) or 8.1(b), or another appropriate order.

RDI 12.9 MOTION FOR RECONSIDERATION

A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment or delay the effective date of a an order or opinion under Rule 12.8 unless the Court enters a stay.

RDI 12.10 VIOLATION OF RULES

The Court may sanction a party under RAP 18.9 for violation of Rules in this Title.

Reviser's note: The typographical 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.

TITLE 13 - SANCTIONS AND REMEDIES

RDI 13.1 FINAL ORDER; SANCTIONS AND REMEDIES

(a) Supreme Court Final Order. The Supreme Court's final order in a disciplinary proceeding is an order or opinion that imposes sanctions or remedies under this Rule, declines to impose sanctions or remedies under this Rule, dismisses the matter, or otherwise concludes the proceeding. Except as otherwise provided in these Rules, upon entry of the Court's final order, the matter is not subject to further review under these Rules and any sanctions or remedies are imposed on the effective date as set forth in this Title. After the final order is issued, the ORA or the Court may hear and decide post-judgment issues authorized by these Rules. A motion for reconsideration under Rule 12.9 does not stay the judgment or delay the effective date of a final order unless the Court enters a stay.

(b) Sanctions. Upon an adjudication or stipulation under these Rules that a respondent has committed an act of misconduct, the Court may impose one or more of the following public sanctions:

(1) Disbarment;

(2) Disciplinary suspension;

(3) Reprimand; or

(4) Admonition.

The American Bar Association Standards for Imposing Lawyer Sanctions are used to determine the appropriate sanction.

(c) Remedies. Upon imposition of a sanction, the Court may impose one or more of the following public remedies:

(1) Probation;

(2) Restitution;

(3) Limitation on practice;

(4) Continuing legal education;

(5) Assessment of costs; or

(6) Other requirements consistent with the purposes of protecting the public and maintaining the integrity of the legal profession.

RDI 13.2 DISBARMENT

(a) Definition. A sanction of disbarment is the revocation of a respondent's license to practice law in this state.

(b) Effective Date. Disbarment is effective on the date set by the Supreme Court's order or opinion, which will ordinarily be seven days after the date of the order or opinion. If no date is set, disbarment is effective seven days after the date of the Court's order or opinion.

(c) Reinstatement from Disbarment. A person who is disbarred may seek reinstatement under APR 25.

RDI 13.3 DISCIPLINARY SUSPENSION

(a) Definition. A disciplinary suspension is a suspension imposed as a sanction under these Rules. A disciplinary suspension is for a fixed period of time not to exceed three years.

(b) Effective Date. A disciplinary suspension is effective on the date set by the Supreme Court's order or opinion, which will ordinarily be seven days after the date of the order or opinion. If no date is set, a disciplinary suspension is effective seven days after the date of the Court's order or opinion.

(c) Reinstatement from Disciplinary Suspension.

(1) A respondent may apply to reinstate the respondent's license to practice law to either active status or inactive status.

(2) A respondent must file an application for reinstatement with the Bar and comply with applicable court rules and the Bar's Bylaws for reinstatement from disciplinary suspension.

(3) A respondent may not be reinstated without disciplinary counsel's certification that the respondent has complied with any pre-conditions to reinstatement or other specific conditions ordered.

(4) If the Client Protection Fund paid an applicant due to a respondent's misconduct, the respondent must obtain a certification from Bar counsel establishing that the respondent has paid restitution to the Client Protection Fund or is current with any restitution payment plan.

(5) A respondent may ask the ORA to review an adverse determination by disciplinary counsel or Bar counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the ORA may modify the terms of the payment plan if warranted. The ORA determines the procedure for this review. The ORA's ruling is not subject to further review.

(6) When the respondent has complied with all conditions for reinstatement and the term of disciplinary suspension is complete, the Bar files a recommendation for rein-

statement with the Supreme Court for entry of an appropriate order.

RDI 13.4 REPRIMAND

(a) Definition. A reprimand is a sanction that declares that the respondent violated the rules of professional conduct. A reprimand does not restrict the respondent's authorization to practice law. Unless otherwise ordered by the Court, a reprimand must include a term of probation under Rule 13.6.

(b) Effective Date of Reprimand. A reprimand is effective on the date of the Supreme Court's order or opinion.

RDI 13.5 ADMONITION

(a) Definition. An admonition is a sanction that declares that the respondent violated the rules of professional conduct. An admonition does not restrict the respondent's authorization to practice law and is imposed when a sanction less than reprimand is appropriate.

(b) Effective Date of Admonition. An admonition is effective on the date of the Supreme Court's order or opinion.

RDI 13.6 PROBATION

(a) Definition. An order imposing a sanction under Rule 13.1 may include a term of probation for a fixed period of two years or less that includes complying with specific conditions ordered under section (b) of this Rule.

(b) Conditions of Probation. Conditions of probation may include, but are not limited to:

(1) alcohol or drug treatment;

(2) continuing legal education;

(3) medical treatment;

(4) psychological or psychiatric treatment;

(5) practice monitoring;

(6) professional office practice or management counseling;

(7) periodic audits or reports; or

(8) any other program or corrective course of action to address the respondent's misconduct.

(c) Failure to Comply. Failure to comply with a condition of probation may be grounds for an interim suspension under Rule 7.2 and may be grounds for discipline.

(d) Public Information. The fact that a respondent is or was on probation, the length of probation, and the conditions of probation are public information subject to Rule 3.3(a). All other information and documents related to the supervision of probation are not public information. In any proceeding under section (c) of this Rule, information relating to the probation is admissible into evidence in any ensuing disciplinary proceeding.

RDI 13.7 RESTITUTION

(a) Restitution May Be Required. A respondent sanctioned under Rule 13.1 may be ordered to make restitution to the Client Protection Fund or to persons or entities financially injured by the respondent's conduct.

(b) Payment of Restitution. A respondent ordered to make restitution, including restitution to the Client Protection Fund, must do so within 90 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan.

(c) Periodic Payment Plan.

(1) Disciplinary counsel, or Bar counsel on behalf of the Client Protection Fund, may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing a present inability to pay restitution. A decision to enter into a periodic payment plan and the determination of the payment plan's terms are made after consideration of the following factors:

(A) whether the respondent promptly requested a reasonable periodic payment plan;

(B) whether, to date, the respondent has made a good faith effort to make payments;

(C) whether the respondent has or sought other sources for payment of the restitution; and

(D) whether the suggested payment plan will allow for restitution to be paid in full in a reasonable amount of time.

(2) A respondent may file a motion with the ORA to request review of an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chief Regulatory Adjudicator directs the procedure for this review. The regulatory adjudicator's ruling is not subject to further review.

(d) Interest. The respondent must pay interest on any amount not paid within 90 days of the date on which the restitution order is final at the maximum rate permitted under RCW 19.52.020. Any payment plan entered into under this Rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(e) Failure to Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan, may be grounds for discipline.

(f) Restitution in Other Cases. Determination of the amount of restitution and any interest thereon in discipline cases resolved by stipulation is governed by Rule 9.1. Determination of the amount of restitution and any interest thereon in discipline cases resolved by resignation in lieu of discipline is governed by Rule 9.2.

(g) Money Judgment for Restitution. No sooner than 90 days after a restitution order is final, a restitution beneficiary, including the Client Protection Fund, may apply to the Supreme Court Clerk or commissioner for a money judgment if the respondent has failed to pay restitution and interest thereon as provided by this Rule. The beneficiary must obtain a declaration from disciplinary counsel stating that the restitution order is final and that the respondent has failed to pay all or part of the restitution or is not current on a periodic payment plan. The beneficiary must serve the application for a money judgment and declaration of disciplinary counsel on the respondent and on disciplinary counsel under Rule 4.1. The respondent may file an objection with the Supreme Court Clerk or commissioner within 20 days of service of the application. The objection must be served on the beneficiary and disciplinary counsel under Rule 4.1. The sole issue to be determined by the Supreme Court Clerk or commissioner is whether the respondent has complied with the duty to make restitution, including compliance with the terms of a periodic payment plan, under this Rule. The Supreme Court Clerk or commissioner may enter a money judgment in compliance with RCW 4.64.030 on the order for restitution if the respondent has failed to pay the restitution as provided by this Rule. The Supreme Court Clerk or commissioner notifies the beneficiary, the respondent, and disciplinary counsel of the judgment. Upon entry of the judgment, the Supreme Court Clerk

or commissioner transmits the judgment to the clerk of the superior court in any county selected by the beneficiary and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

RDJ 13.8 COSTS AND EXPENSES

(a) General. A respondent may be required to pay the Bar's costs and expenses as provided in this Rule.

(b) Costs Defined. The term "costs" for the purposes of this Rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Bar in the performance of its duties under these Rules, whether incurred before or after the filing of a statement of charges. Costs include, by way of illustration and not limitation:

(1) court reporter charges for attending and transcribing depositions, hearings, and oral arguments;

(2) process server charges;

(3) necessary travel expenses of regulatory adjudicators, disciplinary counsel, adjunct disciplinary counsel, special conflicts disciplinary counsel, investigators, and witnesses;

(4) expert witness charges;

(5) costs of conducting an examination of books and records;

(6) costs of supervising or monitoring probation imposed under Rule 13.6;

(7) fees, costs, and expenses of a lawyer appointed under Title 8; and

(8) costs of copying materials.

(c) Expenses Defined. "Expenses" for the purposes of this Rule means a charge for the Office of Disciplinary Counsel's attorney and staff time, in the following amounts:

(1) in a matter without review by an Appeal Panel, $3,000;

(2) in a matter with review by an Appeal Panel under Title 11, without appeal to the Supreme Court, $4,000; and

(3) in a matter in which a notice of appeal or petition for discretionary review was filed with the Supreme Court under Title 12, $6,000.

(d) Statement of Costs and Expenses, Exceptions, and Reply.

(1) *Timing*. Disciplinary counsel must file and serve a statement of costs and expenses with the Clerk no later than 45 days from the date of entry of a hearing decision if no appeal is filed under Rule 11.2. If an appeal is filed under Rule 11.2, disciplinary counsel must file and serve a statement of costs and expenses with the Clerk no later than 45 days from the date of entry of the Appeal Panel's decision.

(2) *Clerk's Certification of Costs*. The Clerk must file and serve a certification of adjudicative costs itemizing the costs incurred by the ORA under section (b) of this Rule no later than 35 days from the date of entry of a hearing decision if no appeal is filed under Rule 11.2. If an appeal is filed under Rule 11.2, the Clerk must file and serve a certification of adjudicative costs no later than 35 days from the date of entry of the Appeal Panel's decision.

(3) *Content*. A statement of costs and expenses must state with particularity the nature and amount of the costs claimed by the Bar and also state the expenses requested. The statement of costs and expenses may incorporate by reference the Clerk's certification of costs.

(4) *Exceptions*. The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.

(5) *Reply*. Disciplinary counsel may file a reply no later than 10 days from service of any exceptions.

(e) Assessment. The hearing adjudicator, or other regulatory adjudicator as assigned by the Chief Regulatory Adjudicator, enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

(f) Review of Costs Order.

(1) *Request for Review by Chief Regulatory Adjudicator*. Within 20 days of service on the respondent of the order assessing costs and expenses, a party may file a request for review of the order by the Chief Regulatory Adjudicator.

(2) *Action by Chief Regulatory Adjudicator*. Upon the timely filing of a request, the Chief Regulatory Adjudicator reviews the order assessing costs and expenses based on disciplinary counsel's statement of costs and expenses and any exceptions or reply, the decision of the regulatory adjudicator, and any written statement filed by either party. The Chief Regulatory Adjudicator may approve or modify the order assessing costs and expenses. The Chief Regulatory Adjudicator's decision is not subject to further review.

(g) Assessment in Matters Reviewed by the Court. When a matter is reviewed by the Court under Title 12, any order assessing costs and expenses under section (e) of this Rule and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion or order by the Court imposing a sanction, costs and expenses may be assessed in favor of the Bar under the procedures of RAP Title 14, except that "costs" as used in that Title means any costs and expenses allowable under this Rule.

(h) Assessment Discretionary. Assessment of any or all costs and expenses may be denied if the respondent demonstrates by a preponderance of the evidence that it would be in the interests of justice to do so.

(i) Payment of Costs and Expenses. A respondent ordered to pay costs and expenses must do so within 90 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(j) Periodic Payment Plan.

(1) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing a present inability to pay assessed costs and expenses. A decision to enter into a periodic payment plan and the determination of the payment plan's terms are made after consideration of the following factors:

(A) whether the respondent promptly requested a reasonable periodic payment plan;

(B) whether, to date, the respondent has made good faith efforts to make payments;

(C) whether the respondent has or sought other sources for payment of the assessment; and

(D) whether the suggested payment plan will allow for costs and expenses to be paid in full in a reasonable amount of time.

(2) A respondent may file a motion with the ORA to request review of an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chief Regulatory Adjudicator directs the procedure for this review. The regulatory adjudicator's ruling is not subject to further review.

(k) Interest. The respondent must pay interest on any amount not paid within 90 days of the date on which the order assessing costs and expenses is final at the maximum rate permitted under RCW 19.52.020. Any payment plan entered into under this Rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(*l*) Failure to Comply. A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

(m) Expenses in Other Cases. Determination of the amount of expenses assessed and any interest thereon in other matters is governed as follows:

(1) for discipline cases resolved by stipulation, by Rule 9.1;

(2) for discipline cases resolved by resignation in lieu of discipline, by Rule 9.2;

(3) for reciprocal discipline cases, by Rule 9.3;

(4) for incapacity cases resolved by stipulation, by Rule 8.9; and

(5) for a respondent's failure to cooperate, by Rule 5.9 (c).

(n) Money Judgment for Costs and Expenses. No sooner than 90 days after an assessment of costs and expenses is final, including an assessment resulting from a proceeding as identified in section (m) of this Rule, disciplinary counsel may apply to the Supreme Court Clerk or commissioner for a money judgment if the respondent has failed to pay the costs and expenses as provided by this Rule. Disciplinary counsel must serve the application for a money judgment on the respondent under Rule 4.1. The respondent may file an objection with the Supreme Court Clerk or commissioner within 20 days of service of the application. The sole issue to be determined by the Supreme Court Clerk or commissioner is whether the respondent has complied with the duty to pay costs and expenses, including compliance with the terms of a periodic payment plan, under this Rule. The Supreme Court Clerk or commissioner may enter a money judgment in compliance with RCW 4.64.030 if the respondent has failed to pay the costs and expenses as provided by this Rule. The Supreme Court Clerk or commissioner notifies disciplinary counsel and the respondent of the judgment. Upon entry of the judgment, the Supreme Court Clerk or commissioner transmits the judgment to the clerk of the superior court in any county selected by disciplinary counsel and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

(o) Action to Enforce Judgment for Costs and Expenses. At any time following the entry of a judgment under section (n) of this Rule, the Bar is authorized to commence a judicial action to enforce and collect the judgment. Upon recommendation of the Chief Disciplinary Counsel, the Executive Director may engage the services of lawyer to represent the Bar in efforts to collect a judgment entered under section (n) or this rule or a collection action authorized by this Rule.

TITLE 14 - DUTIES ON DISBARMENT, RESIGNATION IN LIEU, SUSPENSION FOR ANY REASON, OR INCAPACITY INACTIVE STATUS

RDI 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY

(a) Providing Client Property. A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status must, upon request, provide each client or the client's substituted licensed legal professional with the client's assets, files, and other documents in the respondent's possession, regardless of any possible claim of lien under RCW 60.40.

(b) Required Notices. A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status must within 10 days of the effective date of the disciplinary suspension, disbarment, resignation, or status change:

(1) notify every current client in writing of the following:

(A) the respondent's suspension, disbarment, resignation in lieu of discipline, or status change to incapacity inactive status;

(B) the respondent's inability to practice law and the advisability of seeking legal services elsewhere; and

(C) if the client is involved in litigation or administrative proceedings, the advisability of seeking the prompt substitution of another licensed legal professional.

(2) notify the Court or agency of the respondent's inability to practice law if a client is involved in litigation or administrative proceedings;

(3) notify any co-counsel or licensed legal professional assisting the respondent in providing legal services to a current client of the respondent's inability to practice law; and

(4) notify any licensed legal professional for each adverse party in pending litigation or administrative proceedings, and any unrepresented adverse party, of the respondent's suspension, disbarment, resignation in lieu of discipline, or status change and the respondent's inability to practice law.

(c) Address of Client. When providing the notices required by this Rule, a respondent must, to the extent consistent with the interests of the client and subject to the limitations of RPC 1.6 and 1.9 or LLLT RPC 1.6 and 1.9, take steps to ensure that adverse parties, co-counsel, courts, and agencies have information sufficient to effect service on the client.

RDI 14.2 RESPONDENT TO DISCONTINUE PRACTICE

(a) Discontinue Practice. After the effective date of the suspension, disbarment, resignation in lieu of discipline, or a status change to incapacity inactive status, respondents must:

(1) not practice law,

(2) not hold themselves out as authorized to practice law in Washington State, and

(3) take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on them as authorized to practice law.

(b) Continuing Duties to Former Clients. A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status is not precluded from disbursing assets to clients or other persons or providing information on the facts, theory, and status of a case to a succeeding licensed legal professional, but the respondent cannot be involved in any discussion regarding matters occurring after the effective date of the suspension, disbarment, resignation in lieu of discipline, or status change to incapacity inactive status. The respondent must provide this information on request and without charge.

RDI 14.3 DECLARATION OF COMPLIANCE

Within 25 days of the effective date of a respondent's disbarment, suspension, resignation in lieu of discipline, or status change to incapacity inactive status under these Rules or the APR, the respondent must serve on disciplinary counsel or Bar counsel a declaration stating that the respondent has fully complied with the provisions of this Title. The declaration must also provide a mailing address where communications to the respondent may thereafter be directed. The respondent must attach to the declaration copies of the form letters of notification sent to the respondent's clients and opposing licensed legal professionals or parties and copies of letters to any court or tribunal, together with a list of names and addresses of all clients and opposing licensed legal professionals or parties to whom notices were sent. The declaration is confidential information except the respondent's mailing address is treated as a change of mailing address under APR 13(b).

RDI 14.4 RESPONDENT TO KEEP RECORDS OF COMPLIANCE

A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status must maintain written records of the steps taken by the respondent under this Title, so that proof of compliance will be available in any subsequent proceeding.

Reviser's note: The typographical 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.

TITLE 15 - RANDOM EXAMINATIONS, OVERDRAFT NOTIFICATION, AND IOLTA

RDI 15.1 RANDOM EXAMINATION OF BOOKS AND RECORDS

(a) Authorization. The Office of Disciplinary Counsel is authorized to examine and reexamine the books and records of any lawyer, LLLT, LPO, law firm, or closing firm to determine whether the lawyer, LLLT, LPO, law firm, or closing firm is complying with RPC 1.15A and 1.15B, or LLLT RPC 1.15A and 1.15B, or LPORPC 1.12A and 1.12B and other rules of professional conduct referencing those rules. An examination or reexamination of the books and records of a closing firm must be limited as described in section (c)(2) of this Rule.

(b) Definitions.

(1) As used in this Title, "law firm" has the same meaning as defined in RPC 1.0A(c) except that lawyers employed in the legal department of a closing firm are not considered a law firm under these Rules.

(2) As used in this Title, "closing firm" means any bank, depository institution, escrow agent, title company, or other business, whether public or private, that employs, or contracts for the services of, a lawyer or LPO for the purpose of providing real or personal property closing services for a transaction. For purposes of this section, the term "other business" does not include law firms.

(c) Selection.

(1) *Method*. The selection of lawyers, LLLTs, and LPOs to be examined will be limited to those whose licenses are on active status and will utilize the principle of random selection by license number.

(2) *Law Firms and Closing Firms*. If the license number randomly selected is that of a lawyer, LLLT, or LPO who is an employee or member of a law firm, the entire law firm is subject to examination or reexamination under Rule 15.1(d). If the license number randomly selected is that of a lawyer or LPO who is an employee or member of a closing firm, only those books and records relating to transactions in which the randomly selected lawyer or LPO provided real or personal property closing services are subject to examination or reexamination.

(3) *Exclusions*.

(A) A lawyer, LLLT, or LPO will not be subject to a random examination when the lawyer, LLLT, or LPO is one of the following at the time of the random selection: employed by the Bar; a justice or staff lawyer of the Supreme Court; a governor or governor-elect of the Board of Governors; a regulatory adjudicator; a volunteer adjudicator; an adjunct disciplinary counsel; a special conflicts disciplinary counsel; an appointed counsel under these Rules; or a respondent in a disciplinary or incapacity investigation or proceeding. An exclusion under this section is not imputed to any other lawyer, LLLT, or LPO even if an employee or member of the same law firm or closing firm as a lawyer, LLLT, or LPO who would be excluded under this Rule.

(B) If the lawyer, LLLT, LPO, law firm, or closing firm has been randomly examined under this Rule within seven years preceding the current random selection, the lawyer, LLLT, LPO, law firm, or closing firm will not be subject to random examination.

(4) *Notice of Random Selection*. The Office of Disciplinary Counsel must provide written notification of the selection to the lawyer, LLLT, LPO, law firm, or closing firm.

(5) *Challenges*. Within 30 days of the date of the notice of selection, the lawyer, LLLT, LPO, law firm, or closing firm may file with the Clerk a written request that a regulatory adjudicator review the selection. A regulatory adjudicator's decision under this Rule is not reviewable.

(d) Examination and Reexamination. An examination denotes the initial review following the random selection of a lawyer, LLLT, or LPO. A reexamination denotes a further examination as provided for in sections (e)(2) or (f)(2) of this Rule. Examinations and reexaminations under this Rule will entail a review and testing of the internal controls and procedures used by the lawyer, LLLT, LPO, law firm, or closing firm to receive, hold, disburse, and account for money or property as required by RPC 1.15A, LLLT RPC 1.15A, or LPORPC 1.12A, and a review of the records of the lawyer,

LLLT, LPO, law firm, or closing firm as required by RPC 1.15B, LLLT RPC 1.15B, or LPORPC 1.15B.

(e) Conclusion. At the conclusion of an examination or reexamination, the Office of Disciplinary Counsel must do one of the following:

(1) Issue a report to the lawyer, LLLT, LPO, law firm, or closing firm summarizing the findings and taking no further action;

(2) Issue a report to the lawyer, LLLT, LPO, law firm, or closing firm summarizing the findings, recommending corrective action and requiring a reexamination of the books and records to commence within one year; or

(3) Issue a report to the lawyer, LLLT, LPO, law firm, or closing firm summarizing the findings and recommending an investigation under Title 5. The lawyer, LLLT, LPO, law firm, or closing firm may submit a response to the recommendation within 10 days of the issuance of the report.

(f) Regulatory Adjudicator Action on Report. The Office of Disciplinary Counsel must transmit a report under section (e)(3) and any response to the ORA for entry of an order. A regulatory adjudicator must do one of the following:

(1) order closure of the matter;

(2) order corrective action and a reexamination to commence within one year; or

(3) order an investigation under Title 5.

The action of a regulatory adjudicator under this Rule is not reviewable.

RDI 15.2 COOPERATION WITH EXAMINATION

(a) Cooperation Required. A lawyer, LLLT, and LPO must cooperate with an examination or reexamination under this Title, subject only to the proper exercise of any privilege against self-incrimination, by:

(1) producing promptly all evidence, books, records, and papers requested for the examination or reexamination;

(2) furnishing promptly any explanations required for the examination or reexamination; and

(3) producing written authorization, directed to any bank or depository, authorizing the Office of Disciplinary Counsel to examine trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the lawyer, LLLT, LPO, law firm, or closing firm in the bank or depository.

(b) Failure to Cooperate.

(1) *Noncooperation Deposition*. If a lawyer, LLLT, or LPO has not complied with any request made under this Rule for more than 30 days, the Office of Disciplinary Counsel may notify the lawyer, LLLT, or LPO that failure to comply within 10 days may result in a deposition for failure to cooperate or interim suspension under Rule 7.2. Ten days after this notice, the Office of Disciplinary Counsel may serve the lawyer, LLLT, or LPO with a subpoena for a deposition. Any deposition conducted after the 10-day period and necessitated by the lawyer's, LLLT's or LPO's continued failure to cooperate may be conducted at any place in Washington State.

(2) *Costs and Expenses*.

(A) Regardless of the underlying matter's ultimate disposition, a lawyer, LLLT, or LPO who has been served with a subpoena under this Rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, the cost of transcribing the deposition if ordered by disciplinary counsel, and a reasonable attorney fee of $750.

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

(i) The Office of Disciplinary Counsel applies to the ORA by itemizing the costs and expenses and stating the reasons for the deposition.

(ii) The lawyer, LLLT, or LPO has 10 days to respond to the Office of Disciplinary Counsel's application.

(iii) The ORA by order assesses appropriate costs and expenses. The order assessing costs and expenses is not subject to further review.

(3) *Grounds for Discipline*. A lawyer's, LLLT's, or LPO's failure to cooperate fully and promptly with an examination as required by this Rule is also grounds for discipline.

RDI 15.3 CONFIDENTIALITY

(a) Maintaining Client Confidentiality. In the course of conducting examinations and reexaminations under this Title, the Office of Disciplinary Counsel receives, reviews, and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court's authority to regulate the practice of law. Providing information to the Office of Disciplinary Counsel or a regulatory adjudicator under these Rules is not prohibited by RPC 1.6 or 1.9 or LLLT RPC 1.6 or 1.9 and does not waive any attorney-client privilege. If the lawyer, LLLT, or LPO provides and identifies specific client information that is privileged and requests that it be treated as confidential, the Office of Disciplinary Counsel must maintain the confidentiality of the information unless the client consents to disclosure. Nothing in these Rules waives or requires waiver of any lawyer's, LLLT's, or LPO's own privilege or other protection as a client against the disclosure of information relating to the representation.

(b) Examination Confidential. All information related to an examination or reexamination under Rule 15.1, including any record maintained under Rule 3.9(c), is confidential and is held by the Office of Disciplinary Counsel and the ORA under the authority of the Supreme Court. Information related to examinations or reexaminations under Rule 15.1 is available only to the Office of Disciplinary Counsel; the lawyer, LLLT, LPO, law firm, or closing firm examined or reexamined; and the ORA. When a disciplinary investigation is ordered under Rule 15.1, the release provisions of Title 3 apply to all examination and reexamination information that relates to the disciplinary investigation. Disciplinary counsel may make a motion under Rule 2.13(f) for authorization to disclose other confidential information.

RDI 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) Overdraft Notification Agreement Required. To be authorized as a depository for trust accounts referred to in RPC 1.15A(i), LLLT RPC 1.15A(i), or LPORPC 1.12A(i), a financial institution, bank, credit union, savings bank, or savings and loan association must file with the Legal Foundation of Washington an agreement, in a form provided by the Washington State Bar Association, to report to the Washington State Bar Association if any properly payable instrument is presented against such a trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institu-

tion and cannot be canceled except on 30 days' notice in writing to the Legal Foundation of Washington. The Legal Foundation of Washington must provide copies of signed agreements and notices of cancellation to the Washington State Bar Association upon request.

(b) Overdraft Reports.

(1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:

(A) the identity of the financial institution;

(B) the identity of (i) the lawyer, LLLT, or law firm, or (ii) the LPO or closing firm;

(C) the account number; and

(D) either:

(i) the amount of overdraft and date created; or

(ii) the amount of the returned instrument(s) and the date returned.

(2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

(c) Institution Costs. Nothing in these Rules precludes a financial institution from charging a particular lawyer, LLLT, LPO, law firm, or closing firm for the reasonable cost of producing the reports and records required by this Rule, but those charges may not be a transaction cost charged against funds payable to the Legal Foundation of Washington under RPC 1.15A (i)(1), LLLT RPC 1.15A (i)(1), LPORPC 1.12A (i)(1), and Rule 15.5(e).

(d) Duty to Notify the Office of Disciplinary Counsel. Every lawyer, LLLT, LPO, law firm, or closing firm that receives notification that any instrument presented against a trust account of the lawyer, LLLT, LPO, law firm, or closing firm was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Office of Disciplinary Counsel of the information required by section (b) of this Rule. The lawyer, LLLT, LPO, law firm, or closing firm must include a full explanation of the cause of the overdraft.

RDI 15.5 TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

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

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

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

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

(1) *United States Government Securities*. United States Government Securities are defined as direct obligations of the United States Government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States Government-Sponsored Enterprises.

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

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

(4) *IOLTA*. As used in these Rules, the term IOLTA means interest on lawyer's trust accounts, interest on LLLT's trust accounts, and interest on LPO's trust accounts, as set forth in RPC 1.15A, LLLT RPC 1.15A, and LPORPC 1.12A, respectively, and Title 15 of these Rules.

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

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

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

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

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

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

(d) Requirements of All Trust Accounts. All trust accounts established pursuant to RPC 1.15A(i), LLLT RPC 1.15A(i), or LPORPC 1.12A(i) must be insured by the Federal Deposit Insurance Corporation or the National Credit

Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments.

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

(1) *Interest Comparability*. For accounts established pursuant to RPC 1.15A, LLLT RPC 1.15A, or LPORPC 1.12A, authorized financial institutions must pay the highest interest rate generally available from the institutions to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available to its non-IOLTA customers, authorized financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. An authorized financial institution may satisfy these comparability requirements by selecting one of the following options:

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

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

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

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

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

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

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

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

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

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

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

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

TITLE 16 - COURT-APPOINTED CUSTODIANS

RDI 16.1 COURT-APPOINTED CUSTODIANS

(a) General. The Court may appoint one or more lawyers authorized to practice law in Washington State as custodian to protect clients' interests as set forth in this Rule.

(b) Procedure. Upon ex parte motion by Bar counsel, the Court may appoint a custodian whenever (1) a licensed legal professional who has resigned in lieu of discipline, or has been suspended, disbarred, or whose license has been placed in incapacity inactive status fails to carry out the obligations of Title 14 or fails to protect the clients' interests; (2) a licensed legal professional disappears, dies, or abandons practice; or (3) it reasonably appears that the licensed legal professional is otherwise incapable of meeting the licensed legal professional's obligations to clients.

(c) Custodianship Order. The order authorizes the custodian to obtain and review all records relevant to the custodianship and take one or more of the actions set forth below:

(1) *Files, Records, and Property*. The custodian takes possession of the necessary files, records, and property and takes action to protect the clients' interests as required by the Court's order or these Rules, including, but not limited to, returning files, records, and property to the client. Upon motion by the custodian, the Court may order destruction of files, records, or property as appropriate.

(2) *Trust Accounts*. If ordered by the Court, the custodian assumes control of client trust accounts. Any bank or other person honoring the authority of the custodian as granted by the Court is exonerated from any resulting liability. In determining ownership of funds in the trust account, including by

subrogation or indemnification, the custodian should act as a reasonably prudent lawyer maintaining a client trust account. If the client trust account does not contain sufficient funds to meet known client balances, the custodian may disburse funds on a pro rata basis. Any unclaimed trust funds may be dealt with under the Uniform Unclaimed Property Act, Chapter 63.29 RCW.

(3) *Other*. The Court may enter orders to carry out the provisions and purposes of this Rule.

(d) Confidentiality.

(1) *Attorney-client Privilege and Duty of Confidentiality*. A custodian receives and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court's authority to regulate the practice of law. A custodian's possession of a client's file or other information does not waive the client's attorney-client privilege or other protections from disclosure of information. A custodian must maintain the confidentiality of information received under this Rule.

(2) *Disclosure to Disciplinary Counsel Permitted*. Notwithstanding the provisions of section (d)(1) of this Rule, a custodian must comply with requests and subpoenas from disciplinary counsel under these Rules.

(3) *Other Disclosure*. Other than the disclosure permitted in section (d)(2) of this Rule, the custodian must obtain an order from the Court before making any disclosure of the client's file or information relating to the client's representation.

(e) Discharge. On motion by Bar counsel or the custodian, the Court may discharge the custodian from further duties.

(f) Costs. The Bar pays reasonable costs incurred by the custodian. Payment of any costs incurred or reimbursed by the Bar under this Rule may be required as a condition of reinstatement from disbarment or disciplinary suspension, ordered as restitution to the Bar in a disciplinary proceeding, or claimed against the estate of a deceased or adjudicated incapacitated licensed legal professional.

(g) Records. The public or confidential nature of records or proceedings under this Rule is governed by Title 3. The Bar maintains a record of the custodianship permanently. The custodian maintains files and papers obtained as custodian until otherwise ordered by the Court.

TITLE 17 - EFFECT OF THESE RULES ON PENDING MATTERS

RDI 17.1 EFFECT ON PENDING MATTERS

(a) Initial Enactment of the Rules for Discipline and Incapacity. These Rules in their entirety will apply to pending matters on the effective date as ordered by the Supreme Court with the following exceptions:

(1) if a matter is pending before a review committee of the Disciplinary Board or a discipline committee of the Limited License Legal Technician (LLLT) Board or the Limited Practice (LP) Board;

(2) if a hearing has been held or is in progress and no hearing decision has been filed by the hearing officer; and

(3) if a matter has been briefed or argued to the Disciplinary Board, LLLT Board, the LP Board, or to the Chair of any of these boards and no decision has been filed.

Under the above exceptions and under the supervision of the Supreme Court, the person or entity will continue in its responsibilities under the Rules for Enforcement of Lawyer Conduct, the Rules for Enforcement of Limited License Legal Technician Conduct, or the Rules for Enforcement of Limited Practice Officer Conduct until such time as the pending decision has been filed.

(b) Resolution of Disagreements. Except in matters pending before the Supreme Court, in the event of a disagreement about which rules apply, the Chief Regulatory Adjudicator will determine the appropriate procedure and has authority to enter orders as necessary and appropriate to ensure a fair and orderly proceeding.

(c) Subsequent Amendments. Any subsequent amendments to these Rules will apply to pending matters in their entirety on the effective date as ordered by the Supreme Court.

(d) Matters Pending Before the Court. Unless the Supreme Court orders otherwise, if a matter is pending before the Supreme Court, these Rules for Discipline and Incapacity and any subsequent amendments apply as of their effective date.

GR 9 COVER SHEET

Suggested

SUGGESTED CONFORMING AMENDMENTS TO OTHER COURT RULES RELATED TO SUGGESTED RULES FOR DISCIPLINE AND INCAPACITY (RDI)

ELC; ELPOC; ELLLTC; GR 1, 12.4. 12.5, and 24; RPC 1.0B, 1.6, 1.15A, 5.4, 5.6, 5.8, 8.1, 8.4, and 8.5; LLLT RPC 1.0B, 1.15A, 5.4, 5.8, and 8.4; LPORPC 1.0, 1.8, 1.10, and 1.12A; APR 1, 5, 8, 9, 12, 14, 15, 15 Procedural Regulation 6, 22.1, 23, 24.1, 24.2, 25.1, 25.5, and 28; and new APR 29 and 30

A. Proponent

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C. Purpose

The proponent suggests a series of conforming amendments to other court rules as necessary to implement the new suggested disciplinary procedural rules for Washington State's discipline and incapacity system, the Rules for Discipline and Incapacity (RDI), should they be adopted.

If the suggested RDI are adopted, conforming amendments are necessary to other sets of rules that either cross-reference or give effect to the Rules for Enforcement of Lawyer Conduct (ELC), Rules for Enforcement of Limited Practice Officer Conduct (ELPOC), or Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC). Most of the conforming amendments are technical amendments that

change citations and cross-references from the current rules to the new suggested RDI. In addition, the names of entities and other terminology is amended to reflect the new terminology used in the RDI.

In addition, the conforming amendments capture any other technical updates needed such as updating names of other rule sets or cross-references that might have been overlooked from prior amendments to various rules over the years. A small number of substantive changes to rules other than the RDI have been suggested, as identified below.

ELC

If the Court elects to adopt these suggested rules, the ELC need to be rescinded in their entirety to be replaced by the RDI.

ELPOC

If the Court elects to adopt these suggested rules, the ELPOC need to be rescinded in their entirety to be replaced by the RDI.

ELLLTC

The ELLLTC were adopted by the Court not as published rules but as an interim provision until a set of disciplinary procedural rules was drafted to replace it. See *In re the Matter of—Enforcement of Limited License Legal Technician Conduct*, Order No. 25700-A-1136 (Jan. 7, 2006). If the Court elects to adopt these suggested rules, Order No. 25700-A-1136 needs to be rescinded.

RPC 1.0B(d), LPOROPC 1.0(f), LLLT RPC 1.0B(g)

The definition of LPO is amended due to prior amendments to the APR. Under those prior amendments, the term "certification" was changed to "license" and the APR 12 regulations were rescinded. The LPO definition is also added to the LLLT RPC because LPOs are now referenced in that set of rules also.

RPC 5.8, LLLT RPC 5.8, LPORPC 1.8

These rules prohibit licensed legal professionals from working with other licensed legal professionals who are disbarred or suspended or whose licenses have been revoked. The suggested amendments contain a significant change, which would limit the prohibition for suspension to a disciplinary suspension, i.e., the suggested amendments make it permissible to work with a licensed legal professional who is under an administrative suspension (e.g., suspended for failing to pay the license fee). The prohibition for LPOs remains limited to other LPOs.

LPORPC 1.12A(i)

This rule is amended so that the text of the rule more closely mirrors the text of the lawyer RPC 1.15A(i) and LLLT RPC 1.15A(i).

APR 1 (d)(5)

This new section adds a confidentiality provision relating to incapacity inactive status under APR 30, which is a new rule being suggested as part of this submission (see below).

APR 23(f)

The RDI do not contain procedures for disqualification. Instead, regulatory adjudicators look to the Code of Judicial Conduct (CJC). Thus, Character and Fitness Board members likewise should look to the CJC regarding disqualification when a complaint is filed against a board member.

APR 24.1 - APR 25.5

Currently under the APR, when the Character and Fitness Board recommends against admission in a reinstatement from disbarment proceeding, the petitioner has a right to an intermediate appeal to the Disciplinary Board. This intermediate appeal is unique to reinstatement after disbarment proceedings. For all other character and fitness matters, the only appeal is to the Washington Supreme Court. With the elimination of the Disciplinary Board under the RDI, and to make the reinstatement process more procedurally analogous to character and fitness matters generally, the intermediate appeal is removed from the APR in these suggested amendments. In addition, these suggested amendments reflect other procedural changes necessitated by the removal of the appeal to the Disciplinary Board. Some procedural amendments also reflect current practice in these proceedings.

APR 29 Lawyer Trust Account Declaration

This is a new rule. Currently, the trust account declaration requirement for lawyers is in the ELC. See ELC 15.5 (Declaration). For LLLTs and LPOs, it is in the APR. As an annual licensing requirement to practice law, this provision is best situated in the Admission and Practice Rules.

APR 30 Voluntary Incapacity Inactive Status

This is a new rule for voluntarily requesting incapacity inactive status. There are a few requests every year for incapacity inactive status (currently called disability inactive status). Under the current rules, the only way to accomplish this status change is under ELC 8.5 (Stipulated Transfer to Disability Inactive Status), which is a discipline-system process. This process is unnecessarily cumbersome and potentially stigmatizing for situations when a licensed legal professional seeks only to demonstrate incapacity to practice law. Under this suggested rule, there would be a simple application process handled by the WSBA Regulatory Services Department. To prevent abuse, the licensed legal professional must not have any pending discipline or incapacity matters in order to use this new provision. In addition, the licensed legal professional must seek reinstatement in the same manner as any other licensed legal professional on incapacity inactive status.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is not requested.

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

SUGGESTED AMENDMENTS TO THE GENERAL RULES

Redline Version

GR 1 CLASSIFICATION SYSTEM FOR COURT RULES

Part I: Rules of General Application

General Rules GR

Code of Judicial Conduct CJC

Discipline Rules for Judges DRJ

Board for Judicial Administration Rules BJAR

Admission ~~to~~ and Practice Rules APR

Rules of Professional Conduct RPC

Limited License Legal Technician Rules of Professional Conduct LLLT RPC

Limited Practice Officer Rules of Professional Conduct LPORPC

~~Rules for Enforcement of Lawyer Conduct ELC~~ Rules for Discipline and Incapacity RDI

~~Rules for Enforcement of Limited Practice Officer Conduct ELPOC~~

~~Rules for Enforcement of Limited License Legal Technician Conduct ELLLTC~~

Judicial Information System Committee Rules JISCR

Rules of Evidence ER

GR 12.4 WASHINGTON STATE BAR ASSOCIATION ACCESS TO RECORDS

(a) - (c) [Unchanged.]

(d) Bar Records—Right of Access.

(1) The Bar shall make available for inspection and copying all Bar records, unless the record falls within the specific exemptions of this rule, or any other state statute (including the Public Records Act, chapter 42~~,~~.56 RCW) or federal statute or rule as they would be applied to a public agency, or is made confidential by the Rules of Professional Conduct, the LLLT Rules of Professional Conduct, the LPO Rules of Professional Conduct, the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity, the Admission ~~to~~ and Practice Rules and associated regulations, ~~the Rules for Enforcement of Limited Practice Officer Conduct,~~ General Rule 25, court orders or protective orders issued under those rules, or any other state or federal statute or rule. To the extent required to prevent an unreasonable invasion of personal privacy interests or threat to safety or by the above-referenced rules, statutes, or orders, the Bar shall delete identifying details in a manner consistent with those rules, statutes, or orders when it makes available or publishes any Bar record; however, in each case, the justification for the deletion shall be explained in writing.

(2) In addition to exemptions referenced above, the following categories of Bar records are exempt from public access except as may expressly be made public by court rule:

(A) [Unchanged.]

(B) Specific information and records regarding

(i) internal policies, guidelines, procedures, or techniques, the disclosure of which would reasonably be expected to compromise the conduct of disciplinary or regulatory functions, investigations, or examinations;

(ii) application, investigation, and hearing or proceeding records relating to lawyer, Limited Practice Officer, or Limited License Legal Technician admissions, licensing or discipline, or that relate to the work of ~~ELC 2.5~~ RDI 2.3 ~~hearing officers~~ regulatory adjudicators, the Board of Bar Examiners, the Character and Fitness Board, the Law Clerk Board, the Limited Practice Board, the MCLE Board, the Limited License Legal Technician Board, the Practice of Law Board, or the ~~Disciplinary Board~~ RDI 2.4 adjudicative panels in conducting investigations, hearings or proceedings; and

(iii) the work of the Judicial Recommendation Committee and the ~~Hearing Officer selection panel~~ RDI 2.5 Volunteer Selection Board, unless such records are expressly categorized as public information by court rule.

(C) - (F) [Unchanged].

(e) - (j) [Unchanged.]

GR 12.5 IMMUNITY

All boards, committees, or other entities, and their members and personnel, and all personnel and employees of the Washington State Bar Association, acting on behalf of the Supreme Court under the Admission and Practice Rules~~,~~ or the Rules for Discipline and Incapacity ~~Rules for Enforcement of Lawyer Conduct, or the disciplinary rules for limited practice officers and limited license legal technicians,~~ shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

GR 24 DEFINITION OF THE PRACTICE OF LAW

(a) [Unchanged.]

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice law pursuant to Admission ~~to~~ and Practice Rules 3 (g) (emeritus pro bono admission), 8 (~~special~~ limited admissions for: a particular ~~purpose or~~ action or proceeding; indigent representation; ~~educational purposes; emeritus membership;~~ house counsel), 9 (licensed legal interns), 12 (limited practice ~~for closing~~ officers), ~~or~~ 14 (~~limited practice for~~ foreign law consultants), or 28 (limited license legal technicians).

(2) - (11) [Unchanged.]

(c) - (f) [Unchanged.]

SUGGESTED AMENDMENTS TO THE ADMISSION AND PRACTICE RULES

Redline Version

APR 1 IN GENERAL; SUPREME COURT; PREREQUISITES TO THE PRACTICE OF LAW; COMMUNICATIONS TO THE BAR; CONFIDENTIALITY; DEFINITIONS

(a) - (c) [Unchanged]

(d) Confidentiality.

(1) - (4) [Unchanged].

(5) Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, the nature of the incapacity and all application records under this rule, including all supporting documentation and related investigation files and documents are confidential and shall be privileged against disclosure. The fact and date of placement in incapacity inactive status shall be subject to disclosure.

(e) [Unchanged.]

APR 5 PREADMISSION REQUIREMENTS: OATH: RECOMMENDATION FOR ADMISSION; ORDER ADMITTING TO PRACTICE LAW

(a) - (g) [Unchanged.]

(h) Oath for LPOs—Content of Oath.

OATH FOR LIMITED PRACTICE OFFICERS

STATE OF WASHINGTON

COUNTY OF _____

I, _____, do solemnly declare:

1. - 2. [Unchanged]

3. I will abide by the Limited Practice Officer Rules of Professional Conduct ~~and Rules for Enforcement of Limited Practice Officer Conduct~~ approved by the Supreme Court of the State of Washington.

4. - 5. [Unchanged]

I understand that I may incur personal liability if I violate the applicable standard of care of a Limited Practice Officer. Also, I understand that I have authority to act as a Limited Practice Officer only during the times that my financial

responsibility coverage is in effect. If I am covered under my employer's errors and omissions insurance policy or by my employer's certificate of financial responsibility, my coverage is limited to services performed in the course of my employment.

_____

Signature Limited Practice Officer

Subscribed and sworn to before me this _____ day of _____, _____.

_____

JUDGE

(i) - (m) [Unchanged.]

APR 8 NONMEMBER LAWYER LICENSES TO PRACTICE LAW

(a) - (b) [Unchanged].

(c) Exception for Indigent Representation. A member in good standing of the bar of another state or territory of the United States or of the District of Columbia, who is eligible to apply for admission as a lawyer under APR 3 in this state, while rendering service in either a bar association or governmentally sponsored legal services organization or in a public defender's office or similar program providing legal services to indigents and only in that capacity, may, upon application and approval, practice law and appear as a lawyer before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations:

(1) Application to practice under this rule shall be made to the Bar, and the applicant shall be subject to the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity and to the Rules of Professional Conduct.

(2) - (4) [Unchanged.]

(d) - (e) [Unchanged.]

(f) Exception for House Counsel. A lawyer admitted to the practice of law in any jurisdiction may apply to the Bar for a limited license to practice law as in-house counsel in this state when the lawyer is employed in Washington as a lawyer exclusively for a profit or not for profit corporation, including its subsidiaries and affiliates, association, or other business entity, that is not a government entity, and whose lawful business consists of activities other than the practice of law or the provision of legal services. The lawyer shall apply by:

(i) - (iv) [Unchanged.]

(v) furnishing whatever additional information or proof that may be required in the course of investigating the applicant.

(1) - (4) [Unchanged.]

(5) The practice of a lawyer licensed under this section shall be subject to the Rules of Professional Conduct, the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity, and to all other laws and rules governing lawyers admitted to the active practice of law in this state. Jurisdiction shall continue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(6) - (8) [Unchanged.]

(g) [Unchanged].

APR 9 LICENSED LEGAL INTERNS

(a) - (c) [Unchanged.]

(d) Application. The applicant must submit an application on a form provided by the Bar and signed by both the applicant and the supervising lawyer.

(1) - (7) [Unchanged.]

(8) Once an application is accepted and approved and a license is issued, a Licensed Legal Intern is subject to the Rules of Professional Conduct and the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity and to all other laws and rules governing lawyers admitted to the Bar of this state, and is personally responsible for all services performed as a Licensed Legal Intern. Any offense that would subject a lawyer admitted to practice law in this state to suspension or disbarment may ~~be punished by~~ result in termination of the Licensed Legal Intern's license, or suspension or forfeiture of the Licensed Legal Intern's privilege of taking the lawyer bar examination and being admitted to practice law in this state.

(9) [Unchanged.]

(e) [Unchanged.]

(f) Additional Obligations of Supervising Lawyer. Agreeing to serve as the supervising lawyer for a Licensed Legal Intern imposes certain additional obligations on the supervising lawyer. The failure of a supervising lawyer to comply with the duties set forth in this rule shall be grounds for disciplinary action pursuant to the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity. In addition to the duties stated or implied above, the supervising lawyer:

(1) - (10) [Unchanged.]

(g) - (h) [Unchanged.]

APR 12 LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

(a) [Unchanged.]

(b) Limited Practice Board.

(1) [Unchanged.]

(2) *Duties and Powers*.

(A) [Unchanged.]

(B) Grievances and discipline. The ~~LP Board's involvement in the~~ investigation, hearing and appeal procedures for handling complaints of persons aggrieved by the failure of limited practice officers to comply with the requirements of this rule and of the Limited Practice Officer Rules of Professional Conduct shall be as established in the Rules for ~~Enforcement of Limited Practice Officer Conduct (ELPOC)~~ Discipline and Incapacity.

(C) - (D) [Unchanged.]

(3) - (4) [Unchanged.]

(c) - (*l*) [Unchanged]

Comment

[Unchanged.]

APR 14 LIMITED PRACTICE RULE FOR FOREIGN LAW CONSULTANTS

(a) - (b) [Unchanged.]

(c) Procedure. The Bar shall approve or disapprove applications for Foreign Law Consultants licenses. Additional proof of any facts stated in the application may be required by the Bar. In the event of the failure or refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Bar may deny the application. Upon approval of the application by the Bar, the Bar shall recommend to the Supreme Court that the applicant be granted a license for the purposes herein stated. The Supreme Court may enter an

order licensing to practice those applicants it deems qualified, conditioned upon such applicant's:

(1) - (2) [Unchanged.]

(3) Filing with the Bar in writing his or her address in the State of Washington, or the name and address of his or her registered agent as provided in APR 13, together with a statement that the applicant has read the Rules of Professional Conduct and Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity, is familiar with their contents and agrees to abide by them.

(d) [Unchanged.]

(e) Regulatory Provisions. A Foreign Law Consultant shall be subject to the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity and the Rules of Professional Conduct as adopted by the Supreme Court and to all other laws and rules governing lawyers admitted to the Bar of this state, except for the requirements of APR 11 relating to mandatory continuing legal education. Jurisdiction shall continue whether or not the Consultant retains the authority for the limited practice of law in this state, and regardless of the residence of the Consultant.

(f) - (h) [Unchanged.]

APR 15 CLIENT PROTECTION FUND

(a) - (d) [Unchanged.]

(e) Restitution. A lawyer, LLLT or LPO whose conduct results in payment to an applicant shall be liable to the Fund for restitution.

(1) [Unchanged.]

(2) Lawyers, LLLTs or LPOs on disciplinary or administrative suspension, disbarred or revoked lawyers, LLLTs or LPOs, and lawyers, LLLTs or LPOs on any status other than incapacity ~~disability~~ inactive must pay restitution to the Fund in full prior to returning to Active status, unless the ~~attorney~~ licensed legal professional enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(3) A lawyer, LLLT or LPO who returns from ~~disability~~ incapacity inactive status as to whom an award has been made shall be required to pay restitution if and as provided in Procedural Regulation 6(I).

(4) Restitution not paid within ~~30~~90 days of final payment by the Fund to an applicant shall accrue interest at the maximum rate permitted under RCW 19.52.050.

(5) - (6) [Unchanged.]

(f) - (i) [Unchanged.]

APR 15 CLIENT PROTECTION FUND (APR 15) PROCEDURAL REGULATIONS

Regulations 1-5 [Unchanged.]

Regulation 6. Procedures

(a) - (h) [Unchanged.]

(i) Deferred Disciplinary Proceedings; Lawyer, LLLT or LPO on ~~Disability~~ Incapacity Inactive Status.

(1) If an application relates to a lawyer, LLLT or LPO on ~~disability~~ incapacity inactive status, ~~and/~~or a disciplinary proceeding or investigation is deferred due to a lawyer's, LLLT's or LPO's transfer to ~~disability~~ incapacity inactive status, the Client Protection Board may act on the application when received or may defer processing the application for up to three years if the lawyer, LLLT or LPO remains on ~~disability~~ incapacity inactive status.

(2) A lawyer, LLLT or LPO on ~~disability~~ incapacity inactive status seeking to return to Active status may, while pursuing reinstatement pursuant to the Rules for ~~Enforcement of Conduct~~ Discipline and Incapacity ~~or other applicable discipline rules~~, request that the lawyer's, LLLT's, or LPO's obligation to make restitution for any applications approved while the lawyer, LLLT or LPO was on ~~disability~~ incapacity inactive status be reviewed.

(A) - (B) [Unchanged.]

(j) - (k) [Unchanged.]

Regulations 7-15 [Unchanged.]

APR 22.1. REVIEW OF APPLICATIONS

(a) - (e) [Unchanged].

(f) Scope of Inquiry into Health Diagnosis and Drug or Alcohol Dependence. When a basis for an inquiry by the Bar 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) - (3) [Unchanged.]

(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.

APR 23. CHARACTER AND FITNESS BOARD

(a) - (e) [Unchanged.]

(f) Disqualification. A Character and Fitness Board member must adhere to Rule 2.11 of the Code of Judicial Conduct regarding disqualification, including ~~In the event a grievance~~ when a complaint is made to the Bar alleging an act of misconduct by a lawyer, LLLT or LPO member of the Character and Fitness Board~~, the procedures specified in ELC 2.3 (b)(5) shall apply~~.

APR 24.1. HEARING PROCEDURE

(a) - (e) [Unchanged]

(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 Character and Fitness Board exists under Rule 22.1(e) and only after testimony and evidence presented at the hearing has failed to resolve the Character and Fitness 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 Character and Fitness Board shall provide the applicant with the opportunity to submit such information, within such reasonable timelines as the Character and Fitness Board shall establish, prior to requesting the independent medical examination.

(1) - (4) [Unchanged.]

(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) [Unchanged.]

(g) Confidentiality: All hearings and documents before the Character and Fitness Board on applications for admission or licensure to practice law, enrollment in 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 review, or to other entities with the written consent of the applicant.

APR 24.2. DECISION AND RECOMMENDATION

(a) [Unchanged.]

(b) Action on Character and Fitness Board Recommendation. The recommendation of the Character and Fitness Board shall be served upon the Applicant pursuant to Rule 23.5.

(1) [Unchanged.]

(2) If the Character and Fitness Board recommends against admission, the record and recommendation shall be retained in the office of the Bar unless the Applicant requests that it be submitted to the Supreme Court by filing a notice of appeal with the Character and Fitness Board within 15 days of service of the recommendation of the Character and Fitness Board. If the Applicant ~~so requests~~ files a notice of appeal, ~~the Character and Fitness Board will transmit~~ the record, including the transcript, exhibits, and recommendation shall be transmitted 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.

(3) If the Character and Fitness Board recommends against admission and the Applicant does not file a notice of appeal, then the Bar shall transmit the recommendation to the Supreme Court for disposition. The Supreme Court may request that the Bar transmit all or part of the record for the Court's consideration, or take such other action, including scheduling the matter for appeal, as it deems appropriate based on the record and recommendation. If the Supreme Court approves the Board's recommendation against admission, it may enter an order to that effect and notify the Bar and the parties of the decision, without requiring further action.

(c) [Unchanged.]

APR 25.1. RESTRICTIONS ON REINSTATEMENT

(a) [Unchanged.]

(b) When Petition May Be Filed. No petition for reinstatement shall be filed within a period of five years after disbarment or within a period of two years after an adverse decision of the Supreme Court upon a former petition, or 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, LLLT or LPO was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity, or any comparable rule, the period of such suspension shall be credited toward the five years referred to above.

(c) When Reinstatement May Occur. No disbarred lawyer, LLLT or LPO may be reinstated sooner than six years following disbarment. If prior to disbarment the lawyer, LLLT or LPO was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity, or any comparable rule, the period of such suspension shall be credited toward the six years referred to above.

(d) Payment of Obligations. No disbarred lawyer, LLLT or LPO may file a petition for reinstatement until costs and expenses and restitution ordered ~~by the Disciplinary Board or the Supreme Court~~ in the related disciplinary matter or a prior reinstatement proceeding have been paid and until amounts paid out of the Client Protection Fund for losses caused by the conduct of the Petitioner have been repaid to the ~~client protection fund~~ Client Protection Fund, or until periodic payment plans for costs and expenses, restitution and repayment to the ~~client protection fund~~ Client Protection Fund have been entered into by agreement between the Petitioner and disciplinary counsel or bar 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 by following the procedures set forth in RDI 13.8(i). ~~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 Disciplinary Board will be final.~~

APR 25.5. ACTION BY CHARACTER AND FITNESS BOARD

(a) - (c) [Unchanged.]

(d) Action on Character and Fitness Board Recommendation. The recommendation of the Character and Fitness Board shall be served upon the Petitioner pursuant to Rule 23.5.

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

(2) If the Character and Fitness Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar 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~~ files a notice of appeal with the Character and Fitness Board within 15 days of service of the recommendation of the Character and Fitness Board. If the Petitioner ~~so requests~~ files a notice of appeal, the record, including the transcript, exhibits, and recommendation shall be transmitted to the ~~Disciplinary Board~~ Supreme Court for review and 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~~. The Petitioner must pay to the Supreme Court any fee required by the Court in connection with the appeal and review.

(3) If the Character and Fitness Board recommends against reinstatement and the Petitioner does not ~~so request~~ file a notice of appeal, then the Bar shall transmit the recommendation to the Supreme Court for disposition. The

Supreme Court may request that the Bar transmit all or part of the record for the Court's consideration and take such other action as it deems appropriate based on the record and recommendation, including scheduling the matter for appeal. ~~the record and~~ The recommendation and all related records shall be retained in the records of the Bar 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. If the Supreme Court approves the Board's recommendation against admission, it may enter an order to that effect and notify the Bar and the parties of the decision, without requiring further action.

~~**(c) 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 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 and the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Disciplinary Board under the procedure of rule 13.9 of the Rules for Enforcement of Lawyer Conduct.~~

APR 28 LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. [Unchanged.]

B. Definitions

(1) - (3) [Unchanged.]

(4) "Limited License Legal Technician" (LLLT) means a person qualified by education, training, and work experience who is ~~authorized~~ licensed to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations.

(5) - (10) [Unchanged.]

C. - O. [Unchanged.]

APR 29 LAWYER TRUST ACCOUNT DECLARATION

Every active lawyer must annually certify compliance with Rules 1.15A and 1.15B of the Rules of Professional Conduct. The certification must be filed in a form and manner as prescribed by the Bar and must include the bank where each account is held and the account number. Failure to certify may result in suspension from practice under APR 17.

APR 30 VOLUNTARY INCAPACITY INACTIVE STATUS

(a) Basis. Except for matters governed by Title 8 of the Rules for Discipline and Incapacity, when a licensed legal professional has a mental or physical condition or disability that adversely affects the licensed legal professional's capacity to practice law, the licensed legal professional may submit an application to the Bar to have the license to practice law placed in incapacity inactive status if all requirements of this Rule are met.

(b) Requirements. In order to qualify for incapacity inactive status under this Rule, the licensed legal professional must:

(1) have a mental or physical condition or disability that adversely affects the licensed legal professional's capacity to practice law;

(2) not have any pending discipline or incapacity matters under the Rules for Discipline and Incapacity or have knowledge that a discipline matter is imminent;

(3) acknowledge that while on incapacity inactive status, the licensed legal professional will be prohibited from practicing law; and

(4) acknowledge that in order to return from incapacity inactive status, the licensed legal professional will be required to demonstrate that the basis for the incapacity has been resolved as set forth in RDI 8.11.

(c) Application. The application must be in a form and manner as prescribed by the Bar and must state the nature of the licensed legal professional's incapacity supported by current medical, psychological, or psychiatric evidence.

(d) Placement in Incapacity Inactive Status. Upon the licensed legal professional's compliance with sections (b) and (c) of this Rule, the Bar will place the licensed legal professional's license in incapacity inactive status. The licensed legal professional must comply with all duties under Title 14 of the Rules for Discipline and Incapacity. The Bar must comply with the notice requirements of RDI 3.8.

(e) Confidentiality. Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, the nature of the incapacity and all application records under this rule, including all supporting documentation and related investigation files and documents are confidential and shall be privileged against disclosure. The fact and date of placement in incapacity inactive status shall be subject to disclosure.

(f) Return from Incapacity Inactive Status. In order to return to a prior or other license status from incapacity inactive status, the licensed legal professional must demonstrate that the basis for the incapacity has been resolved as set forth in RDI 8.11.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

SUGGESTED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Redline Version

RPC 1.0B ADDITIONAL WASHINGTON TERMINOLOGY

(a) - (b) [Unchanged.]

(c) "Limited License Legal Technician" or "LLLT" ~~denotes~~ means a person qualified by education, training, and work experience who is ~~authorized~~ licensed to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations.

(d) "Limited Practice Officer" or "LPO" ~~denotes~~ means a person who is licensed ~~in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice Board~~ to engage in the limited practice of law as specified by APR 12.

(e) [Unchanged.]

Washington Comments

[Unchanged.]

RPC 1.6 CONFIDENTIALITY OF INFORMATION

[Unchanged.]

Comments

[1] - [20] [Unchanged.]

Additional Washington Comments (21-28)

[21] - [27] [Unchanged.]

[28] This Rule does not relieve a lawyer of his or her obligations under Rules ~~5.4(b)~~ 2.13(b) or 15.3(a) of the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity.

RPC 1.15A SAFEGUARDING PROPERTY

(a) - **(h)** [Unchanged.]

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ~~ELC 15.7(d)~~ RDI 15.5(d) and ~~ELC 15.7(e)~~ 15.5(e). In the exercise of ordinary prudence, a lawyer may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ~~ELC 15.7(e)~~ RDI 15.5(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, a lawyer shall apply the following criteria:

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ~~ELC~~ RDI 15.4 and ~~ELC 15.7(e)~~ 15.5(e).

(2) - (3) [Unchanged.]

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

(j) [Unchanged.]

Washington Comments

[1] - [6] [Unchanged.]

[7] A lawyer may not use as a trust account an account in which funds are periodically transferred by the financial institution between a trust account and an uninsured account or other account that would not qualify as a trust account under this Rule or ~~ELC 15.7~~ RDI 15.5.

[8] - [15] [Unchanged.]

[16] The term "closing firm" as used in this rule has the same definition as in RDI 15.1 ~~ELPOC 1.3(g)~~.

[17] [Unchanged.]

[18] When selecting a financial institution for purposes of depositing and holding funds in a trust account, a lawyer is obligated to exercise ordinary prudence under paragraph (i). All trust accounts must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments. See ~~ELC 15.7(d)~~ RDI 15.5(d).

[19] Only those financial institutions authorized by the Legal Foundation of Washington (Legal Foundation) are eligible to offer trust accounts to Washington lawyers. To become authorized, the financial institution must satisfy the Legal Foundation that it qualifies as an authorized financial institution under ~~ELC 15.7(e)~~ RDI 15.5(c) and must have on file with the Legal Foundation a current Overdraft Notification Agreement under ~~ELC~~ RDI 15.4. A list of all authorized financial institutions is maintained and published by the Legal Foundation and is available to any person on request.

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

[21] - [22] [Unchanged.]

RPC 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) [Unchanged.]

(2) a lawyer who purchases the practice of a deceased, ~~disabled~~ incapacitated, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) - (5) [Unchanged.]

(b) - **(d)** [Unchanged.]

Comment

[Unchanged.]

RPC 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

[Unchanged].

Comments

[1] - [2] [Unchanged.]

[3] [**Washington revision**] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17, a lawyer's plea agreement in a criminal matter, or a stipulation under the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity.

Additional Washington Comment (4)

[4] [Unchanged.]

RPC 5.8 MISCONDUCT INVOLVING LAWYERS, ~~AND~~ LLLTS, AND LPOS NOT ACTIVELY LICENSED TO PRACTICE LAW

(a) [Unchanged.]

(b) A lawyer shall not engage in any of the following with a lawyer, ~~or~~ LLLT, or LPO who is disbarred or suspended for discipline, ~~or~~ who has resigned in lieu of disbarment or discipline, or whose license has been revoked for discipline or voluntarily cancelled in lieu of ~~discipline~~ revocation:

(1) - (5) [Unchanged.]

Washington Comments

[1] [Unchanged.]

[2] ~~The prohibitions in paragraph (b) of this Rule apply to suspensions, revocations, and voluntary cancellations in lieu of discipline under the disciplinary procedural rules applicable to LLLTs. See Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC)~~ [Reserved].

RPC 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

[Unchanged.]

Comment

[1] - [3] [Unchanged.]

Additional Washington Comments (4-5)

[4] A lawyer's obligations under this Rule are in addition to the lawyer's obligations under the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity.

[5] [Unchanged.]

RPC 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) - (k) [Unchanged.]

(*l*) violate a duty or sanction imposed by or under the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ~~ELC 1.5~~ RDI 1.6;

(m) - (n) [Unchanged.]

Comments

[Unchanged.]

Additional Washington Comments (6-8)

[Unchanged.]

RPC 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) - (b) [Unchanged.]

(c) Disciplinary Authority over Judges. Notwithstanding the provisions of Rule 8.4(m), a lawyer, while serving as a judge or justice as defined in RCW 2.64.010, shall not be subject to the disciplinary authority provided for in these Rules or the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity for acts performed in his or her judicial capacity or as a candidate for judicial office unless judicial discipline is imposed for that conduct by the Commission on Judicial Conduct or the Supreme Court. Disciplinary authority should not be exercised for the identical conduct if the violation of the Code of Judicial Conduct pertains to the role of the judiciary and does not relate to the judge's or justice's fitness to practice law.

Comment

[Unchanged.]

Additional Washington Comments (8-13)

[Unchanged.]

Reviser's note: The typographical 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.

SUGGESTED AMENDMENTS TO THE LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROFESSIONAL CONDUCT

Redline Version

LLLT RPC 1.0B ADDITIONAL TERMINOLOGY

(a) - (e) [Unchanged.]

(f) "Limited License Legal Technician" or "LLLT" ~~denotes~~ means a person qualified by education, training, and work experience who is ~~authorized~~ licensed to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations.

(g) "Limited Practice Officer" or "LPO" means a person who is licensed to engage in the limited practice of law as specified by APR 12.

~~(g)~~(h) "~~ELLLTC~~ RDI" denotes the Washington Supreme Court's Rules for ~~Enforcement of Limited License Legal Technician Conduct~~ Discipline and Incapacity.

~~(h)~~(i) "Representation" or "represent," when used in connection with the provision of legal assistance by an LLLT, denotes limited legal assistance as set forth in APR 28 to a pro se client.

Comment

[Unchanged.]

LLLT RPC 1.15A SAFEGUARDING PROPERTY

(a) - (h) [Unchanged.]

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ~~ELC 15.7(d)~~ RDI 15.5(d) and 15.5(e). In the exercise of ordinary prudence, an LLLT may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ~~ELC 15.7(c)~~ RDI 15.5(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, an LLLT shall apply the following criteria:

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Limited License Legal Technician's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ~~ELLLTC~~ RDI 15.4 and ~~ELC 15.7(e)~~ 15.5(e).

(2) - (3) [Unchanged.]

(4) The provisions of paragraph (i) do not relieve an LLLT or law firm from any obligation imposed by these Rules or the ~~ELLLTC~~ RDI.

Comment

[Unchanged.]

LLLT RPC 5.4 PROFESSIONAL INDEPENDENCE OF AN LLLT

(a) An LLLT or LLLT firm shall not share legal fees with anyone who is not a LLLT, except that:

(1) [Unchanged.]

(2) an LLLT who purchases the practice of a deceased, ~~disabled~~ incapacitated, or disappeared LLLT or lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that LLLT or lawyer the agreed-upon purchase price;

(3) - (5) [Unchanged.]

(b) - (d) [Unchanged.]

Comment

[Unchanged.]

LLLT RPC 5.8 MISCONDUCT INVOLVING LLLTS, ~~AND~~ LAWYERS, AND LPOS NOT ACTIVELY LICENSED TO PRACTICE LAW

(a) [Unchanged.]

(b) An LLLT shall not engage in any of the following with ~~an LLLT or~~ a lawyer, LLLT, or LPO who is disbarred or suspended for discipline, ~~or~~ who has resigned in lieu of disbarment or discipline, or whose license has been revoked for discipline or voluntarily canceled in lieu of ~~discipline~~ revocation:

(1) - (5) [Unchanged.]

Comment

[Unchanged.]

LLLT RPC 8.4 MISCONDUCT

It is professional misconduct for an LLLT to:

(a) - (k) [Unchanged.]

(*l*) violate a duty or sanction imposed by or under the ~~ELLLTC~~ RDI in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ~~ELLLTC 1.5~~ RDI 1.6;

(m) - (o) [Unchanged.]

Comment

[Unchanged.]

SUGGESTED AMENDMENTS TO THE LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL CONDUCT

Redline Version

LPORPC 1.0 TERMINOLOGY

(a) - (e) [Unchanged.]

(f) "Limited Practice Officer" or "LPO" means a person who is licensed ~~in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice Board~~ to engage in the limited practice of law as specified by APR 12.

(g) - (n) [Unchanged.]

Comment

[Unchanged.]

LPORPC 1.8 UNAUTHORIZED PRACTICE OF LAW

An LPO shall not:

(a) - (b) [Unchanged.]

(c) select, prepare, or complete documents authorized by APR 12 for or together with ~~any person whose~~ an LPO ~~certification~~ who ~~has been revoked~~ is disbarred or suspended for discipline, or who has resigned in lieu of discipline, or whose license has been revoked for discipline or voluntarily cancelled in lieu of revocation, if the LPO knows, or reasonably should know, of such disbarment, revocation, ~~or~~ suspension, resignation, or cancellation; or

(d) [Unchanged.]

Comment

[Unchanged.]

LPORPC 1.10 MISCONDUCT

It is professional misconduct for an LPO to:

(a) - (e) [Unchanged.]

(f) violate a duty or sanction imposed by or under the Rules for ~~Enforcement of Limited Practice Officer Conduct~~ Discipline and Incapacity in connection with a disciplinary matter, including, but not limited to, the duties catalogued at ~~ELPOC 1.5~~ RDI 1.6~~, Violation of Duties Imposed by These Rules~~.

(g) engage in conduct demonstrating unfitness to practice as an LPO. "Unfitness to practice" includes but is not limited to the inability, unwillingness or repeated failure to perform adequately the material functions required of an LPO or to comply with the LPORPC ~~and/~~or ~~ELPOC~~ RDI;

(h) - (i) [Unchanged].

Comment

[Unchanged.]

LPORPC 1.12A SAFEGUARDING PROPERTY

(a) - (h) [Unchanged.]

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meets the requirements of RDI 15.5(d) and 15.5(e). In the exercise of ordinary prudence, the LPO or Closing Firm may select any bank, savings bank, credit union or savings and loan association that is insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, is authorized by law to do business in Washington and has filed the agreement required by ~~rule~~ RDI 15.4 ~~of the Rules for Enforcement of Lawyer Conduct~~. Trust account funds must not be placed in mutual funds, stocks, bonds, or similar investments.

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest ~~accruing~~ earned on ~~the~~ IOLTA account~~s, net of reasonable check and deposit processing charges which may only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, must~~ shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with RDI 15.4 and 15.5(e). ~~Any other fees and transaction costs must be paid by the LPO or Closing Firm. An LPO or Closing Firm may, but shall not be required to, notify the parties to the transaction of the intended use of such funds.~~

(2) - (4) [Unchanged.]

(j) [Unchanged.]

WSR 21-04-092

RULES OF COURT

STATE SUPREME COURT

[January 8, 2021]

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT (RPC) 5.5—UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW; RPC 7.1—COMMUNICATIONS CONCERNING A LAWYER'S SERVICES; RPC 7.2—~~ADVERTISING~~ RESERVED; RPC 7.3—SOLICITATION OF CLIENTS; RPC 7.4—~~COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION~~ RESERVED; RPC 7.5—~~FIRM NAME AND LETTERHEADS~~ RESERVED	)))))))))))))	ORDER NO. 25700-A-1333

The Washington State Bar Association, having recommended the adoption of the proposed amendments to Rules of Professional Conduct (RPC) 5.5—Unauthorized Practice of Law; Multijurisdictional Practice of Law; RPC 7.1—Communications Concerning a Lawyer's Services; RPC 7.2—~~Advertising~~ Reserved; RPC 7.3—Solicitation of Clients; RPC 7.4—~~Communication of Fields of Practice and Specialization~~ Reserved; RPC 7.5—~~Firm Name and Letterheads~~ Reserved, and the Court having considered the proposed amendments, 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 proposed amendments as shown below are adopted.

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

DATED at Olympia, Washington this 8th day of January, 2021.

	Stephens, C.J.
Johnson, J.	Gordon McCloud, J.
Madsen, J.	Yu, J.
Owens, J.	Montoya-Lewis, J.
Gonzalez, J.	Whitener, J.

RULES OF PROFESSIONAL CONDUCT

RPC 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

[1] [Washington revision] This Rule governs all communications about a lawyer's services~~, including advertising permitted by Rule 7.2~~. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] - [3] [Unchanged.]

[4] [Washington revision] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. RPC 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Additional Washington Comments (5 - 14)

[5] 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.

[6] This rule permits public dissemination of information concerning a lawyer's name or firm name, address, e-mail 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.

[7] 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 now among 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.

Areas of Expertise/Specialization

[8] A lawyer may indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in RPC 7.1 to communications concerning a lawyer's services. A lawyer may state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[9] In advertising concerning an LLLT's services, an LLLT is required to communicate the fact that the LLLT has a limited license in the particular fields of law for which the LLLT is licensed and must not state or imply that the LLLT has broader authority to practice than is in fact the case. See LLLT RPC 7.1(b). When lawyers and LLLTs are associated in a firm, lawyers with managerial or pertinent supervisory authority must take measures to assure that the firm's communications conform with these obligations. See Rule 5.10.

Firm Names

[10] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive

website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer or LLLT not associated with the firm or a predecessor of the firm, or the name of an individual who is neither a lawyer nor an LLLT.

[11] Lawyers or LLLTs sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

[12] When lawyers and LLLTs are associated with each other in a law firm, the firm may be designated using the name of a member LLLT if the name is not otherwise in violation of this rule.

[13] Lawyers or LLLTs practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers or LLLTs who are not (1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or (2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or (3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards, and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers or LLLTs.

[14] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. See RPC 5.5(f) & cmt. [22]. In order to avoid misleading the public, when lawyers or LLLTs are identified as practicing in a particular office, the firm should indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

~~RPC 7.2 ADVERTISING~~ **[Reserved.]**

~~(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.~~

~~(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may~~

~~(1) pay the reasonable costs of advertisements or communications permitted by this Rule;~~

~~(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;~~

~~(3) pay for a law practice in accordance with Rule 1.17; and~~

~~(4) refer clients to another lawyer or LLLT pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if~~

~~(i) the reciprocal referral agreement is not exclusive, and~~

~~(ii) the client is informed of the existence and nature of the agreement.~~

~~(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.~~

~~**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, e-mail 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 now among 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. But see Rule 7.3(a) for the prohibition against a solicitation of a possible client through a real-time electronic exchange initiated by the lawyer.~~

~~[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), lawyers 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 communications 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, 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 (duties of lawyers and law firms with respect to the conduct of nonlawyers); RPC 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 [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 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 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, 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 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.~~

~~[8] [**Washington revision**] A lawyer also may agree to refer clients to another lawyer in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.~~

~~**Additional Washington Comment (9)**~~

~~[9] That portion of Model Rule 7.2 (b)(4) that allows lawyers to enter into reciprocal referral agreements with nonlawyer professionals was not adopted. A lawyer may agree to refer clients to an LLLT in return for the undertaking of that person to refer clients to the lawyer. The guidance provided in Comment [8] to this Rule is also applicable to reciprocal referral arrangements between lawyers and LLLTs. Under LLLT RPC 1.5(e), however, an LLLT may not enter into an arrangement for the division of a fee with a lawyer who is not in the same firm as the LLLT.~~

RPC 7.3 SOLICITATION OF CLIENTS

(a) A lawyer ~~shall not directly or through a third person, by in person, live telephone, or real-time electronic contact~~ may solicit professional employment ~~from a 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~~ the solicitation is false or misleading;

(2) ~~has a family, close personal, or prior professional relationship with the lawyer; or~~ the lawyer knows or reasonably should know that the physical, emotional, or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(3) ~~has consented to the contact by requesting a referral from a not-for-profit lawyer referral service.~~ the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(4) the solicitation involves coercion, duress, or harassment.

(b) A lawyer shall not ~~solicit professional employment from a 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~~ compensate, or give or promise anything of value to, a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the services of the lawyer or law firm, except that a lawyer may~~:~~:

(1) ~~the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or~~ pay the

reasonable cost of advertisements or communications permitted by RPC 7.1, including online group advertising;

(2) ~~the solicitation involves coercion, duress or harassment.~~ pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with RPC 1.17;

(4) refer clients to another lawyer or LLLT or other non-lawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement;

(5) give nominal gifts that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(c) [Reserved.]

(d) ~~Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.~~ [Reserved.]

Comment

[1] [Washington revision] A solicitation is a targeted communication initiated by ~~the~~ or on behalf of a lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. Solicitations can include in-person, written, telephonic, and electronic communications. 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] [Reserved.] ~~There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, 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] [Reserved.] ~~This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed 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 to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or real-time electronic persuasion that may overwhelm a person's judgment.~~

[4] [Reserved.] ~~The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, 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 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] [Reserved. ~~**Washington revision**~~] ~~There is far less likelihood that a lawyer would engage in abusive practices against 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] [Reserved.] ~~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 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 as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).~~

[7] [Reserved] ~~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. 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] [Reserved.]

[9] [Reserved.] ~~Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).~~

Additional Washington Comments (10 - ~~14~~ 16)

[10] ~~A lawyer who receives a referral from a third party should exercise caution in contacting the prospective client directly by in-person, live telephone, or real-time electronic contact. Such contact is generally prohibited by this Rule unless the prospective client has asked to be contacted by the lawyer. A prospective client may request such contact through a third party. Prior to initiating contact with the prospective client, however, the lawyer should confirm with the source of the referral that the prospective client has indeed made such a request. Similarly, when making referrals to other lawyers, the referring lawyer should discuss with the prospective client whether he or she wishes to be contacted directly.~~ While all communications about a lawyer's services are subject to the general prohibition against false or misleading communication in RPC 7.1, in-person solicitation can create problems because of the particular circumstances in which the solicitation takes place, and those circumstances are, therefore, appropriately regulated. subsection (a) of this rule prohibits solicitation in circumstances or through means that are not conducive to intelligent, rational decisions. Unwanted solicitations (after the subject has informed the lawyer not to make contact) or solicitations involving coercion, duress, or harassment are specifically prohibited. Such circumstances and means could be the harassment of early morning or late-night telephone calls to a potential client to solicit legal work, repeated calls at any time of day, solicitation of an accident victim or the victim's family shortly after the accident or while the victim is still in medical distress (particularly where a lawyer seeks professional employment by in-person or other real-time contact in such circumstances), or solicitation of vulnerable subjects, such as persons facing incarceration, or their family members, in or near a courthouse. The prohibition on solicitation of a subject who cannot "exercise reasonable judgment in employing a lawyer" extends to an individual with diminished capacity who cannot adequately act in the individual's own interest, and the provisions of RPC 1.14 may provide guidance in evaluating "the physical, emotional, or mental" state of the subject.

[11] ~~Those in need of legal representation often seek assistance in finding a lawyer through a lawyer referral service. Washington adopted paragraph (a)(3) in order to facilitate communication between lawyers and potential clients who have specifically requested a referral from a not-for-profit lawyer referral service. Under this paragraph, a lawyer receiving such a referral may contact the potential client directly by in-person, live telephone, or real-time electronic contact to discuss possible representation.~~ Under RPC 5.1, RPC 5.3, and RPC 8.4(a), the solicitation restrictions that apply to the lawyer's own acts or conduct also extend to acts or conduct by employees, agents, or any third persons acting on the lawyer's behalf.

[12] ~~Washington did not adopt paragraph (c) of the Model Rule relating to labeling of communications with prospective clients. A specific labeling requirement is unnecessary in light of the prohibitions in Rule 7.1 against false or misleading communications.~~ Washington has not adopted subsection (e) of the Model Rule creating a safe harbor for in-person and telephonic solicitations in the context of a prepaid or group legal services plan because solicitations of professional employment by any means and in all contexts are permitted subject to the exceptions contained in subsection (a)(1) - (4). In addition, prior provisions and comments under RPC 7.3 in Washington relating to in-person, telephonic, or real-time electronic solicitations in the context of referrals from a third party or a lawyer referral service have been removed because solicitations by any means in this context are permitted subject to the exceptions contained in paragraphs (a)(1)-(4) of this RPC.

Paying Others to Recommend a Lawyer

[13] ~~The phrase "directly or through a third person" in paragraph (a) was retained from former Washington RPC 7.3(a).~~ Subsection (b) of this rule was derived from former Washington RPC 7.2(b).

[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 RPC 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 danger that lawyers might mistakenly infer that the kind of benign conversations with non-client intermediaries described above are precluded by this rule.~~ Except as permitted under subsections (b)(1)-(b)(5), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional

work in a manner that violates RPC 7.1 or RPC 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Subsection (b)(1), however, allows a lawyer to pay for advertising and solicitations permitted by RPC 7.1 and this rule, including the costs of print directory listings, online directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, 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, as long as the employees, agents, and vendors do not direct or regulate the lawyer's professional judgment (see RPC 5.4(c)). 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 RPC 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with RPC 7.1 (communications concerning a lawyer's services). To comply with RPC 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 RPC 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); RPC 8.4(a) (duty to avoid violating the rules through the acts of another). For the definition of nonlawyer for the purposes of RPC 5.3, see Washington cmt. 5 to Rule 5.3.

[15] 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 to secure legal representation. A "lawyer referral service," on the other hand, is anyindividual or entity that operates for the direct or indirect purpose of referring potential clients to lawyers, regardless of whether the term "referral service" is used. The "usual charges" of a legal service plan or not-for-profit lawyer referral service are fees that are openly promulgated and uniformly applied. Not-for-profit lawyer referral services are understood by the public 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.

[16] A lawyer also may agree to refer clients to another lawyer or LLLT or other nonlawyer professional in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See RPC 2.1 and 5.4(c). Except as provided in RPC 1.5(e), a lawyer who receives referrals from a lawyer or LLLT or other nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate this Rule by agreeing to refer clients to the other lawyer or LLLT or other nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by RPC 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these rules. This rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities. Under LLLT RPC 1.5(e), however, an LLLT may not enter into an arrangement for the division of a fee with a lawyer who is not in the same firm as the LLLT.

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

RPC 7.4 ~~COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION~~ [Reserved.]

~~(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.~~

~~(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.~~

~~(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or substantially similar designation.~~

~~(d) A lawyer shall not state or imply that a lawyer is a specialist in a particular field of law, except upon issuance of an identifying certificate, award, or recognition by a group, organization, or association, a lawyer may use the terms "certified", "specialist", "expert", or any other similar term to describe his or her qualifications as a lawyer or his or her qualifications in any subspecialty of the law. If the terms are used to identify any certificate, award, or recognition by any group, organization, or association, the reference must:~~

~~(1) be truthful and verifiable and otherwise comply with Rule 7.1;~~

~~(2) identify the certifying group, organization, or association; and~~

~~(3) the reference must state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the certificate, award, or recognition is not a requirement to practice law in the state of Washington.~~

~~Comment~~

~~[1] [**Washington revision**] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate.~~

~~[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.~~

~~[3] [**Reserved.**]~~

~~Additional Washington Comment (4 - 5)~~

~~[4] Statements indicating that the lawyer is a "specialist," practices a "specialty," "specializes in" particular fields, and the like, are subject to the limitations set forth in paragraph~~

~~(d). The provisions of paragraph (d) were taken from former Washington RPC 7.4(b).~~

~~[5] In advertising concerning an LLLT's services, an LLLT is required to communicate the fact that the LLLT has a limited license in the particular fields of law for which the LLLT is licensed and must not state or imply that the LLLT has broader authority to practice than is in fact the case. See LLLT RPC 7.4(a); see also LLLT RPC 7.2(c) (advertisements must include the name and office address of at least one responsible LLLT or law firm). When lawyers and LLLTs are associated in a firm, lawyers with managerial or pertinent supervisory authority must take measures to assure that the firm's communications conform with these obligations. See Rule 5.10.~~

RPC 7.5 ~~FIRM NAMES AND LETTERHEADS~~ [Reserved.]

~~(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.~~

~~(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers or LLLTs in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~

~~(c) The name of a lawyer or LLLT holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer or LLLT is not actively and regularly practicing with the firm.~~

~~(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.~~

~~**Comment**~~

~~[1] [**Washington revision**] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer or LLLT not associated with the firm or a predecessor of the firm, or the name of an individual who is neither a lawyer nor an LLLT.~~

~~[2] [**Washington revision**] With regard to paragraph (d), lawyers or LLLTs sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.~~

~~**Additional Washington Comments (3 - 4)**~~

~~[3] When lawyers and LLLTs are associated with each other in a law firm, the firm may be designated using the name of a member LLLT if the name is not otherwise in violation of Rule 7.1, this Rule, or LLLT RPC 7.5. See also Washington Comment [4] to this Rule.~~

~~[4] Lawyers or LLLTs practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers or LLLTs who are not (1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or (2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or (3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers or LLLTs. (The provisions of this Comment were taken from former Washington RPC 7.5(d).)~~

RPC 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) - (e) Unchanged.

(f) Subsection (b)(1) of this rule does not prohibit a law firm with offices in multiple jurisdictions from establishing and maintaining an office in this jurisdiction even if some of the lawyers who are members of the firm or are otherwise employed or retained by or associated with the law firm are not authorized to practice law in this jurisdiction.

Comment

[1] - [3] Unchanged.

[4] [Washington revision] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also RPC 7.1 and ~~7.5(b)~~ Washington cmt. 14.

[5] [Washington revision] 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 paragraph (d)(2), this Rule does not authorize a United States. or foreign lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally or as housel counsel under APR 8(f) here.

[6] - [13] Unchanged.

[14] [Washington revision] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro bono legal services on a temporary basis in Washington following determination by the Supreme Court that an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred, who are not otherwise authorized to practice law in Washington, as well as lawyers from another affected jurisdiction who seek to practice law temporarily in Washington, but who are not otherwise authorized to practice law in Washington, should consult Admission to Practice Rule 27 on Provision of Legal Services Following Determination of Major Disaster.

[15] - [20] Unchanged.

[21] [Washington revision] Paragraphs (c) and (d) do not authorize communications advertising legal services ~~to prospective clients~~ in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services ~~to prospective clients~~ in this jurisdiction is governed by Rule~~s~~ 7.1 ~~to 7.5~~.

Additional Washington Comment (22)

[22] Subsection (f) is derived from former RPC 7.5(b), which permitted law firms with offices in more than one jurisdiction to use the same name or other professional designation in each jurisdiction, and is intended to maintain authorization in the Rules of Professional Conduct for the presence of multijurisdictional law firms in Washington for purposes of RCW 2.48.180(7).

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

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

WSR 21-06-002
HEALTH CARE AUTHORITY

[Filed February 17, 2021, 1:34 p.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 21-0008 COVID Vaccine Administration Fees.

Effective Date: December 11, 2020.

Description: The health care authority (HCA) intends to submit medicaid SPA 21-0008 to implement policies and procedures that may be different from the policies and procedures otherwise applied under the medicaid state plan, during the period of the presidential and secretarial emergency declarations related to the COVID-19 outbreak. SPA 21-0008 addresses fees for administering COVID vaccines.

This SPA is the preprint developed by the Centers for Medicare and Medicaid Services to waive or modify certain requirements of Titles XVIII, XIX, and XXI of the act as a result of the consequences [of the] COVID-19 pandemic, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

At this time HCA is unable to determine the effect of SPA 21-0008 on the annual aggregate expenditures/reimbursement/payment for professional services.

A copy of draft SPA 21-0008 is available. HCA would appreciate any input or concerns regarding this SPA. To request a copy of the SPA or to submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

Contact Rebecca Carrell, Medicaid Program Operations and Integrity, 626 8th Avenue S.E., Olympia, WA 98501, TRS 711, email rebecca.carrell@hca.wa.gov.

WSR 21-06-003
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF COMMERCE
(Hanford Healthy Energy Workers Board)

[Filed February 17, 2021, 2:48 p.m.]

Following is the schedule of regular meetings for the Hanford healthy energy workers board after March 16, 2021:

Date	Time	Location
March 30, 2021	10:00 [a.m.] - 12:00 [p.m.]	Meetings to be held virtually until further notice

Due to the statewide emergency related to COVID-19 meetings are planned to be held virtually. If in-person meetings become possible, the time and location will be updated with the State Register as well as on the project website. Information on how to participate and attend these meetings will be provided on the project website as well as sent out to a distribution list. If you need further information contact Sean Ardussi, P.O. Box 42525, Olympia, WA 98504-2525, 360-725-5039, 360-586-8440, sean.ardussi@commerce.wa.gov, https://commerce.wa.gov/hanford-healthy-energy-workers-board/.

WSR 21-06-016
NOTICE OF PUBLIC MEETINGS
COUNTY ROAD ADMINISTRATION BOARD
[Filed February 19, 2021, 11:43 a.m.]

SPECIAL MEETING NOTICE:	March 10, 2021 Suncadia Lodge Barich Room Cle Elum, WA Noon - 5:00 p.m. Executive session to conduct interviews
SPECIAL MEETING NOTICE:	March 11, 2021 Suncadia Lodge Barich Room Cle Elum, WA 8:00 a.m. - 2:00 p.m. Executive session to conduct interviews

* Individuals requiring reasonable accommodation may request written materials in alternative formats, sign language interpreters, physical accessibility accommodations, or other reasonable accommodation, by contacting Karen Pendleton at 360-753-5989.

Hearing and speech impaired persons call 1-800-833-6384.

For questions, please call 360-753-5989.

WSR 21-06-021
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Division of Child Support)
[Filed February 22, 2021, 11:40 a.m.]

Notice of Interpretive or Policy Statement

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

Economic Services Administration
Division of Child Support (DCS)

Document Title: Policy Clarification Memo 21-001: 2021 Change to the Self-Support Reserve.

Subject: 2021 Change to the self-support reserve.

Effective Date: February 10, 2021.

Document Description: This Policy Clarification Memo explains the 2021 change to the self-support reserve amount.

To receive a copy of the interpretive or policy statements, contact Rachel Shaddox, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone 360-664-5073, TDD/TTY 800-833-6384, fax 360-664-5342, email Rachel.Shaddox@dshs.wa.gov, website http://www.dshs.wa.gov/dcs/.

WSR 21-06-024
NOTICE OF PUBLIC MEETINGS
RECREATION AND CONSERVATION OFFICE
(Invasive Species Council)
[Filed February 23, 2021, 8:52 a.m.]

The Washington invasive species council (WISC) is changing the **location** of the regular quarterly meeting scheduled for March 18, 2021:

FROM: March 18, 2021, from 9:00 a.m. to 3:00 p.m., at Natural Resource Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98501.

TO: March 18, 2021, from 9:00 a.m. to 3:00 p.m., **online**.

For further information, please contact Justin Bush, WISC, at 360-902-3088 or justin.bush@rco.wa.gov, or at the WISC website www.InvasiveSpecies.wa.gov.

WISC schedules all public meetings at barrier free sites. Persons who need special assistance may contact Leslie Frank at 360-902-0220 or email leslie.frank@rco.wa.gov.

WSR 21-06-025
NOTICE OF PUBLIC MEETINGS
RECREATION AND CONSERVATION OFFICE
(Invasive Species Council)
[Filed February 23, 2021, 8:53 a.m.]

The Washington invasive species council (WISC) is changing the **location** of the regular quarterly meeting scheduled for June 10, 2021:

FROM: June 10, 2021, from 9:00 a.m. to 3:00 p.m., at Natural Resource Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98501.

TO: June 10, 2021, from 9:00 a.m. to 3:00 p.m., **online**.

For further information, please contact Justin Bush, WISC, at 360-902-3088 or justin.bush@rco.wa.gov, or at the WISC website www.InvasiveSpecies.wa.gov.

WISC schedules all public meetings at barrier free sites. Persons who need special assistance may contact Leslie Frank at 360-902-0220 or email leslie.frank@rco.wa.gov.

WSR 21-06-027

INTERPRETIVE STATEMENT

DEPARTMENT OF REVENUE

[Filed February 23, 2021, 10:12 a.m.]

INTERPRETIVE STATEMENT ISSUED

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

ETA 3032.2021 ***Taxability of Auction Sales of Abandoned Motor Vehicles by a Registered Tow Truck Operator***

This ETA addresses the taxability of abandoned motor vehicles sold at public auction by a registered tow truck operator (RTTO). The ETA has been updated to reflect 2019 legislation (SSB 5668, chapter 357, Laws of 2019), which excludes an abandoned vehicle sold by an RTTO at public auction from the definition of "sale" under RCW 82.04.040.

A copy of this document is available via the Internet at Rule and Tax Advisory Adoptions and Repeals.

Atif Aziz
Tax Policy Manager
Rules Coordinator

WSR 21-06-029

NOTICE OF PUBLIC MEETINGS

DEPARTMENT OF LICENSING

(Real Estate Commission)

[Filed February 23, 2021, 11:27 a.m.]

The real estate commission board meeting is scheduled for March 31, 2021. This meeting will be held via Zoom. The meeting will take place beginning at 1:00 to 3:00 p.m. (or until completion of business).

WSR 21-06-030

NOTICE OF PUBLIC MEETINGS

DEPARTMENT OF LICENSING

(Home Inspector Board)

[Filed February 23, 2021, 11:28 a.m.]

Dates and Locations for 2021 Meetings

March 4, 2021, meeting will be cancelled due to lack of quorum.

June 3, 2021, meeting will be held virtually, beginning at 2:00 to 4:00 p.m. (or until completion of business).

September 2, 2021, meeting will be held in Olympia, Washington, beginning at 2:00 to 4:00 p.m. (or until completion of business).

December 2, 2021, meeting will be held virtually, beginning at 2:00 to 4:00 p.m. (or until completion of business).

WSR 21-06-031

NOTICE OF PUBLIC MEETINGS

BENTON CLEAN AIR AGENCY

[Filed February 23, 2021, 11:28 a.m.]

Board of Directors
Meeting Schedule for Calendar Year 2021

Meetings are held on the fourth Thursday of each month, with three noted exceptions, at 5:00 p.m., at the agency offices, 526 South Steptoe Street, Kennewick, WA 99336, or via Zoom in compliance with COVID-19 restrictions.

2021

January 28
February 25
March 25
April 22
May 27
June 24
July 22
August 26 - canceled
September 23
October 28
November 25 - canceled
December 16*** third Thursday

WSR 21-06-034
NOTICE OF PUBLIC MEETINGS
EMPLOYMENT SECURITY DEPARTMENT
(Employment Security Advisory Committee)
[Filed February 23, 2021, 4:40 p.m.]

Following are the 2021 meeting dates for the employment security advisory committee, which was convened pursuant to RCW 50.12.200.

Date	Time	Location (if in-person meetings are allowed at the time of these meetings)	Call-In Details
May 24	1 to 3 p.m.	Employment Security Department Maple Room Meeting Room 212 Maple Park Avenue S.E. Olympia, WA 98501	1-877-309-3457 Access code: 146 373 0746#
August 9	1 to 3 p.m.	Employment Security Department Maple Room Meeting Room 212 Maple Park Avenue S.E. Olympia, WA 98501	1-877-309-3457 Access code: 146 861 3144#
October 25	1 to 3 p.m.	Employment Security Department Maple Room Meeting Room 212 Maple Park Avenue S.E. Olympia, WA 98501	1-877-309-3457 Access code: 146 981 8161#

In accordance with chapter 42.30 RCW, the Open Public Meetings Act, these meetings are open to the public and conducted at a barrier-free site.

For special assistance and for additional information, please contact Bianca Stoner, legislative policy analyst, employment security department, at 360-485-5939 or via email at bstoner@esd.wa.gov.

Meeting information is also available on the employment security advisory committee website at https://esd.wa.gov/newsroom/ESAC.

WSR 21-06-037
NOTICE OF PUBLIC MEETINGS
TRANSPORTATION COMMISSION
[Filed February 24, 2021, 8:53 a.m.]

Due to the continued COVID-19 challenges, the transportation commission will be holding virtual meetings January - June 2021. At this time, we plan to hold in-person meetings starting July 2021. However, if this plan changes next year, we will be in contact with the amendments to the schedule below.

January 19 and 20 Tuesday/Wednesday	Virtual/Olympia
February 16 and 17 Tuesday/Wednesday	Virtual/Olympia
March 16 and 17 Tuesday/Wednesday	Virtual/Olympia
April 20 and 21 Tuesday/Wednesday	Virtual/Lakewood
May 18 and 19 Tuesday/Wednesday	Virtual/Olympia
June 15 and 16 Tuesday/Wednesday	Virtual/Wenatchee
July 20 and 21 Tuesday/Wednesday	Olympia
September 1 and 2 Wednesday/Thursday	Oregon - Salem or Eugene
September 21 and 22 Tuesday/Wednesday	Spokane
October 19 and 20 Tuesday/Wednesday	Olympia
November 16 and 17 Tuesday/Wednesday	Ocean Shores
December 14 and 15 Tuesday/Wednesday	Olympia

All meetings are planned to be held between 9:00 a.m. and 5:00 p.m. The meeting location for the in-person meetings will be in Room 1D2 of the Transportation Building, 310 Maple Park Drive S.E., Olympia, WA.

Locations for our local meetings are yet to be determined and will be published on our website prior to the meeting date.

WSR 21-06-038
RULES COORDINATOR
CLARK COLLEGE
[Filed February 24, 2021, 11:02 a.m.]

Pursuant to RCW 34.05.312, the rules coordinator for the Clark College is Bob Williamson, 1933 Fort Vancouver Way, Baird Hall 105, Vancouver, WA 98663, phone 360-992-2123, fax 360-992-2873, email bwilliason@clark.edu [bwilliamson@clark.edu].

Bob Williamson
Special Projects Administrator

WSR 21-06-040
HEALTH CARE AUTHORITY
[Filed February 24, 2021, 1:51 p.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 21-0009 Home Health Services.

Effective Date: January 1, 2021.

Description: The health care authority (HCA) intends to submit medicaid SPA 21-0009 to comply with a request from the Centers for Medicare and Medicaid Services to describe limitations on covered prosthetic and orthotic devices. The SPA does not change current policy and practice; it is for clarification purposes only.

SPA 21-0009 is expected to have no effect on the annual aggregate expenditures, reimbursement, or payment for home health services.

SPA 21-0009 is in the development process; therefore, a copy is not yet available for review. HCA would appreciate any input or concerns regarding this SPA. To request a copy when it becomes available, you may contact the person named below. To submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

Contact Erin Mayo, Home Health, 626 8th Avenue S.E., Olympia, WA 98501, TRS 711, email erin.mayo@hca.wa.gov, website hca.wa.gov.

WSR 21-06-045
HEALTH CARE AUTHORITY
[Filed February 25, 2021, 9:49 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 21-0013 Ambulance Transport Quality Assurance Fee.

Effective Date: July 1, 2021.

Description: The health care authority (HCA) previously published its intent to submit medicaid SPA 20-0032 under WSR 20-15-081 in order to comply with ESSB 6534, which directs HCA to establish an ambulance transportation quality assurance fee program to provide an add-on to fee-for-emergency ambulance rates for nonpublic and nonfederal emergency ambulance transportation providers. The add-on payment will be funded solely from assessments to the nonpublic and nonfederal ambulance providers. Submission of SPA 20-0032 was delayed. HCA intends to submit SPA 21-0013 in its place.

SPA 21-0013 is expected to increase the annual aggregate payment for emergency ambulance transportation services by one hundred twenty-five percent to one hundred eighty-three percent.

SPA 21-0013 is in the development process; therefore a copy is not yet available for review. HCA would appreciate any input or concerns regarding this SPA. To request a copy when it becomes available or submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

Contact: Stefanee Hale, Hospital Finance, P.O. Box 45510, Olympia, WA 98506, TRS 711, email stefanee.hale@hca.wa.gov, website hca.wa.gov.

WSR 21-06-053
HEALTH CARE AUTHORITY
[Filed February 25, 2021, 2:56 p.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 21-0013 Ambulance Transport Quality Assurance Fee.

Effective Date: July 1, 2021.

Description: The health care authority (HCA) previously published its intent to submit medicaid SPA 20-0032 under WSR 20-15-081 in order to comply with ESSB 6534, which directs HCA to establish an ambulance transportation quality assurance fee program to provide an add-on to fee for emergency ambulance rates for nonpublic and nonfederal emergency ambulance transportation providers. The add-on payment will be funded solely from assessments to the nonpublic and nonfederal ambulance providers. Submission of SPA 20-0032 was delayed. HCA intends to submit SPA 21-0013 in its place.

SPA 21-0013 is expected to increase the annual aggregate payment for emergency ambulance transportation services by one hundred twenty-five percent to one hundred eighty-three percent.

SPA 21-0013 is in the development process; therefore a copy is not yet available for review. HCA would appreciate any input or concerns regarding this SPA. To request a copy when it becomes available or submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

Contact: Stefanee Hale, Hospital Finance, P.O. Box 45510, Olympia, WA 98506, TRS 711, email stefanee.hale@hca.wa.gov, website hca.wa.gov.

WSR 21-06-055
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF HEALTH
(Dental Hygiene Examining Committee)
[Filed February 26, 2021, 9:13 a.m.]

In accordance with the Open Public Meeting[s] Act (chapter 42.30 RCW) and the Administrative Procedure Act (chapter 34.05 RCW), the following is the schedule of regular meetings for the department of health (DOH), dental hygiene examining committee, for the year 2020. The dental hygiene examining committee meetings are open to the public and access for persons with disabilities may be arranged with advance notice; please contact the staff person below for more information.

Agendas for the meetings listed below are made available in advance via GovDelivery and DOH website (see below). Every attempt is made to ensure that the agenda is up-to-date. However, the dental hygiene examining committee reserves the right to change or amend agendas at the meeting.

Date	Location
July 23, 2021	To be determined Webinar
October 8, 2021	To be determined

If you need further information, please contact Bruce Bronoske, Jr., Program Manager, Dental Hygiene Examining Committee, DOH, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4843, fax 360-236-2901, bruce.bronoske@doh.wa.gov, www.doh.wa.gov.

Please be advised the dental hygiene examining committee is required to comply with the Public Disclosure [Records] Act, chapter 42.56 RCW. This act establishes a strong state mandate in favor of disclosure of public records. As such, the information you submit to the board, including personal information, may ultimately be subject to disclosure as a public record.

WSR 21-06-056
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF HEALTH
(Athletic Training Advisory Committee)
[Filed February 26, 2021, 10:23 a.m.]

In accordance with the Open Public Meeting[s] Act (chapter 42.30 RCW) and the Administrative Procedure Act (chapter 34.05 RCW), the following is the schedule of regular meetings for the department of health (DOH) athletic training advisory committee, for the year 2021. The athletic training advisory committee meetings are open to the public and access for persons with disabilities may be arranged with advance notice; please contact the staff person below for more information.

Agendas for the meetings listed below are made available in advance via GovDelivery and DOH website (see below). Every attempt is made to ensure that the agenda is up-to-date. However, the athletic training advisory committee reserves the right to change or amend agendas at the meeting.

Date	Time	Location
May 17, 2021	9:00 a.m.	Webinar
December 20, 2021	9:00 a.m.	Webinar

If you need further information, please contact Bruce Bronoske, Jr., Program Manager, Athletic Training Advisory Committee, DOH, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4843, fax 360-236-2901, bruce.bronoske@doh.wa.gov, www.doh.wa.gov.

Please be advised the athletic training advisory committee is required to comply with the Public Disclosure [Records] Act, chapter 42.56 RCW. This act establishes a strong state mandate in favor of disclosure of public records. As such, the information you submit to the board, including personal information, may ultimately be subject to disclosure as a public record.

WSR 21-06-057
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF HEALTH
(Dental Hygiene Examining Committee)
[Filed February 26, 2021, 10:24 a.m.]

In accordance with the Open Public Meeting[s] Act (chapter 42.30 RCW) and the Administrative Procedure Act (chapter 34.05 RCW), the following is the schedule of regular meetings for the department of health (DOH), dental hygiene examining committee, for the year 2021. The dental hygiene examining committee meetings are open to the public and access for persons with disabilities may be arranged with advance notice; please contact the staff person below for more information.

Agendas for the meetings listed below are made available in advance via GovDelivery and DOH website (see below). Every attempt is made to ensure that the agenda is up-to-date. However, the dental hygiene examining committee reserves the right to change or amend agendas at the meeting.

Date	Time	Location
July 23, 2021	9:00 a.m.	To be determined Webinar
October 8, 2021	9:00 a.m.	To be determined

If you need further information, please contact Bruce Bronoske, Jr., Program Manager, Dental Hygiene Examining Committee, DOH, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4843, fax 360-236-2901, bruce.bronoske@doh.wa.gov, www.doh.wa.gov.

Please be advised the dental hygiene examining committee is required to comply with the Public Disclosure [Records] Act, chapter 42.56 RCW. This act establishes a strong state mandate in favor of disclosure of public records. As such, the information you submit to the board, including

personal information, may ultimately be subject to disclosure as a public record.

WSR 21-06-062
NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION
[Filed February 26, 2021, 2:38 p.m.]

The following times, dates, and locations are for commission meetings for 2021:

Washington state human rights commission, commission meeting, on March 25, 2020 [2021], at 9:30 a.m., via telephone conference, 711 South Capitol Way, Suite 402, Olympia, WA 98504, conference line 360-407-4020, access code 8074251.

WSR 21-06-070
DEPARTMENT OF ECOLOGY
[Filed March 1, 2021, 8:23 a.m.]

PUBLIC NOTICE

Announcing Ecology's Findings on Safer Alternatives to Per- and Polyfluoroalkyl Substances (PFAS) in Food Packaging

RCW 70A.222.070 directs the department of ecology (ecology) to determine whether safer alternatives to PFAS (per- and polyfluoroalkyl substances) currently exist for food packaging applications. Intentionally added PFAS will be banned from paper food packaging applications two years after ecology submits a report to the legislature that identifies safer alternatives for those specific types of paper food packaging.

To make the necessary determination, ecology conducted an alternatives assessment for various food packaging items containing intentionally added PFAS. Following the Interstate Chemicals Clearinghouse (IC2) Alternatives Assessment Guide as required by statute, ecology assessed the hazard, exposure, performance, and cost and availability of ten food packaging applications (such as plates, pizza boxes, and French fry containers). Ecology evaluated a variety of both chemical alternatives to PFAS as well as nonchemical options.

As directed by the statute, ecology not only evaluated the hazard of each alternative, but also assessed whether each alternative performed as well as the PFAS choice, whether the alternative was readily available, and whether it was comparable in cost to the PFAS choice. The Washington State Academy of Sciences assembled a peer-review committee, which reviewed the alternatives assessment and made various recommendations to further strengthen and enhance the assessment.

To be considered a "safer alternative," the alternatives assessment must conclude that a non-PFAS option is less hazardous, is available in sufficient quantity and at a comparable cost, and performs as well as or better than PFAS chemicals in a specific food packaging application. Non-PFAS options that fail to meet all of these criteria are not "safer alternatives" under the statute. Based on the results of the alternatives assessment, ecology found safer alternatives for the following items:

- Wraps and liners: wax coated options met the criteria for a safer alternative.
- Plates: clay-coated and reusable options met the criteria for safer alternatives.
- Food boats: clay-coated and reusable options met the criteria for safer alternatives.
- Pizza boxes: uncoated options met the criteria for a safer alternative.

The alternatives assessment determined there was insufficient information available to find safer alternatives for:

- Bags and sleeves.
- Bowls.
- Trays.
- French fry cartons.
- Clamshells.
- Interlocking folded containers.

As specified in RCW 70A.222.070(1), PFAS-containing food wraps and liners, plates, food boats, and pizza boxes may not be manufactured, sold, or distributed in Washington starting two years from the date ecology submits its report to the legislature containing the department's findings and feedback received from the peer review, or February 22, 2023.

Ecology has continued the alternatives assessment process, as required by RCW 70A.222.070(5). This assessment, which began in early 2021, will review food contact bags and sleeves, bowls, trays, French fry cartons, clamshells, and interlocking folded containers to determine if, based on new information, PFAS-free alternatives are readily available, in sufficient quantity, at a comparable price, with equivalent performance.

Copies of the PFAS in Food Packaging Alternatives Assessment and Report to the Legislature: The alternatives assessment (https://apps.ecology.wa.gov/publications/documents/2104004.pdf) and report to the legislature (https://apps.ecology.wa.gov/publications/documents/2104007.pdf) are available online. You may also request copies of these documents via email at hwtrpubs@ecy.wa.gov.

Ecology Contact: Rae Eaton, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7696, phone 360-522-2362, email rae.eaton@ecy.wa.gov.

Assistance for Persons with Disabilities: To request an ADA accommodation, contact ecology by phone at 360-407-6700 or email hwtrpubs@ecy.wa.gov, or visit https://ecology.wa.gov/accessibility. For relay service or TTY call 711 or 877-833-6341.

WSR 21-06-071
HEALTH CARE AUTHORITY

[Filed March 1, 2021, 8:46 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 21-0009 Home Health Services.

Effective Date: January 1, 2021.

Description: The health care authority (HCA) intends to submit medicaid SPA 21-0009 to comply with a request from the Centers for Medicare and Medicaid Services to describe limitations on covered prosthetic and orthotic devices. The SPA does not change current policy and practice; it is for clarification purposes only.

SPA 21-0009 is expected to have no effect on the annual aggregate expenditures, reimbursement, or payment for home health services.

SPA 21-0009 is in the development process; therefore, a copy is not yet available for review. HCA would appreciate any input or concerns regarding this SPA. To request a copy when it becomes available, you may contact the person named below. To submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

Contact: Erin Mayo, Home Health, 626 8th Avenue S.E., Olympia, WA 98501, TRS 711, email erin.mayo@hca.wa.gov, website hca.wa.gov.

WSR 21-06-072
HEALTH CARE AUTHORITY

[Filed March 1, 2021, 8:55 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 21-0012 Disaster Relief—Provider Enrollment in the Public Health Emergency.

Effective Date: February 15, 2021.

Description: The health care authority (HCA) intends to submit medicaid SPA 21-0012 to implement policies and procedures that may be different from the policies and procedures otherwise applied under the medicaid state plan, during the period of the presidential and secretarial emergency declarations related to the COVID-19 outbreak. SPA 21-0012 allows Washington medicaid the flexibility to automatically enroll COVID-19 vaccine administration providers who have already completed medicare application processes for participation. SPA 21-0012 also allows Washington medicaid the flexibility to not require the servicing (rendering) provider National Provider Identifier for the administering of vaccines to medicaid recipients during the public health emergency.

This SPA is the preprint developed by the Centers for Medicare and Medicaid Services to waive or modify certain requirements of Titles XVIII, XIX, and XXI of the Act as a result of the consequences [of the] COVID-19 pandemic, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

At this time HCA is unable to determine the effect of SPA 21-0012 on the annual aggregate expenditures/reimbursement/payment for providers rendering professional services.

SPA 21-0012 is under development. HCA would appreciate any input or concerns regarding this SPA. To request a copy of the SPA when it becomes available or to submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

Contact: Rebecca Carrell, Medicaid Programs Division, 626 8th Avenue S.E., Olympia, WA 98501, TRS 711, email rebecca.carrell@hca.wa.gov.

WSR 21-06-076
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF CORRECTIONS
(Correctional Industries Advisory Committee)

[Filed March 1, 2021, 11:15 a.m.]

Following are the dates for the 2021 correctional industries advisory committee meetings to the appropriate websites:

Date	Time	Location
March 17, 2021	9:00 - 11:00 a.m.	Microsoft Teams
June 24, 2021	9:00 - 11:00 a.m.	Microsoft Teams
September 23, 2021	9:00 - 11:00 a.m.	Microsoft Teams
December 9, 2021	9:00 - 11:00 a.m.	Microsoft Teams

Virtual meeting information: Microsoft Teams meeting.

Join on your computer or mobile app: Click here to join the meeting [contact agency for link].

Or call in (audio only): +1 253-372-2181,429252829#, United States, Tacoma, phone conference ID 429 252 829#.

WSR 21-06-081
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF LABOR AND INDUSTRIES
(Board of Boiler Rules)

[Filed March 1, 2021, 4:05 p.m.]

Per chapter 42.30 RCW, the Open Public Meetings Act, the board of boiler rules meeting and study session for May 2021, has been changed to:

Date(s)	Time	Location
Study Session: May 25, 2021 **Board Meeting:** May 26, 2021	10:00 a.m. 10:00 a.m.	The boiler board meeting will be held virtually only. For meeting updates, visit the labor and industries website at https://lni.wa.gov/licensing-permits/boilers/board-of-boiler-rules.

If you have any questions, please contact Alicia Curry, management analyst, at 360-902-6244 or Alicia.Curry@Lni.wa.gov.

WSR 21-06-085
PUBLIC RECORDS OFFICER
CRIMINAL JUSTICE TRAINING COMMISSION
[Filed March 2, 2021, 8:14 a.m.]

The Washington state criminal justice training commission (WSCJTC) pursuant to RCW 42.56.580, appoints Derek Zable the public records officer of the WSCJTC, 19010 1st Avenue South, Burien, WA 98148, 206-835-7350, DZable@cjtc.wa.gov.

If you have any questions, please contact Monica Alexander at malexander@cjtc.wa.gov.

Monica Alexander
Executive Director

WSR 21-06-091
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE UNIVERSITY
[Filed March 2, 2021, 10:17 a.m.]

Following is the schedule of regular meetings for the Washington State University - Pullman student technology fee committee for academic year 2021-22:

Date	Time	Location
March 5, 2021	2:00-3:00 p.m.	Zoom https://wsu.zoom.us/j/94440070086?pwd=bjI0Mm5uRFd2Mlh5RGZkRXlmcG1-sUT09
March 8, 2021	4:30-8:00 p.m.	Zoom https://wsu.zoom.us/j/95676322626?pwd=elJ1M01YQ3MxL0t4ZTB4SUhYTHJ-kUT09
March 9, 2021	4:30-8:00 p.m.	Zoom https://wsu.zoom.us/j/95676322626?pwd=elJ1M01YQ3MxL0t4ZTB4SUhYTHJ-kUT09
March 11, 2021	4:30-8:00 p.m.	Zoom https://wsu.zoom.us/j/95676322626?pwd=elJ1M01YQ3MxL0t4ZTB4SUhYTHJ-kUT09

Changes due to COVID-19 State of Emergency and to meet Governor Inslee's order. If you need further information contact Emily Green, Budget Office, Washington State University, P.O. Box 641041, Pullman, WA 99164-1041, 509-335-9681, 509-335-3870, ewgreen@wsu.edu, https://budget.wsu.edu.

WSR 21-06-095
NOTICE OF PUBLIC MEETINGS
RENTON TECHNICAL COLLEGE
[Filed March 2, 2021, 1:05 p.m.]

Renton Technical College (RTC), Community College District 27, State of Washington, 3000 Fourth Street, Renton, WA, will hold a virtual public hearing, as part of the permanent rule-making process, on March 24, 2021, at 3:00 p.m. Attendees may join via video or phone. The purpose of the hearing is to receive comments on proposed rule changes amending chapter 495E-110 WAC which relate to the student conduct code and hearing procedures for RTC.

To further explain the purpose of the hearing, RTC is updating its student conduct code and hearing procedures. This update incorporates the new Title IX regulations issued from the department of Education, Office of Civil Rights that took effect on August 14, 2020. Higher education institutions receiving federal funds are required to adopt these regulations to be in compliance. These new regulations were adopted via an emergency rule during a special session of the RTC board of trustees on August 12, 2020. The college then began the permanent rule-making process to incorporate the new Title IX regulations into an updated student conduct code and hearing procedures. The state community and technical colleges' assistant attorney generals worked with the Washington state student services commission members to ensure that the codes and hearing procedures are compliant with federal law, including Title IX.

Join Zoom meeting https://rtcedu.zoom.us/j/82503220875?pwd=djk1S2xUaDZlRWVabW1nU3lIMHdCZz09, Meeting ID 825 0322 0875, Passcode 125154, One tap mobile +12532158782,,82503220875# US (Tacoma), +16699006833,,82503220875# US (San Jose).

The proposed student conduct code and hearing procedures may be reviewed at https://www.rtc.edu/sites/default/files/OTS-2832.1%20For%20Filing.pdf.

The filing document may be viewed at https://www.rtc.edu/sites/default/files/WSR%2021-05-051.pdf.

Written comments on the proposed rules may be submitted via email to Jessica Gilmore English, vice president of student services, by close of business on March 24, 2021, jgilmoreenglish@rtc.edu.

WSR 21-06-098
DEPARTMENT OF ECOLOGY

[Filed March 2, 2021, 2:50 p.m.]

PUBLIC NOTICE

Reissuance of the Aquatic Plant and Algae Management General Permit

On March 17, 2021, the Washington department of ecology (Ecology) will reissue the aquatic plant and algae management national pollutant discharge elimination system and state waste discharge general permit (permit). The permit becomes effective on April 21, 2021, and expires on March 21, 2026.

Purpose of the Permit: The permit provides coverage for the use of pesticides and other products applied to manage aquatic nuisance plants, noxious weeds, quarantine-listed weeds, algae, and phosphorus in fresh surface waters of the state of Washington. Under federal and state water quality laws (Federal Clean Water Act and State Water Pollution Control Act), a permit is required for the discharge of these chemicals. Private individuals or businesses with a pesticide applicator license that apply pesticides, other aquatic plant management products, and phosphorous sequestration products either directly or indirectly to waters of the state, must obtain permit authorization for their discharge.

Public Notice Process and Comments: Ecology accepted public comments on the draft permit and fact sheet from October 21, through December 7, 2020. Ecology held public workshops and hearings during this time. Due to COVID-19 restrictions, the workshops and hearings were held via online statewide webinars on December 2 and 3, 2020. Ecology received oral and written comments during the public comment period. The comments and ecology's responses are included in Appendix C of the fact sheet, the response to comments document.

Copies of the Permit: You may download copies of the final permit, fact sheet, response to comments, and other supporting documents online at https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Aquatic-pesticide-permits/Aquatic-plant-algae-management. You may also request copies from Kimberly Adams at kimberly.adams@ecy.wa.gov or 360-407-6448.

Your Right to Appeal: You have a right to appeal the final general permit and the general permit coverage for a specific facility to the pollution control hearings board (PCHB). The appeal process is governed by chapters 43.21B RCW and 371-08 WAC.

- Appeals of the general permit issuance must be filed within thirty days of issuance of the general permit. See the appeal of the general permit focus sheet for more information, at https://fortress.wa.gov/ecy/publications/documents/1710009.pdf.
- Appeals of the general permit coverage for a specific facility must be filed within thirty days of the effective date of coverage. See the appeal of a general permit coverage focus sheet for more information at https://fortress.wa.gov/ecy/publications/documents/1710007.pdf.

Ecology Contact: Danielle Edelman, Washington State Department of Ecology, Water Quality Program, P.O. Box 47696, Olympia, WA 98504-7696, email danielle.edelman@ecy.wa.gov, phone 360-407-7118.

Assistance for Persons with Disabilities: To request ADA accommodation for disabilities, call ecology at 360-407-7285 or visit https://ecology.wa.gov/accessibility. People with impaired hearing may call Washington relay service at 711. People with speech disability may call TTY at 877-833-6341.

En Español: Para información en español, por favor comuníquese con Gustavo Ordóñez al 360-407-6619.

WSR 21-06-112
HEALTH CARE AUTHORITY

[Filed March 3, 2021, 9:53 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 21-0012 Disaster Relief - Provider Enrollment in the Public Health Emergency.

Effective Date: February 15, 2021.

Description: The health care authority (HCA) intends to submit medicaid SPA 21-0012 to implement policies and procedures that may be different from the policies and procedures otherwise applied under the medicaid state plan, during the period of the presidential and secretarial emergency declarations related to the COVID-19 outbreak. SPA 21-0012 allows Washington medicaid the flexibility to automatically enroll COVID-19 vaccine administration providers who have already completed medicare application processes for participation. SPA 21-0012 also allows Washington medicaid the flexibility to not require the servicing (rendering) provider national provider identification for the administering of vaccines to medicaid recipients during the public health emergency.

This SPA is the preprint developed by the Centers for Medicare and Medicaid Services to waive or modify certain requirements of Titles XVIII, XIX, and XXI of the Act as a result of the consequences [of the] COVID-19 pandemic, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

At this time HCA is unable to determine the effect of SPA 21-0012 on the annual aggregate expenditures/reimbursement/payment for providers rendering professional services.

SPA 21-0012 is under development. HCA would appreciate any input or concerns regarding this SPA. To request a copy of the SPA when it becomes available or to submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

Contact Rebecca Carrell, Medicaid Programs Division, 626 8th Avenue S.E., Olympia, WA 98501, TRS 711, email rebecca.carrell@hca.wa.gov.