WSR 22-08-001
HEALTH CARE AUTHORITY

[Filed March 23, 2022, 1:00 p.m.]

NOTICE

Title or Subject: Children's Health Insurance Program (CHIP) State Plan Amendment (SPA) 22-1000 COVID-19 Vaccines, Testing, and Treatment (formerly 22-0001).

Effective Date: March 11, 2021.

Description: The health care authority (HCA) previously filed notice under WSR 22-06-027 of its intent to submit CHIP SPA 22-0001 in order to provide coverage for COVID-19 vaccines, testing, and treatment, including treatment of a condition that may seriously complicate COVID-19, without cost-sharing in CHIP. States are required to provide such coverage by the American Rescue Plan Act, retroactive to March 11, 2021.

Due to an administrative technicality, SPA 22-0001 must be renumbered as SPA 22-1000.

At this time, HCA is unable to determine the effect of SPA 22-1000 on the annual aggregate expenditures/reimbursement/payment for professional services.

CHIP SPA 22-1000 is available for review. HCA would appreciate any input or concerns regarding this SPA. To request a copy of the draft 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: Shaunie McLeod, CHIP, 626 8th Avenue S.E., Olympia, WA 98501, phone 360-725-1423, TTY 711, email shaunie.mcleod@hca.wa.gov.

WSR 22-08-005
NOTICE OF PUBLIC MEETINGS
BENTON CLEAN AIR AGENCY
[Filed March 23, 2022, 2:36 p.m.]

Board of Directors
Meeting Schedule for Calendar Year 2022

Meetings are held on the fourth Thursday of each month, with three noted exceptions, at 5:30 p.m., at the agency offices at 526 South Steptoe Street, Kennewick, WA 99336, or via Zoom in compliance with COVID-19 restrictions.

2022

January 27

February 24

March 24

April 28

May 26

June 23

July 28

August 25
Canceled

September 22

October 27

November 24
Canceled

December 15
Third Thursday

WSR 22-08-009
AGENDA
DEPARTMENT OF LICENSING
[Filed March 23, 2022, 6:51 a.m.]

Semi-Annual Rule-Making Agenda
January through June 2022

This report details current and anticipated rule-making activities for the department of licensing (DOL). This agenda is sent as a requirement of RCW 34.05.314. If you have any questions regarding this report or DOL rule-making activities, please contact Ellis Starrett at 360-902-3846 or rulescoordinator@dol.wa.gov.

This agenda is for information purposes, and the noted dates of anticipated rule-making actions are estimates. Any errors in this agenda do not affect the rules and rule-making notices filed with the office of the code reviser and published in the Washington State Register. There may be additional DOL rule-making activities that cannot be forecasted as the department initiates rule making to implement new state laws, meet federal requirements, or meet unforeseen circumstances. See the **"Key"** below for explanations of terms and acronyms.

Key

CR means "code reviser" on notice forms created by the office of the code reviser for use by all state agencies.

CR-101 is a Preproposal statement of inquiry filed under RCW 34.05.310.

CR-102 is a Proposed rule-making notice filed under RCW 34.05.320 or 34.05.340.

Proposal is exempt under RCW 34.05.310(4) means a rule that does not require the filing of a CR-101 notice under RCW 34.05.310(4).

CR-105 is an expedited rule-making notice filed under RCW 34.05.353. This is an accelerated rule adoption process with no public hearing required.

CR-103P is a rule-making order permanently adopting a rule, and filed under RCW 34.05.360 and 34.05.380.

CR-103E emergency rules are temporary rules filed under RCW 34.05.350 and 34.05.380 by using a CR-103E rule-making order. Emergency rules may be used to meet certain urgent circumstances. These rules are effective for 120 days after the filing date, and may be extended in certain circumstances.

Blank cells in tables mean the anticipated filing date is not known at the time this rules agenda is filed.

RCW is the Revised Code of Washington.

WSR number is the Washington State Register official filing reference number given by the office of the code reviser when a notice is filed.

Proposed Rule Making				
Rule	**Scope**	**Agency Contact**	**Deadline**	**Legislation Effective Date**
Public records fees, WAC 308-10-055	Adopts standard language to allow DOL to collect fees for qualifying records requests.	Annette Gavette agavette@dol.wa.gov	N/A	N/A
WAC 308-10-075 and 308-10-087	Clarifies who may release vehicle owner name and address information.	Annette Gavette agavette@dol.wa.gov	N/A	N/A

Proposed Rule Making				
Rule	**Scope**	**Agency Contact**	**Deadline**	**Legislation Effective Date**
Dealer investigation's temporary permit, WAC 308-56A-420	Expand the expiration date of the 45 day temporary permit to 60 days.	Kelsey Hood khood@dol.wa.gov	N/A	N/A
SHB 1269 Vehicle transporter plates, WAC 308-80-020	May need to be updated during bill implementation.	Kelsey Hood khood@dol.wa.gov	N/A	N/A
WATV titling, chapter 308-94A WAC	Will allow DOL to clarify the registration process for wheeled all-terrain vehicles.	Carl Backen cbacken@dol.wa.gov	N/A	N/A
CDL surrender	Draft rules in Title 308 WAC that clarify DOL's CDL surrender policy.	Ellis Starrett estarrett@dol.wa.gov	N/A	N/A
DTS out-of-state licensed/ unlicensed driver under 18, waiver of traffic safety education course	Further explain DOL's application of RCW 46.20.100 and how it applies to both licensed and unlicensed drivers who are under 18 and applying for a Washington state driver's license.	Ellis Starrett estarrett@dol.wa.gov	N/A	N/A
DVR, WAC 308-59-510: TBD vehicle fee exemptions; and WAC 308-57-140: RTA/ MVET tax exemptions	Update WAC to bring them into compliance.	Carl Backen cbacken@dol.wa.gov	N/A	N/A
Chapter 308-61 WAC, abandoned recreational vehicles clarity update	Update WAC for clarity and to address stakeholder workgroup requests.	Carl Backen cbacken@dol.wa.gov	N/A	N/A
WAC 308-56A-460, destroyed or rebuilt vehicle market value threshold	Update the market value threshold in accordance with statutory requirements.	Carl Backen cbacken@dol.wa.gov	N/A	N/A
Online renewals over 70, WAC 308-104-019	Proposes amending rule to allow applicants over 70 years old to renew their driver's license online.	Ellis Starrett estarrett@dol.wa.gov	N/A	N/A

Ongoing Rule Making				
Rule	**Scope**	**Agency Contact**	**CR-101**	**CR-102**
SB 5378 implementation, WSR 22-04-013	Implements SB 5378 which created a new educational requirement related to the fair housing act for real estate licensees.	Kelsey Hood khood@dol.wa.gov	November 1, 2021	N/A
Court reporters, WSR 21-19-094	Amends chapter 308-14 WAC, Court reporters, to expand exam options and bring chapter into compliance with new system efficiencies.	Kelsey Hood khood@dol.wa.gov	September 17, 2021	N/A
Business and professions fee increases, WSR 22-03-102, 22-03-103, 22-03-104, 22-03-105	Fees are being raised to address a negative fund balance in the 06L Account.	Ellis Starrett estarrett@dol.wa.gov	January 19, 2022	N/A
Data privacy, WSR 21-10-098	Implementing SSB 5152 Enhancing data stewardship and privacy protections for vehicle and driver data.	Annette Gavette agavette@dol.wa.gov	May 5, 2021	N/A

Ellis Starrett
Rules Coordinator

WSR 22-08-018
HEALTH CARE AUTHORITY
[Filed March 25, 2022, 10:01 a.m.]

NOTICE

Subject: Children's Health Insurance Program (CHIP) State Plan Amendment (SPA) 22-0002 (now 22-2000) for Extended Postpartum Coverage.

Effective Date: April 1, 2022.

Description: The health care authority (HCA) previously filed notice of its intent to submit medicaid CHIP SPA 22-0002 under WSR 22-06-043 to extend post-partum coverage from the current 60-day period to 12 months and includes noncitizens with income under 193 percent of the federal poverty level. In addition, the SPA will extend CHIP coverage for children continuously through their postpartum period.

Due to administrative technicalities, CHIP SPA 22-0002 is renumbered as 22-2000.

Currently, HCA is unable to determine the effect of CHIP SPA 22-0002 on the annual aggregate expenditures/reimbursement/payment for professional services.

CHIP SPA 22-0002 is in the development process; therefore, copies are not yet available for review. HCA would appreciate any input or concerns regarding these SPAs. To request copies when they become 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: Paige Lewis, Medicaid and CHIP, 626 8th Avenue, Olympia, WA 98501, phone 360-725-0757, TTY 711, email paige.lewis@hca.wa.gov.

WSR 22-08-024
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed March 25, 2022, 4:15 p.m.]

Notice of Interpretive or Policy Statement

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

Economic Services Administration
Division of Child Support (DCS)

Document Title: DCS Administrative Policy 7.01: IRS Confidentiality and Security.

Subject: DCS AP 7.01.

Effective Date: March 23, 2022.

Document Description: This DCS administrative policy explains DCS's procedures to comply with IRS guidelines in order to participate in the IRS Tax Refund Offset program.

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 360-753-9122, fax 360-664-5342, email Rachel.Shaddox@dshs.wa.gov, website http://www.dshs.wa.gov/dcs/.

WSR 22-08-027
NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION
[Filed March 28, 2022, 9:12 a.m.]

The following times, dates, and locations are for commission meetings for 2022: Washington state human rights commission, commission meeting, April 28, 2022, at 9:30 a.m., via telephone conference, 711 South Capitol Way, Suite 402, Olympia, WA 98504, Conference Line 833-598-2099 (toll free), 564-999-2000 (Olympia), Access Code 592 444 653#.

WSR 22-08-029
NOTICE OF PUBLIC MEETINGS
PUGET SOUND PARTNERSHIP
(Puget Sound Partnership Leadership Council)
[Filed March 28, 2022, 1:46 p.m.]

A special meeting of the Puget Sound partnership, leadership council has been scheduled for 2021:

Date	Time	Location
April 13	10:30 - 11:30 a.m.	Virtual Zoom meeting

If you need further information, contact Anna Petersen, P.O. Box 40900, Olympia, WA 98504, 360-338-2384, anna.petersen@psp.wa.gov, https://www.psp.wa.gov/board_meetings.php.

WSR 22-08-041
NOTICE OF PUBLIC MEETINGS
BELLEVUE COLLEGE

[Filed March 31, 2022, 7:47 a.m.]

The following is [the] schedule of regular meetings for the board of trustees of Community College District VIII for Bellevue College. These meeting[s] will be a hybrid format available on both Zoom and in the Board Room (B201) at Bellevue College, 3000 Landerholm Circle S.E., Bellevue, WA unless otherwise noted below.

Date	Time	Location
Wednesday, May 18, 2022	2:00 p.m.	Hybrid: Zoom and Bellevue College
Wednesday, June 1, 2022	5:00 p.m.	Hybrid: Zoom and Bellevue College
Wednesday, June 15, 2022	2:00 p.m.	Hybrid: Zoom and Bellevue College

If you need any further information, please contact Alicia Keating Polson, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 425-564-2302, Alicia.keatingpolson@bellevuecollege.edu.

WSR 22-08-042
POLICY STATEMENT
LIQUOR AND CANNABIS BOARD

[Filed March 31, 2022, 8:50 a.m.]

NOTICE OF ADOPTION OF POLICY STATEMENT

Title of Policy Statement: Implementation of Marijuana (Cannabis) Quality Assurance and Quality Control Rules-Policy Statement Number PS-22-01.

Issuing Entity: Washington state liquor and cannabis board.

Subject Matter: This policy statement describes licensed marijuana (cannabis) producer and processor postharvest "phase in" and licensed marijuana (cannabis) retail "sell-down" periods for marijuana (cannabis) products that must meet updated quality assurance and quality control rules described in WAC 314-55-101, 314-55-102, and 314-55-1025 effective April 2, 2022.

Effective Date: April 2, 2022.

Expiration Date: December 31, 2022.

Contact Person: Katherine Hoffman, policy and rules manager, 360-664-1622.

WSR 22-08-046
NOTICE OF PUBLIC MEETINGS
RECREATION AND CONSERVATION OFFICE
(Invasive Species Council)
[Filed March 31, 2022, 11:03 a.m.]

The Washington invasive species council (WISC) is changing the **location and date** of the regular quarterly meeting scheduled for June 9, 2022:

FROM: June 9, 2022, from 9:00 a.m. to 3:00 p.m., Natural Resource[s] Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98501.

TO: June 16, 2022, from 9:00 a.m. to 3:00 p.m., hybrid: **Online, and Natural Resource[s] Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98501.**

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 by email at leslie.frank@rco.wa.gov.

WSR 22-08-050
NOTICE OF PUBLIC MEETINGS
EDMONDS COLLEGE
[Filed March 31, 2022, 3:12 p.m.]

The Edmonds College board of trustees has changed the time of their regular May meeting as follows:

From: Thursday, May 12, 2022, at **2:30 p.m.**

To: Thursday, May 12, 2022, at **3:30 p.m.**

If you need further information, contact Kristen NyQuist, Edmonds College, 20000 68th Avenue West, Lynnwood, 98036, 425-275-8060, kristen.nyquist@edcc.edu.

WSR 22-08-051
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
FISH AND WILDLIFE
(Fish and Wildlife Commission)
[Filed March 31, 2022, 3:52 p.m.]

2022 MEETING CALENDAR

At its March 28, 2022, [meeting], [the] executive committee revised the following locations for the remainder of the 2022 calendar:

Date	Meeting Type
January 13-15	Webinar
January 28	Web conference
February 17-19	Webinar
March 17-19	Webinar
April 7-9	Webinar
May 13	Web conference
June 10	Web conference
June 23-25	In-person - Olympia
July 15	Web conference
August 4-6	In-person - Ocean Shores
August 26	Web conference
September 22-24	In-person - Clarkston
October 7	Web conference
October 27-29	In-person - Colville
November 18	Web conference
December 8-10	Webinar

Commission meetings are open to the public. Meeting agendas, minutes, and recordings are available on the commission's website.

WSR 22-08-052
RULES COORDINATOR
CHARTER SCHOOL COMMISSION
[Filed March 31, 2022, 3:53 p.m.]

Pursuant to RCW 34.05.312, the rules coordinator for the charter school commission is Jessica de Barros, 1068 Washington Street S.E., Olympia, WA 98501, phone 360-725-5511, email charterschoolinfo@k12.wa.us.

Jessica de Barros
Interim Executive Director

WSR 22-08-056
NOTICE OF PUBLIC MEETINGS
BILLY FRANK JR NATIONAL STATUARY HALL SELECTION COMMITTEE

[Filed April 1, 2022, 2:46 p.m.]

Meeting Dates for 2022

Tuesday, March 15, 2022	9:00 - 10:30 a.m.
Tuesday, May 17, 2022	9:00 - 10:30 a.m.
Tuesday, June 14, 2022	9:00 - 10:30 a.m.
Tuesday, August 16, 2022	9:00 - 10:30 a.m.
Tuesday, October 25, 2022	9:00 - 10:30 a.m.

Meeting location: https://us06web.zoom.us/j/85419559819.

WSR 22-08-058
HEALTH CARE AUTHORITY

[Filed April 4, 2022, 6:40 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 22-0011 Alternative Benefit Plan Updates.

Effective Date: July 1, 2022.

Description: The health care authority (HCA) intends to submit medicaid SPA 22-0007 to bring the alternative benefit plan (ABP) into alignment with the medicaid state plan. The ABP is the plan by which Washington expanded medicaid coverage to people ages 19 through 64 with income at or below 133 percent of the federal poverty level as allowed by the Affordable Care Act. ABPs are aligned with the medicaid state plan regarding service coverage and must be updated to reflect changes made to that plan. SPA 22-0007 updates the ABP to reflect the following changes that have already been made to the medicaid state plan:

- Adds collaborative care.
- Adds licensed emergency medical service providers.
- Add applied behavioral therapy for adults.
- Add social worker services for home health.
- Adds coverage for client participation in qualifying clinical trials.
- Replaces outdated terms (e.g., "alcohol abuse," "chemical dependency," etc.) with updated terms (e.g., "substance use disorder," "behavioral health," etc.).
- Adds medication assisted treatment.
- Adds substance use disorder peer support.
- Adds medical withdrawal management (previously detoxification).
- Adds additional dental services for oral health connections.
- Add school-based health care services.

Please note that additional information may be added to the ABP as medicaid SPAs are approved prior to the submission of SPA 22-0011.

SPA 22-0011 is an administrative action to bring the ABP into alignment with the medicaid state plan. Therefore, it is anticipated to have no effect on the annual aggregate expenditures/reimbursement/payment for professional services.

SPA 22-0011 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: Josh Morse, Health Services, 626 8th Avenue S.E., Olympia, WA 98501, phone 360-725-0839, TRS 711, fax 360-725-2641, email josh.morse@hca.wa.gov.

WSR 22-08-061
HEALTH CARE AUTHORITY
[Filed April 4, 2022, 12:26 p.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 21-0014 April 2022 Fee Schedule Updates.

Effective Date: April 1, 2022.

Description: The health care authority intends to submit Medicaid SPA 22-0014 to update the fee schedule effective dates for several medicaid programs and services. This is a regular, budget neutral update to keep rates and billing codes in alignment with the coding and coverage changes from the Centers for Medicare and Medicaid Services, the state, and other sources. These changes are routine and do not reflect significant changes to policy or payment.

SPA 22-0014 is expected to have no effect on the annual aggregate expenditures/payments for the services listed above. These changes are routine and do not reflect significant changes to policy or payment.

HCA is in the process of developing the SPA. HCA would appreciate any input or concerns regarding this SPA. To request a copy of the SPA when it becomes available or submit comments, you may contact the people named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

CONTACT: Ann Myers, State Plan Coordinator, P.O. Box 42716, Olympia, WA 98504, TRS 711, email ann.myers@hca.wa.gov.

WSR 22-08-063
NOTICE OF PUBLIC MEETINGS
DAIRY PRODUCTS COMMISSION

[Filed April 4, 2022, 1:35 p.m.]

Dairy Farmers of Washington (DFW)

2022 Updated Board Meeting Schedule

May 11, 2022	DFW board meeting 1631 Liberty Road Granger, WA 98932	9:00 a.m.
July 20, 2022	DFW board meeting Western Washington TBD	8:00 a.m.
September 26-27, 2022	DFW meeting Location TBD	8:00 a.m.
November 2022 TBD	DFW board meeting Location TBD	8:00 a.m.
December 14, 2022	DFW board meeting Virtual meeting	8:00 a.m.

NOTE: Please confirm all final meeting start times with the Washington dairy products commission at 425-672-0687.

WSR 22-08-066
OFFICE OF THE
INSURANCE COMMISSIONER
[Filed April 4, 2022, 3:30 p.m.]

Technical Assistance Advisory 2022-01[1]

1 This advisory is a policy statement released to advise the public of the office of the insurance commissioner's (OIC) current opinions, approaches, and likely courses of action. It is advisory only. RCW 34.05.230(1).

TO: Health carriers.
FROM: Insurance Commissioner, Mike Kreidler.
DATE: April 4, 2022.
SUBJECT: OIC Implementation of E2SHB 1688.

The purpose of this technical assistance advisory (TAA) is to provide guidance for health carriers[2] on OIC's implementation of E2SHB 1688.[3]

2 *See* RCW 48.43.005(28) (defining "health carrier").
3 *See* Consolidated Appropriations Act (CAA), 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020) (enacting several new laws, including the No Surprises Act at div. BB, tit. I, 134 Stat. at 2757-2890).

Background: Washington's Balance Billing Protection Act (BBPA) was enacted in 2019, and effective January 1, 2020.[4] In December 2020, Congress enacted the No Surprises Act (NSA), which went into effect on January 1, 2022. E2SHB 1688 (the bill) was enacted in 2022, and relates to consumer protection from charges for out-of-network health care services. It aligns state law and NSA and addresses coverage for treatment of emergency services. The bill is effective March 31, 2022.

4 *See* OIC's surprise billing and BBPA web page for more information.

Below are some of the key components of the bill and applicable sections:

1. Applicable Plans: E2SHB 1688 applies to fully insured individual and group health plans offered to residents in Washington state and to Washington state public and school employee health benefit plans (PEBB/SEBB).[5] The prohibition on balance billing, associated consumer protections and provider/carrier dispute resolution processes also apply to self-funded group health plans that have elected to participate in Washington state's balance billing protections.[6]

5 *See* RCW 48.43.005 definition of "health plan" and RCW 41.05.107.
6 *See* RCW 48.49.130.

2. Surprise billing dataset and study on impact of BBPA - Section 1, amending RCW 43.371.100: The surprise billing data set will be updated to align with the scope of services protected from balance billing in RCW 48.49.020, as amended by the bill. Section 1 directs OIC to conduct biennial analysis, beginning in 2022, of the impact of BBPA and NSA on payments for in-network and out-of-network services, including an analysis of the volume and percentage of claims of in-network health care providers versus out-of-network providers in Washington state. Section 1(3). The first analysis required under section 1 must be published on OIC's website on or before December 15, 2022. *Id.*

3. *Emergency Services Coverage - Sections 2 and 3, amending RCW 48.43.005 and 48.43.093:* Section 2 broadens the definition of emergency services to include covered services related to screening, stabilization, and post-stabilization, which includes observation or an inpatient and outpatient stay with respect to the visit during which screening and stabilization services were provided. Section 2 (16)(iii). Additionally, emergency services providers include, in ad-

dition to a hospital emergency department, mobile rapid response crisis teams, crisis triage and stabilization facilities, evaluation and treatment facilities, agencies certified by the state to provide outpatient crisis services and medical withdrawal management services. Section 2(48).

Emergency services must be covered regardless of the network status of a hospital or provider and without prior authorization. Section 3 (1)(a). Carriers can require notification of a person's stabilization or admission by in-network facilities. Section 3 (3)(a). They also can require a hospital or behavioral health emergency services provider to notify them within 48 hours of stabilization if a person needs to be stabilized, or by the end of the business day following the day the stabilization occurs, whichever is later. Section 3 (3)(b).

4. *Scope of Balance Billing Protections - Section 7, amending RCW 48.49.020; and section 21, adding a new section to chapter 48.49 RCW:* The bill amends BBPA to align the scope of services subject to balance billing protections with NSA. This includes emergency services, nonemergency health care services performed by nonparticipating providers at certain participating facilities and air ambulance services. Nonemergency services include covered items or services other than emergency services with respect to a visit at a participating health care facility, as provided in NSA. Section 2(46).

The bill amends applicable provisions of BBPA to reference "behavioral health emergency services providers" such that balance billing protections and other related consumer protections apply to these services.

Under section 21, OIC is required, in collaboration with the health care authority and the department of health, and with input from interested groups, to submit a report and any recommendations to the legislature by October 1, 2023, regarding how balance billing for ground ambulance services[7] can be prevented and whether ground ambulance services should be subject to balance billing restrictions.

7 "Ground ambulance services" is defined under Section 21(4) of the Bill to mean "organizations licensed by the department of health that operate one or more ground vehicles designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat patients before and during transportation."

5. Consumer Cost-Sharing - Section 7, amending RCW 48.49.020; and section 8, amending RCW 48.49.030: Consumer cost-sharing for services subject to balance billing protections under NSA will be calculated as provided in NSA. Section 7(2). Section 8 also requires NSA method for calculating consumer cost-sharing (as known as "qualified payment amount") for behavioral health emergency services.

6. Waiver of Rights Sections - Section 10, adding a new section to chapter 48.49 RCW; and section 7, amending RCW 48.49.020: The bill prohibits consumers from being asked to waive their balance billing protections. Sections 7 (2)(b) and 10(2).

7. Out of Network Claim Payment Standard - Section 9, adding a new section to chapter 48.49 RCW: Section 9 states the allowed amount paid to an out-of-network provider for health care services described under RCW 48.49.020(1), other than air ambulance services shall be a "commercially reasonable amount" based on payments for the same or similar services provided in a similar geographic area. Section 9(1). This is required until July 1, 2023, or a later date determined by OIC. *Id.* At that point, transition to NSA payment standard is required. Section 9(1).

8. Dispute Resolution - Section 11, amending RCW 48.49.040; and section 18, amending RCW 48.49.150: Under section 11, BBPA arbitration

is required until July 1, 2023, or a later date determined by OIC. Section 11 (1), (2). On July 1, 2023, or a later date determined by OIC, carriers are required to transition to NSA "independent dispute resolution" (IDR) system if out-of-network provider and carrier cannot agree on a commercially reasonable payment. *Id.* Upon transition to NSA independent dispute resolution system, if behavioral health emergency services payment disputes can be addressed using federal IDR system, carriers shall use that system. If not possible, BBPA dispute resolution process will continue to be used. Section 11(2). Air ambulance payment disputes shall use NSA IDR system. Section 11(14).

Section 11 revises existing BBPA arbitration provisions, including some provisions to align NSA more closely with state law:

- Section 11(4): Permits multiple claims to be addressed in a single arbitration proceeding if the claims at issue meet the following requirements:
  - The claims must involve identical carrier and provider, provider group, facility, or behavioral health emergency services provider parties. Section 11 (4)(a).
  - The bundled claims must have the same procedural code, or a comparable code under a different procedural code system. Section 11 (4)(b).
  - Bundled claims must occur within 30 business days of each other. Section 11 (4)(c).
- Section 11(5): Amends RCW 48.49.040(2) to provide that the arbitrators on OIC's required list "must" have experience in matters related to medical or health care services. Accordingly, OIC plans to review current arbitrators' experience within the next several months for compliance with this new requirement.
- Section 11(7): If the parties to a pending arbitration proceeding agree on an out-of-network payment rate at any point before the arbitrator has made their decision, the agreed-upon amount will be treated as the out-of-network payment rate for the service(s) at issue.
- Section 11 (13)(a): "Baseball arbitration" is retained, such that the arbitrator will choose the final offer of either the nonparticipating provider or the carrier.
- Section 11 (8)(a): The arbitrator's decision must include an explanation of the elements of the parties' submissions relied upon to make their decision and why those elements were relevant to their decision.
- Section 11(11): The arbitrator's decision is final and binding on the parties and is not subject to judicial review.
- Section 11(9): OIC is given authority to establish arbitrator fee ranges or schedules by rule. Arbitrator fees must be paid by the parties to the arbitrator within 30 calendar days following receipt of the arbitrator's decision by the parties.
- Section 11 (3)(b): If a federal IDR decision maker finds that it does not have jurisdiction over a dispute, time frames related to good faith negotiations and notice for BBPA arbitration are modified.

Sections 11 and 18 provide for use of BBPA arbitration process in limited circumstances for services that are subject to balance billing protections when a carrier and an out-of-network provider or facility cannot reach agreement on a contract and an amended alternative access delivery request (AADR) has been approved by OIC. OIC must approve use of this arbitration process. The bill includes some provisions that

apply specifically to arbitration proceedings in these circumstances, some of which are listed below:

- Section 11 (13)(a): The issue before the arbitrator is the commercially reasonable payment for services addressed in AADR.
- Section 18 (13)(b): During the period from the effective date of the amended AADR to issuance of the arbitrator's decision, the allowed amount paid to providers or facilities for services addressed in the amended AADR, shall be a commercially reasonable amount, based on payments for the same or similar services provided in a similar geographic area.
- Section 11 (13)(a): The arbitrator shall issue a decision related to whether payment for services should be made at the final offer amount of the carrier or the out-of-network provider or facility. The arbitrator's decision is final and binding on the parties for services rendered to enrollees from the effective date of the amended AADR to the expiration date of AADR or the date the parties enter into a provider contract and provider compensation agreement, whichever occurs first.
- Section 11 (13)(c): For these disputes, BBPA arbitration process will continue to be used, rather than transitioning to NSA IDR system in 2023.

9. Network Adequacy - Section 18: Under section 18, when determining the adequacy of a carrier's provider network, OIC must review the network to determine whether it includes a sufficient number of facility-based providers at the carrier's in-network hospitals and ambulatory surgical facilities. Section 18(1). OIC may allow carriers to submit an AADR to address a gap in their provider network. AADR must meet the requirements detailed under section 18(2).

For services subject to the balance billing prohibition, a carrier cannot treat their payment of out-of-network providers or facilities under BBPA or NSA as a means to satisfy OIC's network access standards. Section 18 (2)(b). However, if an AADR has been granted and a carrier meets the following requirements, a carrier may ask OIC to amend its AADR to allow use of BBPA dispute resolution process to determine the amount that will be paid to out-of-network providers or facilities for the services referenced in AADR. Section 18 (2)(b). The carrier must meet the following requirements:

- The carrier's request to amend AADR is made at least three months after the effective date of AADR at issue; and
- During that three-month period, the carrier has demonstrated substantial good faith efforts on its part to contract with out-of-network providers or facilities to deliver the services referenced in AADR. Section 18 (2)(b)(i).

For services subject to balance billing protections, a carrier must notify out-of-network providers that deliver the services referenced in the AADR within five days of submitting the AADR to OIC. Section 18 (2)(b). Once a carrier has notified an out-of-network provider or facility that delivers the services referenced in an AADR, a carrier is not responsible for reimbursing a provider's or facility's charges in excess of the amount charged by the provider or facility for the same or similar service at the time the notification was provided. Section 18 (2)(b)(ii). The provider or facility must accept this reimbursement as payment in full. *Id.*

10. Consumer Appeals to Independent Review Organization (IRO) - Section 4, amending RCW 48.43.535: Section 4(2) adds an NSA provision

which provides consumers an opportunity to appeal a carrier's adverse decision related to its obligations under NSA.

Rule Making: OIC plans to conduct rule making in the next several months. Rule making will address several of the topics discussed in this TAA.

OIC Enforcement: Aside from a few deferments described in the next section, OIC will enforce E2SHB 1688[8] and other federal NSA provisions not specifically addressed in E2SHB 1688 pertaining to health carriers for health plans starting on or after January 1, 2022.[9] Where there is any conflict between the provisions of E2SHB 1688 and OIC's regulations previously adopted to implement BBPA, the provisions of E2SHB 1688 govern.

8 *See* sections 5 and 19 of E2SHB 1688.

9 *See* WAC 284-43-0140 (health carriers shall comply with all Washington state and federal laws relating to the acts and practices of carriers and laws relating to health plan benefits).

Additionally, the following provisions of NSA, are not specifically discussed in the bill; however, OIC notes health carriers are required to comply with them:

- Requirements for in-network cost-sharing for enrollees that relied on an issuer's databases, response protocols, or provider directory representations that a provider was in-network.[10]
- Prohibition on balance billing for "continuing care patients" for 90 days after a provider becomes OON.[11]

10 *See* section 116(b) of NSA.

11 *See* section 113 of NSA.

NSA preempts state laws only when those laws impose a requirement that "prevents the application" of NSA.[12] Based upon this principle and a few NSA provisions expressly deferring to state law, OIC will continue to enforce related state laws related to provider directories.[13]

12 *See* 42 U.S.C. § 300gg-23 (a)(1); 86 Fed. Reg. at 36,886.

13 *See* section 116(a) of NSA (deferring to state laws relating to provider directories).

Deferred Enforcement: OIC will defer enforcement against some entities due to jurisdictional limitations, and with respect to some provisions of NSA. This decision is in alignment with deferment recently announced by the departments of Health and Human Services, Labor, and Treasury (collectively referred to as "the departments"). Due to jurisdiction limitations, OIC will defer to other state or federal agencies for enforcement regarding the following entities:

- Air ambulances;[14]
- Self-funded group health plans that have not elected to participate in BBPA; and
- Health providers and facilities.[15]

14 *See* 86 Fed. Reg. at 36,885.

15 Pursuant [to] RCW 48.49.100, OIC will continue to give providers and facilities an opportunity to cure violations of RCW 48.49.020 or 48.49.030.

Additionally, OIC will defer enforcement for some of NSA provisions in accordance with the deferred enforcement policy announced by the departments, August 20, 2021, in a set of frequently asked questions (FAQs).[16] In accordance with these FAQs, OIC will defer enforcement for the following NSA provisions:

16 *See* "FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49 (FAQs)," Aug. 20, 2021, *available at*: https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/FAQs%20About%20ACA%20%26%20CAA%20Implementation%20Part%2049_MM%20508_08-20-21.pdf. Additionally, the departments announced deferment of a few non-FNSA provisions, namely the requirement that issuers publish machine-readable files relating to prescription drug pricing. *Id.*at 1 (citing 85 Fed. Reg. 72,158 (Nov. 12, 2020); 26 C.F.R. § 54.9815-2715A3 (b)(1)(iii), 29 C.F.R. § 2590.715-2715A3 (b)(1)(iii), and 45 C.F.R. § 147.212 (b)(1)(iii)). Deferment will be until regulations to fully implement this requirement are adopted and applicable. *Id.* at 1-2 (describing deferment). The departments will defer enforcement of the requirement to publish the remaining machine-readable files until July 1, 2022. *Id.* at 2. OIC will similarly defer enforcement.

- Requirements for making available a price comparison tool (by internet website, in paper form, or telephone). Deferment will be up until plan years (in the individual market, policy years) beginning on or after January 1, 2023.[17]
- Requirements for providing an advanced explanation of benefits.[18] Deferment will be until regulations fully implementing this requirement are adopted and applicable.[19]

17 *Id.* at 3-4 (citing Internal Revenue Code (Code) § 9819, Employee Retirement Income Security Act (ERISA) § 719, and Public Health Service (PHS) Act § 2799A-4, as added by section 114 of NSA).
18 *Id.* at 6 (citing Code § 9816(f), ERISA § 716(f), and PHS Act § 2799A-1(f), as added by section 111 of NSA).
19 *Id.* at 7 (describing deferment).

OIC will continue to enforce any state law counterpart to these NSA provisions, including, but not limited to the following:

- Requirements for transparency tools for price and quality information.[20]
- Requirements for enrollee notification upon termination of a provider by a health carrier.[21]

20 *See* RCW 48.43.007.
21 WAC 284-170-421(10).

The departments also detailed provisions of NSA[22] that issuers must implement using a good faith, reasonable interpretation of the law, without the guidance of regulations. OIC will enforce the following provisions in the same manner as announced by the departments:

22 Additionally, the departments detailed a few non-FNSA provisions it will expect issuers to implement using a good faith, reasonable interpretation of the law, including requirements prohibiting gag clauses. *See* FAQs at 7 (citing Code § 9824, ERISA § 724, and PHS Act § 2799A-9, as added by section 201 of division BB, title II, of CAA). OIC will enforce these provisions in the same manner as the departments.

- Requirements to include on any insurance identification card issued to enrollees, any applicable deductibles, any applicable out-of-pocket maximum limitations, and a telephone number and website address for individuals to seek assistance.[23]
- Requirements to establish a process to update and verify the accuracy of provider directory information and to establish a protocol for responding to requests by telephone and electronic communication from an enrollee about a provider's network participation status.[24]
- Prohibition on cost-sharing when an enrollee relied on the issuer's provider directory or response protocol.[25]
- Requirements to make certain disclosures regarding balance billing protections to enrollees.[26]
- Requirements to apply continuity of care protections.[27]

23 *Id.* at 4-5 (citing Code § 9816(e), ERISA § 716(e), and PHS Act § 2799A-1(e), as added by section 107 of NSA).
24 *Id.* at 7-8 (citing Code § 9820 (a) and (b), ERISA § 720 (a) and (b), and PHS Act § 2799A-5 (a) and (b), as added by section 116(a) of NSA). However, given the deferment to state law in section 116(a) of NSA, OIC will only enforce these FNSA provisions against health carriers for plans and services not subject to BBPA but subject to OIC's jurisdiction, e.g., grandfathered health plans.
25 *Id.*
26 *Id.* at 8-9 (citing Code § 9820(c), ERISA § 720(c), and PHS Act § 2799A-5(c), as added by section 116(c) of NSA).
27 *Id.* at 9 (citing Code § 9818, ERISA § 718, and PHS Act § 2799A-3 and 2799B-8, as added by section 113 of NSA).

Consumer Notice: OIC is required to develop standard template language for a notice of consumer rights that notifies consumers of their rights under both BBPA and NSA. Section 13(1). OIC determines by rule when and how the notice must be provided to consumers by health

carriers, health care providers, and health care facilities. Section 18(3).[28]

28 *See* WAC 284-43B-050.

OIC is developing a consumer notice for balance billing rights that satisfies both NSA and E2SHB 1688.[29] OIC's consumer notice should be used for fully insured health plans, PEBB/SEBB plans, and self-funded ERISA plans that have opted into BBPA. Under BBPA, this notice must be provided to enrollees in any communication that authorizes nonemergency surgical or ancillary services at an in-network facility.[30] Also, the issuer must indicate on the enrollee's explanation of benefits whether the service is subject to balance billing protections.[31] OIC will continue to enforce these BBPA consumer notice requirements against health carriers.

29 The draft notice has been circulated for review and comment. When the E2SHB 1688 Consumer Notice is finalized, it will be posted on OIC's website and shared through a GovDelivery notice; *see also* Code § 9820(c), ERISA § 720(c), and PHS Act § 2799A-5(c), as added by section 116(c) of NSA.

30 *See* WAC 284-43B-050 (2)(a)(i).

31 *See* WAC 284-43B-050 (4)(a).

Please direct any questions about this advisory to Jane Beyer, Senior Health Policy Advisor, who may be contacted at janeb@oic.wa.gov or phone 360-725-7043.

WSR 22-08-072
DEPARTMENT OF AGRICULTURE
[Filed April 5, 2022, 8:45 a.m.]

LEGAL NOTICE FOR SPARTINA TREATMENTS

The Washington state department of agriculture (WSDA) is hereby notifying the affected public that the herbicides imazapyr and glyphosate may be used to control invasive *Spartina* grass species between June 1 and November 30, 2022.

Licensed pesticide applicators operating under WSDA's national pollutant discharge elimination system (NPDES) state waste discharge general permit may apply these products in the following locations: Grays Harbor, Hood Canal, Willapa Bay, Puget Sound, the north and west sides of the Olympic Peninsula, and the mouth of the Columbia River.

For more information, including locations of possible application sites or information on *Spartina*, contact WSDA *Spartina* control program, phone 360-902-2070, email pestprogram@agr.wa.gov, or website https://agr.wa.gov/departments/insects-pests-and-weeds/weeds/spartina; or write WSDA *Spartina* Program, P.O. Box 42560, Olympia, WA 98504-2560.

The Washington state department of ecology number for reporting concerns about *Spartina* treatments is 360-407-6600.

WSR 22-08-074
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE PROPOSED AMENDMENTS TO GR 11.3— REMOTE INTERPRETATION) ORDER NO. 25700-A-1414

The Washington State Supreme Court Interpreter Commission, having recommended the adoption of the proposed amendments to GR 11.3—Remote Interpretation, 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 31st day of March, 2022.

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

GR 11.3

REMOTE ~~INTERPRETATION~~ INTERPRETING

(a) ~~Whenever an interpreter is appointed in a legal proceeding, the interpreter shall appear in person unless the Court makes a good cause finding that an in-person interpreter is not practicable, and where it will allow the users to fully and meaningfully participate in the proceedings. The court shall make a preliminary determination on the record, on the basis of testimony of the person utilizing the interpreter services, of such ability to participate and if not, the court must provide alternative access.~~ Interpreters may be appointed to provide interpretation via audio only or audio-visual communication platforms for nonevidentiary proceedings. For evidentiary proceedings, the interpreter shall appear in person unless the court makes a good cause finding that an in-person interpreter is not practicable. The court shall make a preliminary determination on the record, on the basis of the testimony of the person utilizing the interpreter services, of the person's ability to participate via remote interpretation services.

Comment

[1] ~~Section (a) is a significant departure from prior court rule which limited the use of telephonic interpreter services to non-evidentiary hearings.~~ While remote interpretation is permissible, in-person interpreting services are the primary and preferred way of providing interpreter services for legal proceedings. Because video remote

interpreting provides ~~the~~ participants ~~litigants~~ and interpreters the ability to see and hear all parties, it is more effective than telephonic interpreter services. Allowing remote interpretation for evidentiary hearings will provide flexibility to courts to create greater accessibility. However, in using this mode of delivering interpreter services, where the interpreter is remotely situated, courts must ensure that the remote interpretation is as effective and meaningful as it would be in person and that the LEP (Limited English Proficient) ~~litigant~~ person or person with hearing loss is provided full access to the proceedings. Interpreting in courts involves more than the communications that occur during a legal proceeding, and courts utilizing remote interpretation should develop measures to address how LEP and persons with hearing loss will have access to communications occurring outside the courtroom where the in-person interpreter would have facilitated this communication. Courts should make a preliminary determination on the record regarding the effectiveness of remote interpretation and the ability of the LEP ~~litigant~~ person or person with hearing loss to meaningfully participate at each occurrence because circumstances may change over time necessitating an ongoing determination that the remote interpretation is effective and enables the parties to meaningfully participate.

Interpreting in courts involves more than the communications that occur during a legal proceeding, and courts utilizing remote interpretation should develop measures to address how LEP persons and persons with hearing loss will have access to communications occurring outside the courtroom where the in-person interpreter would have facilitated this communication. Courts should make a preliminary determination on the record regarding the effectiveness of remote interpretation and the ability of the person utilizing the interpreter service to meaningfully participate at each occurrence, because circumstances may change over time necessitating an ongoing determination that the remote interpretation is effective and enables the parties to meaningfully participate.

(b) Chapters 2.42 and 2.43 RCW and GR 11.2 must be followed regarding the interpreter's qualifications and ~~c~~Code of ~~p~~Professional ~~r~~Responsibility for J~~j~~udiciary I~~i~~nterpreters.

Comment

[2] Section (b) reinforces the requirement that interpreters appointed to appear remotely must meet the qualification standards established in chapters 2.42 and 2.43 RCW and they must be familiar with and comply with the code of professional responsibility for judiciary interpreters. Courts are discouraged from using telephonic interpreter service providers who cannot meet the qualification standards outlined in chapters 2.42 and 2.43 RCW.

(c) In all remote interpreting court events, both the ~~litigant~~ LEP Individual and the interpreter must have clear audio of all participants throughout the hearing. In video remote court events, the ~~litigant~~ person with hearing loss and the interpreter must also have a clear video image of ~~the~~ all participants throughout the hearing.

Comment

[3] Section (c) discusses the importance of courts using appropriate equipment and technology when providing interpretation services through remote means. Courts should ensure that the technology provides clear audio and video, where applicable, to all participants. Because of the different technology and arrangement within a given

court, audio transmissions can be interrupted by background noise or by distance from the sound equipment. This can limit the ability of the interpreter to accurately interpret. Where the ~~litigant~~ LEP person or person with hearing loss is also appearing remotely, as is contemplated in (h), courts should also ensure that the technology allows ~~litigants~~ for full access to all visual and auditory information.

When utilizing remote video interpreting for persons with hearing loss, the following performance standards must be met: real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; a sharply delineated image that is large enough to display the ~~interpreter and person using sign language's face, arms, hands, and fingers~~ the face, arms, hands, and fingers of both the interpreter and the person using sign language; and clear, audible transmission of voices.

(d) If the telephonic or video technology does not allow simultaneous interpreting, the hearing shall be conducted to allow consecutive interpretation of all statements.

(e) The court must provide a means for confidential attorney-client communications during hearings, and allow for these communications to be interpreted confidentially.

Comment

[4] Section (e) reiterates the importance of the ability of individuals to consult with their attorneys, throughout a legal proceeding. When the interpreter is appearing remotely, courts should develop practices to allow these communications to occur. At times, the court interpreter will interpret communications between an LEP or Deaf litigant and an attorney just before a hearing is starting, during court recesses, and at the conclusion of a hearing. These practices should be supported even when the court is using remote interpreting services.

(f) To ensure accuracy of the record, ~~the court and the parties should~~, where practicable, courts should provide the following to the interpreter, electronically or by other means, in advance of the hearing, allowing the interpreter sufficient time to review the information and prepare for the hearing:

(i) Case information and documents pertaining to the hearing.

(ii) Names and spellings of all participants in the hearing to include but not limited to: litigants, judge, attorneys, and witnesses.

(iii) Evidence related to the hearing, to include but not limited to: documents, photographs and images, audio and video recordings and any transcription or translations of such materials.

(g) Written documents, the content of which would normally be interpreted, must be read aloud by a person other than the interpreter to allow for full interpretation of the material by the interpreter.

(h) An audio recording shall be made of all statements made on the record during their interpretation, and the same shall be preserved. Upon the request of a party, the court may make and maintain ~~an audio~~ recording of the spoken language interpretations or a video recording of the signed language interpretations made during a hearing. Any recordings permitted by this subparagraph shall be made and maintained in the same manner as other audio or video recordings of court proceedings. ~~This subparagraph shall not apply to court interpretations during jury discussions and deliberations.~~

Comment

[5] Section (h). For court interpreting, it is the industry standard to use simultaneous interpreting mode when the LEP or Deaf individual is not an active speaker or signer. The use of consecutive interpreting mode is the industry standard for witness testimony where the witness is themselves LEP or Deaf. This allows for the English interpretation to be on the record. This section also addresses situations where, at the request of a party, the court is to make a recording of the interpretation throughout the hearing, aside from privileged communications. If the court is not able to meet this requirement, an in-person hearing is more appropriate to allow recording of both the statements made on the record and the interpretation throughout during the hearing. Recordings shall not be made of interpretations during jury discussions and deliberations off the record.

(i) When using remote interpreter services in combination with remote legal proceedings, courts should ensure the following: the LEP person or person with hearing loss is able to access the necessary technology to join the proceeding remotely; the remote technology allows for confidential attorney-client communications, or the court provides alternative means for these communications; the remote technology allows for simultaneous interpreting, or the court shall conduct the hearing using ~~with~~ consecutive interpretation and take measures to ensure interpretation of all statements; translated instructions on appearing remotely are provided, or alternative access to this information is provided through interpretation services; audio and video feeds are clear; and judges, court staff, attorneys, and interpreters are trained on the use of the remote platform.

Comment

[~~5~~6] Section (~~h~~i) contemplates a situation where the legal proceeding is occurring remotely, including the interpretation. In this situation, all or most parties and participants at the hearing are appearing remotely and additional precautions regarding accessibility are warranted. This section highlights some of the additional considerations courts should make when coupling remote interpretation with a remote legal proceeding.

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.

WSR 22-08-075
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE PROPOSED AMENDMENTS TO GR 31—ACCESS TO COURT RECORDS AND CrR 2.1— THE INDICTMENT AND THE INFORMATION	)))))	ORDER NO. 25700-A-1415

The Washington State Office of Public Defense and the Minority and Justice Commission, having recommended the adoption of the proposed amendments to GR 31—Access to Court Records and CrR 2.1—The Indictment and the Information, 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 31st day of March, 2022.

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

GR 31
ACCESS TO COURT RECORDS

(a)-(d) [Unchanged.]

(e) Personal Identifiers Omitted or Redacted from Court Records.

(1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

(A)-(C) [Unchanged.]

(D) In a juvenile offender case, the parties shall caption the case using the juvenile's initials. The parties shall refer to the juvenile by their initials throughout all briefing and pleadings.

(2) [Unchanged.]

(f)-(k) [Unchanged.]

CrR 2.1
THE INDICTMENT AND THE INFORMATION

(a) Use of Indictment or Information. The initial pleading by the State shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(1) [Unchanged.]

(2) *Contents*. The indictment or the information shall contain or have attached to it the following information when filed with the court:

(i) the name, or in the case of a juvenile respondent the initials, address, date of birth, and sex of the defendant;

(ii) [Unchanged.]

(b)-(e) [Unchanged.]

WSR 22-08-076
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO GR 31—ACCESS TO COURT RECORDS	)))	ORDER NO. 25700-A-1416

The Washington State Office of Public Defense and the Minority and Justice Commission, having recommended the adoption of the suggested amendments to GR 31—Access to Court Records, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

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

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

DATED at Olympia, Washington this 31st day of March, 2022.

	Gonzalez, C.J.
Johnson, J.	Gordon McCloud, J.
Madsen, J.	Yu, J.
Owens, J.	Whitener, J.

GR 31
ACCESS TO COURT RECORDS

(a)-(c) [Unchanged.]

(d) Access.

(1) [Unchanged.]

(2) Information from an official juvenile offender court record shall not be displayed on a publicly accessible website. The only exception to this rule is if the website is accessed from a physical county clerk's office location.

~~(2)~~ (3) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.

~~(3)~~ (4) A fee may not be charged to view court records at the courthouse.

(e)-(f) [Unchanged.]

(g) Bulk Distribution of Court Records.

(1) [Unchanged.]

(2) Dissemination contracts shall not include the dissemination or distribution of juvenile court records.

~~(2)~~ (3) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

~~(3)~~ (4) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

(h)-(k) [Unchanged.]

WSR 22-08-077
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO GR 23—RULE FOR CERTIFYING PROFESSIONAL GUARDIANS AND CONSERVATORS	)))))	ORDER NO. 25700-A-1417

Deborah Jameson, having recommended the adoption of the suggested amendments to GR 23—Rule for Certifying Professional Guardians and Conservators, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

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

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

DATED at Olympia, Washington this 31st day of March, 2022.

	Gonzalez, C.J.
Johnson, J.	
Madsen, J.	Yu, J.
Owens, J.	Whitener, J.
Stephens, J.	

GR 23
RULE FOR CERTIFYING PROFESSIONAL GUARDIAN BOARD
AND CONSERVATORS

(a)-(b) [Unchanged.]

(c) Certified Professional Guardianship and Conservatorship Board.

(1) *Establishment*.

(i) Membership. The Supreme Court shall appoint a Certified Professional Guardianship and Conservators Board (Board) of 12 or more members. The Board shall include representatives from the following areas of expertise: professional guardians and conservators; attorneys; advocates for individuals subject to guardianship and conservatorship; courts; state agencies; and those employed in medical, social, health, financial, or other fields pertinent to guardianships and conservatorships. ~~No more than one-third of the Board membership shall be practicing professional guardians and conservators.~~

(ii)-(iv) [Unchanged.]

(2) [Unchanged.]

(3) *Duties and Powers*.

(i)-(xi) [Unchanged.]

(xii) Meetings. The Board shall hold meetings as determined to be necessary by the Chair. Meetings of the Board will be open to the public except for executive session, review panel, or disciplinary meetings prior to filing of a disciplinary complaint. Executive session

shall be limited to discussion of applications and disciplinary matters. The Open Public Meetings Act, ch. 42.30 RCW, shall apply to the Board.

(xiii) [Unchanged.]

(4)-(9) [Unchanged.]

(d)-(i) [Unchanged.]

WSR 22-08-078
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE PROPOSED NEW GENERAL RULE [GR 40]— INFORMAL FAMILY RELATIONS TRIAL [REVISED PROPOSAL]	))))	ORDER NO. 25700-A-1418

D.C. Cronin/ad hoc workgroup, having recommended the proposed new General Rule [GR 40]—Informal Family Relations Trial [Revised Proposal], and the Court having approved the proposed new general rule for publication on an expedited basis;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed new general rule as shown below is to be published expeditiously for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites.

(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 June 30, 2022. 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 31st day of March, 2022.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

COVER SHEET FOR NEW (REVISED) GENERAL RULE PROPOSAL
INFORMAL FAMILY RELATIONS TRIALS

Proponents: Dennis "D.C." Cronin, WSBA No. 16018, 724 N. Monroe Street, Spokane, WA 99201, joined by Commissioner Jennie Laird (King County Superior Court, in her individual capacity), and Justice Mary Yu.

Purpose: See original GR 9 Cover Sheet.

The original proposed rule for Informal Family Law Trials generated a number of helpful comments. Rather than pass or reject the Rule, the Rules Committee authorized Justice Yu to explore revisions to the proposal with the proponent. Justice Yu met with the proponents and Commissioner Jennie Laird, co-Chair of the SCJA Juvenile and Family Law Committee, and requested that they review the comments and make suggestions that might address some of the comments.

After several revisions and discussions with some of the stakeholders, including the SCJA, the attached revisions are being proposed for publication and comment. The proponent accepted the modifications and are persuaded that the changes address the concerns reflected in the comments

Public Hearing: Not requested

Expedited Consideration: Expedited publication and a shortened comment period are requested because there are courts who are conducting informal trials and many other courts who wish to adopt the practice.

SUGGESTED [NEW] GENERAL RULE 40 INFORMAL FAMILY LAW TRIAL (IFLT)

1. Upon the consent of both parties and with approval of the court, Informal Family Law Trials (IFLT) may be held to resolve any or all issues in original actions or modification for dissolution of marriage, separate maintenance, invalidity, child support, parenting plans, residential schedules, relocation, child custody, and other family law matters as established by statute.

2. The parties may select an IFLT within 30 days before trial or trial setting if no trial date is set at filing, or as otherwise directed by local court rule. Parties must file a Trial Process Selection and Waiver for IFLT that is in substantial compliance with the attached form, until a pattern form is developed by the Administrative Office of the Courts. This form shall be accepted by all superior courts, but may be modified to conform to local rule practices, provided local rule practices do not nullify this rule and/or the implementation of this rule.

3. When a trial is conducted pursuant to this rule, in accordance with ordinary trial management, the trial judge shall retain discretion to modify any of these procedures as justice and fundamental fairness require, with prior notice to the parties.

(a) At the beginning of an IFLT, the parties will be asked to affirm that they understand the rules and procedures of the IFLT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the IFLT process.

Parties must affirm that they waive the right to appeal the court's use of the IFLT process and the court's admission of evidence pursuant to the IFLT process that is not consistent with the traditional court process, court rules, and Rules of Evidence. However, nothing in this rule prevents a party from filing a direct appeal of any final judgment or order at the conclusion of the IFLT.

(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.

(c) The moving party will be allowed to address the Court under oath concerning all issues in dispute. A represented party is not questioned by their counsel, but may be questioned by the Court to develop evidence required by any statute or rule; for example, the applicable requirements of the Washington State Child Support Schedule if child support is at issue. A party may also present up to five declarations (limited to 20 pages total) from lay persons who would otherwise be called as a witness.

(d) The parties will not be subject to cross-examination unless permitted by the Court. However, the Court will ask the nonmoving party or their counsel whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.

(e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

(f) Expert reports will be received as exhibits. Upon request of either party, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

(g) The Rules of Evidence shall not apply to the proceedings. The judicial officer hearing the matter shall determine the credibility and weight of the evidence that is offered.

(h) The Court shall receive and admit exhibits offered by the parties. The Court will determine what weight, if any, is given to each exhibit. The Court may order the record to be supplemented. The process for submitting, filing, and storing exhibits shall be governed by local rule.

(i) The parties or their counsel shall then be offered the opportunity to respond briefly to the statements of the other party.

(j) The parties or their counsel shall be offered the opportunity to make a brief legal argument.

(k) At the conclusion of the case, the Court shall make its ruling or may take the matter under advisement, and make every effort to issue prompt rulings no later than the 90 day statutory requirement. Findings shall be made and orders entered consistent with statutes and case law.

(l) The Court may modify these trial procedures as justice and fundamental fairness requires.

4. The Court may refuse to allow the parties to utilize the IFLT, or a party who has previously agreed to proceed with an IFLT may file a motion to opt out of the IFLT at any time, including after an IFLT has started but before a ruling has been issued.

(a) If the parties request an informal family law trial after a traditional trial has started, the court should consider whether enforcement of traditional trial rules after the IFLT has started will prejudice either party or the best interests of any child. The decision to continue with a traditional trial shall be left to the discretion of the judicial officer hearing the matter.

(b) A change in the type of trial to be held may result in a change of the trial date.

SUGGESTED RULE COVER SHEET

GENERAL STATEWIDE INFORMAL DOMESTIC RELATIONS TRIAL (IDRT)

GR9 (e)(2)(A) Name of Proponent: Dennis "D.C." Cronin, WSBA No. 16018, 724 N. Monroe Street, Spokane, WA. 99201.

GR9 (e)(2)(B) Spokesperson: D.C. Cronin, WSBA No. 16018, 724 N. Monroe Street, Spokane, WA 99201.

GR9 (e)(2)(C) Purpose—the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules

The challenges of 2020 have afforded unprecedented opportunities. Advancing equitable access to justice commitments of statewide agencies, organizations, and individuals seeking to collaborate and coordinate efforts, a statewide Informal Domestic Relations Trial (IDRT) Rule affords families the opportunity for equitable accessible substantive and procedural justice regardless of geographical circumstance.

To equitably access substantive and procedural justice in all Superior Court Domestic Relations systems, the people of Washington State imminently require innovative, timely, cost effective, and efficient transformative options statewide.

A general statewide IDRT Rule promotes a less adversarial process for families and provides consistency in procedural process, thereby reducing associated risks of trauma compounded within the system itself and helping to address access barriers for many experiencing the

legal system in domestic relations cases-overwhelmingly those most disparately impacted by the justice system as a whole, including people of color, victims of domestic and sexual violence, self-represented and low-income persons-as they maneuver through an overburdened legal system.[1]

1 https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf

In 2008, Barbara Babb, author of *Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems* wrote, "Court reform relative to family law matters has risen steadily over the past decade. States have restructured their justice systems to handle increasingly complex family law cases and burgeoning family law caseloads."[2]

2 *Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems*, Barbara A. Babb, 46 Fam. Ct. Rev. 230, 230 (2008) (footnote omitted)

And, as Rebecca Aviel noted in the 2018 Fordham Law Review article Family Law and the New Access to Justice,[3] "Family court … reformers are implementing transformative changes that are consistent with access-to-justice values: these reforms are delivering dispute-resolution mechanisms that are faster, cheaper, and easier to maneuver, particularly for self-represented litigants."

3 Family Law and the New Access to Justice, 86 Fordham L. Rev. 2279 (2018)

The suggested Rule is not in conflict with existing statutes, case law or other court rules and is similar to *Thurston County LSPR 94.03F Informal Family Law Trials* [Updated Rule, January 13, 2020] and *King County Emergency Local Rule Amendment LFLR 23. Informal Family Law Trials effective September 2020.* Uniform, comprehensive Washington State domestic relations reform has intersectional systemic impacts, and an IDRT rule may provide a beneficial resource to superior courts and others committed to the equitable access to justice. The suggested rule recognizes the inherent authority and duty of all courts to manage their own affairs, so as to achieve the orderly and expeditious disposition of cases, prevent undue congestion in the court system, conserve scarce judicial resources, and manage caseloads fairly and expeditiously for *all justice-involved persons in Washington State*.

As the 2015 report *Escalating Costs of Civil Litigation in Washington* recommended, there is a basis for a two-tier litigation model in Washington superior courts. The IDRT is complimentary to such a two-tier system recommended by the task force. While not specifically recommended in the *July 2016 Washington State Bar Association (WSBA) Board of Governors (BOG) Report*, the BOG Task Force acknowledged family law has a "constellation of concerns" and reserved further consideration of recommendations within the Escalating Costs of Civil Litigation (ECCL) Task Force "to future efforts except to the extent its recommendations also address this area of the law."

Similarly, the October 2015 Washington State Supreme Court Civil Legal Needs Study Update Committee chaired by Justice Wiggins identified "Family Related Problems" as a "Substantive Problem Area." The 2017 Legal Services Corporation report, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low Income Americans* indicates, "Twenty-seven percent of households with parents or guardians of children under the age of 18 have experienced a civil legal problem related to children or custody" between 2016 and 2017. In addition, the report identified civil legal problems related to family affect 17% of all low-income households, including domestic violence or sexual assault and filing for divorce or legal separation.

The suggested statewide rule for an IDRT option is an effort to provide access to justice in family law matters for unrepresented families in *all* Washington State superior courts. The IDRT also provides access to those individuals across Washington who can afford the Traditional Domestic Relations Trial, but elect not to do so, seeking a less adversarial resolution to their domestic legal matters.

Despite the investments of talent and resources of many during the past two decades, including the Washington State Supreme Court and the Office of Civil Legal Aid, Board of Judicial Administration (BJA), and other qualified entities, Washington courts and domestic relations practice continue to lag "behind the times" in transformative reform. Adoption of an IDRT Rule is where Washington State can begin, truly, as the Civil Legal Needs Study opined, meeting "the challenge" by "turning findings to action."[4]

4 2015 Civil Legal Needs Study Update.

While family law practitioners and the public may experience "silo effects" as local jurisdictions attempt to formulate local rules in response to domestic relations administrative issues, Washington State has a wealth of existing research and resources available for collaboration including, but not limited to, the (ATJ), BJA, WSBA, ATJ, ECCL, Family and Juvenile Court Improvement Program, Unified Family Court program, Supreme Court and, our law schools, as well as professional associations. In light of the urgency due to COVID related impacts, implementation of a statewide IDRT Rule provides an opportunity for comprehensive statewide uniform domestic relations reform, providing best practice guidance as multiple local and statewide court recovery and unrepresented litigant groups discuss how to best move forward.

Our surrounding geographical neighbors in Oregon, Idaho, and Alaska, implemented IDRT standards as early as 2015. A similar rule is in effect in Utah, and in 2017, a pilot program was launched in the Seventh Judicial District in Iowa, resulting in the Iowa Judicial Branch Informal Family Law Trial, implemented statewide by order of the Iowa State Supreme Court on December 1, 2020. Similarly, the 2018-2021 long-range plan from the Florida Commission on Access to Civil Justice includes study and research of IDRT.

In **Alaska**, the Rule, as amended through July 25, 2019, governing the IDRT is found at Alaska R. Civ P. 16.2. In **Idaho** the Informal Domestic Relations trial rule is found at Idaho Rule of Family Procedure 713. In **Oregon** the IDRT is found at UTCR 8.120. under Chapter 8: Domestic Relations Proceedings. In **Utah** the rule is found at Utah District Court Rule 4-904. Information concerning the Informal Family Law Trial Pilot Program can be accessed through the District Court Administration for the Seventh Judicial District of Iowa.

Further information from **Alaska** explaining and supporting an IDRT rule can be found at Alaska Court System Self Help Center: Family Law.

Further information from **Oregon**, explaining the differences between Informal and Traditional Domestic Relations Trials can be found at: Oregon Judicial Branch: Informal Family Law Trials.

Further information from **Idaho** can be found at Idaho Rules of Family Law Procedure Rule 713. Informal Trial.

Further information from **Iowa** can be found at Iowa State Supreme Court December 1, 2020 Order and Iowa Judicial Branch Informal Family Law Trial Program.

Further information from **Utah** can be found at Utah Courts Informal Trial of Support, Custody and Parent-Time.

See also, William J. Howe III & Jeffrey E. Hall, *Oregon's Informal Domestic Relations Trial: A New Tool To Efficiently and Fairly Manage Family Court Trials*, 55 Fam. Crt. Rev., 70 (2017).

GR9 (e)(2)(D) Hearing: Due to the implementation of Thurston County, LSPR 94.03F Informal Family Law Trials [Updated Rule, January 13, 2020] and King County Emergency Local Rule Amendment LFLR 23 Informal Family Law Trials effective September 2020 as well as the number of longstanding published Washington State committee and task force reports, data, research, and studies containing recommendations to overcome barriers to equal access to justice, it is not believed a public hearing regarding a general statewide Informal Domestic Relations Trial suggested rule is necessary.

In addition, information from the currently implemented Informal Domestic Relations Trials in Alaska, Idaho, Iowa, Oregon and Utah Courts is readily accessible.

GR9 (e)(2)(E) Expedited Consideration: 2020 has presented unprecedented challenges and unprecedented opportunities, as evidenced by the dedication of countless individuals in local jurisdictions as well as through statewide task forces and workgroups addressing best practices during court recovery. The opportunity to uniformly impact barriers impacting equitable access to justice is now.

The Board for Judicial Administration recommends domestic case standards of "90 percent of all domestic relations cases should be adjudicated within 10 months of the date of filing of the information, 98 percent within 14 months of filing, and 100 percent within 18 months". Yet in 2019, 11,125 families[5], up from 9,162 families in 2018, had domestic relations cases pending resolution over 18 months in Washington State Superior Courts[6], as opposed to 2,371 families with domestic relations cases pending resolution over 18 months in 2000.[7]

5 Superior Court 2019 Domestic Relations Case Management Statistics
6 Superior Court 2018 Annual Caseload Report
7 Superior Court 2000 Annual Caseload Report

While the case management percentages may appear to have remained fairly consistent on paper, we have yet to see the 2020 impact COVID will have on these statistics. Yet, the number of cases reported do not reflect the financial and psychological impact of backlogged, delayed, and adversarial legal proceedings experienced by children, youth, parents, relatives and employers throughout our state, most often the most vulnerable, marginalized, and impoverished members of our communities. COVID has only made matters more traumatic and as such, expedited consideration of a statewide rule is warranted for families, courts, and communities.

Even before COVID brought attention to the imminent need for civil legal equity throughout our state, one participant in the *October 2015 Washington State Supreme Court Civil Legal Needs Study Update* was quoted in the report as asking '"Will people in my position, or worse off than I, get any sort of meaningful help?"'. The reply, '"The answer to these questions, and so many others, is up to all of us."' Despite the Campaign for Equal Justice funding legal aid for 31,000 families in poverty in 2018, two years pre-COVID, at least 3 out of 4 low income individuals are not able to access legal assistance when it is needed.[8] Private practice attorneys provide valuable pro bono service. Yet, valuable hours of research and committee time have yielded no discernable implementation of recommendations designed specifically to address access to justice for *all*. There is a critical need for the

Court to address the domestic relations judicial process for low income and other marginalized families by implementation of a statewide rule, which regardless of geographical location and local court resources, can promote equity and consistency.

8 https://legalfoundation.org/the-campaign-for-equal-justice/

As noted by *Jane C. Murphy & Jana B. Singer, Moving Family Dispute Resolution from the Court System to the Community, 75 MD.L. REV. ENDNOTES 9 (2016),* "Everyone who works in family law … agrees on two things: family court is not good for families, and litigation is not good for children." Respectfully, it would appear that upon which we are not able to agree continues to cause barriers for implementing best practices for the families of Washington State.

Based upon nearly 20 years of research, studies, committees and task forces, respectfully, I request expeditious review and consideration of a statewide general IDRT system for domestic relations cases; a recommendation within the prevue and authority of the Washington State Supreme Court.

For disparately affected persons seeking timely and less traumatic adjudication of their domestic relations matters, as well as for the fiscal impact on counties and Superior Courts now exacerbated by the unprecedented COVID challenges of 2020 and beyond, expedited consideration is respectfully requested.

Respectfully Submitted this 16th day of December, 2020,

D.C. Cronin, WSBA No. 16018

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.

WSR 22-08-079
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO IRLJ 1.2, IRLJ 2.1, IRLJ 2.4, IRLJ 2.5, IRLJ 2.6, IRLJ 3.2, IRLJ 3.3, IRLJ 3.4, IRLJ 5.1, SUGGESTED NEW IRLJ 3.5, AND THE SUGGESTED REPEAL OF IRLJ 4.2	))))))))	ORDER NO. 25700-A-1419

The Northwest Justice Project, having recommended the suggested amendments to IRLJ 1.2, IRLJ 2.1, IRLJ 2.4, IRLJ 2.5, IRLJ 2.6, IRLJ 3.2, IRLJ 3.3, IRLJ 3.4, IRLJ 5.1, suggested new IRLJ 3.5, and the suggested repeal of IRLJ 4.2, and the Court having approved the suggested amendments for publication on an expedited basis;

Now, therefore, it is hereby

ORDERED:

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

(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 August 31, 2022. 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 31st day of March, 2022.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 22-09 issue of the Register.

WSR 22-08-080
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO GR 29—PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED JURISDICTION COURT DISTRICT	))))))	ORDER NO. 25700-A-1420

The Board for Judicial Administration, having recommended the suggested amendments to GR 29—Presiding Judge in Superior Court District and Limited Jurisdiction Court District, and the Court having approved the suggested amendments for publication on an expedited basis;

Now, therefore, it is hereby

ORDERED:

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

(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 June 30, 2022. 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 31st day of March, 2022.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

PROPOSED AMENDMENT TO RULE 29

1. Proponent Organization

Board for Judicial Administration Legislative Committee and the Administrative Office of the Courts

2. Spokesperson & Contact Info

Brittany Gregory, Associate Director of Judicial and Legislative Relations

Email: Brittany.Gregory@courts.wa.gov

Phone: 360-522-2911

3. Purpose of Proposed Rule Amendment

Washington has 29 courts that would qualify as a single judge court, meaning their court or judicial district has only one judge. If that judge becomes unavailable due to illness, incapacity, resignation, death, or other unavailability, there is no formal process in place for how a pro tem is chosen. The proposed rule amendment will

work in connection with BJA request-legislation to have judges in single judge courts designate someone as their pro tem, and give the Chief Justice the ability to fill a vacancy in a single judge court if no one is designated, or if the designee is unable to assume the position.

4. Is Expedited Consideration Requested?

Yes, because the amendment works in coordination with BJA request-legislation that creates a process for filling vacancies in single judge courts. If the bill passes in the 2022 legislative session, the latest the bill could be signed into law is March 31, 2022.

5. Is a Public Hearing Recommended?

No, I don't believe a public hearing is needed. This amendment has been thoroughly discussed by the BJA, and a hearing is not required by statute.

General Rule 29

PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED JURISDICTION COURT DISTRICT

(a) [Unchanged.]

(b) Selection, ~~and~~ Term, and Designation of Presiding Judge Pro Tempore—Single Judge Courts. In court districts or municipalities having only one judge, that judge shall serve as the Presiding Judge for the judge's term of office, and shall predesignate and prepare a Presiding Judge Pro Tempore to fulfill presiding judge duties in the case of illness, incapacity, resignation, death, or unavailability of the judge.

Commentary

In training and preparing the designated Presiding Judge Pro Tempore to fulfill presiding judge duties, a Presiding Judge from a single judge court should address the significant and nondelegable administrative, budgetary and personnel responsibilities of a presiding judge under this court rule, any obligations under collective bargaining agreement(s) or law(s) applicable to court personnel, interjurisdictional relations, and executive and legislative branch collaborations.

If it becomes necessary for the Chief Justice to appoint a Presiding Judge Pro Tempore for a single judge court pursuant to RCW 2.56.040(2) or other authority, then the State Court Administrator or the Chief Justice may consider consulting with the local executive or legislative authorities prior to the appointment.

(c) Notification of Chief Justice. The Presiding Judge so elected shall send notice of the election of the Presiding Judge and Assistant Presiding Judge, and in cases of single judge courts, the predesignated Presiding Judge Pro Tempore, to the Chief Justice of the Supreme Court within 30 days of election or any new or changed Presiding Judge or Presiding Judge Pro Tempore designations.

(d)-(e) [Unchanged.]

(f) Duties and Authority. The judicial and administrative duties set forth in this rule cannot be delegated to persons in either the legislative or executive branches of government. A Presiding Judge may delegate the performance of ministerial duties to court employees; however, it is still the Presiding Judge's responsibility to ensure they are performed in accordance with this rule. In addition to exercising general administrative supervision over the court, except those

duties assigned to clerks of the superior court pursuant to law, the Presiding Judge shall:

(1)-(11) [Unchanged.]

(12) Determine the qualifications of and establish a training program for Presiding Judges Pro Tempore predesignated under (c), pro tem judges and pro tem court commissioners; and

(13) [Unchanged.]

(g)-(k) [Unchanged.]

WSR 22-08-081
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE SUGGESTED NEW RULES CrR 4.11 —NOTICE OF COURT DATES TO DEFENDANT AND CrRLJ 4.11— NOTICE OF COURT DATES TO DEFENDANT	))))))	ORDER NO. 25700-A-1421

The Board for Judicial Administration COVID Recovery Task Force Adult Criminal Committee, having recommended the suggested new rules CrR 4.11—Notice of Court Dates to Defendant and CrRLJ 4.11—Notice of Court Dates to Defendant, and the Court having approved the suggested new rules for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested new rules as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2023.

(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, 2023. 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 31st day of March, 2022.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

PROPONENT: Proposed new rule CrR 4.11 is submitted and endorsed solely by the Adult Criminal Committee of the BJA Court Recovery Task Force. This proposal does not necessarily reflect all of the BJA Court Recovery Task Force members' perspectives.

SPOKESPERSON: Amy Muth, Chair; 206-940-0294; amy@amymuthlaw.com

PURPOSE: The proposed rule provides a different hearing notice procedure for courts to follow before issuing a bench warrant for non-appearance in light of the adoption of CrR 3.4. Historically, defendants have been provided notice of court dates solely through the court either on the record or via a summons. With the adoption of CrR 3.4, however, defendants may now appear through counsel unless they have received prior notice that their physical presence is required. When defendants appear through counsel, defense counsel provides notice of new court dates to the defendant, not the court.

CrR 3.4 has created substantial and significant benefits for courts, attorneys, and defendants; courts can process continuance requests much more efficiently, attorneys save courtroom time, and defendants do not have to take time off from work and travel to court for routine matters. However, when defense counsel provides notice of

a hearing for which the defendant fails to appear, defense counsel is ethically prohibited from revealing whether their client received actual notice or when notice was provided, because doing so causes them to reveal attorney-client confidential communications in violation of RPCs 1.6 and 3.3. The Washington State Bar Association Committee on Professional Ethics reached the same conclusion when previously asked to examine this issue:

> The Committee reviewed your inquiry concerning informal meetings between you as a public defender and the presiding judge, during which the judge asks whether clients have been meeting with you. The Committee was of the opinion that such information would constitute confidences or secrets of your client, and that pursuant to RPC 1.6 you could not disclose such information unless your client consented to disclosure or you were ordered to do so by the court. The Committee was further of the opinion that RPC 3.3 would prohibit you from making evasive answers to such questions.
>
> WSBA Advisory Op. 1311.

Revealing these communications also risks placing defense counsel in the position of becoming a witness, potentially leading to withdrawal from the case and appointment or retention of a new attorney, which adds court costs and causes delays.

Because of the risks and collateral consequences of issuing a warrant for arrest, when the defendant's notice is constructive, many stakeholders have asked courts to attempt additional service of notice prior to issuing a bench warrant for failure to appear. If service is mailed by the court, the court can confirm service was timely completed *without* requiring a declaration or testimony from defense counsel. Our proposed rule ensures that a mailed summons for the hearing has been attempted prior to issuance of a bench warrant when notice of that court date was provided through defense counsel. This process preserves the integrity of the attorney-client privilege while retaining the efficiencies of CrR 3.4. This process is not intended to apply when the defendant has been provided other forms of notice, such as when the court instructs the defendant of their hearing date on the record in court.

Under this rule, when a defendant fails to appear for a hearing for which notice was provided only through defense counsel, the court will issue a summons to the defendant to appear for a new hearing. The court will also note the nonappearance so as to suspend the time for speedy trial consistent with CrR 3.3 (c)(2)(ii). Should the defendant fail to appear for the new hearing, the court has provided two forms of notice to the defendant and a bench warrant may issue at the court's discretion. We believe this proposal strikes the right balance between preserving the benefits of CrR 3.4 and ensuring that defense counsel follow through on their ethical obligations.

Regarding where to place the proposed language in the court rules, the Adult Criminal Committee discussed at length whether this proposal should be submitted as a proposed amendment to CrR 3.4 or as a stand-alone rule. The Adult Criminal Committee decided to submit this proposal as a separate rule because there are other proposals seeking to amend CrR 3.4, and it was unclear to the Adult Criminal Committee where the proposed language would best fit. Otherwise, as CrR 3.4 is currently written, the proposed language could be added to CrR 3.4(d).

HEARING: We do not believe that a public hearing is necessary.

EXPEDITED CONSIDERATION: We do not believe that expedited consideration is necessary.

[NEW]

Proposed CrR 4.11

NOTICE OF COURT DATES TO DEFENDANT

The Court shall provide notice of new hearing dates to the defendant by delivering a copy of the notice to the defendant or the defendant's attorney, by mailing the notice to the defendant's last known address, or by providing notice to the defendant on the record in open court. Notice of new hearing dates provided to the defendant only through the defendant's attorney shall not constitute notice sufficient to issue a warrant for failure to appear for a hearing that requires the physical presence of the defendant under CrR 3.4. When a defendant fails to appear at a hearing where the defendant's physical presence was required under CrR 3.4 and the only notice of that hearing was provided to the defendant through the defendant's attorney, the court shall note the non-appearance in accordance with CrR 3.3 (c)(2)(ii) and summons the defendant to a hearing where, if the defendant fails to appear, the court may order the clerk to issue a warrant for the defendant's arrest.

PROPONENT: Proposed new rule CrRLJ 4.11 is submitted and endorsed solely by the Adult Criminal Committee of the BJA Court Recovery Task Force. This proposal does not necessarily reflect all of the BJA Court Recovery Task Force members' perspectives.

SPOKESPERSON: Amy Muth, Chair; 206-940-0294; amy@amymuthlaw.com

PURPOSE: The proposed rule provides a different hearing notice procedure for courts to follow before issuing a bench warrant for non-appearance in light of the adoption of CrRLJ 3.4. Historically, defendants have been provided notice of court dates solely through the court either on the record or via a summons. With the adoption of CrRLJ 3.4, however, defendants may now appear through counsel unless they have received prior notice that their physical presence is required. When defendants appear through counsel, defense counsel provides notice of new court dates to the defendant, not the court.

CrRLJ 3.4 has created substantial and significant benefits for courts, attorneys, and defendants; courts can process continuance requests much more efficiently, attorneys save courtroom time, and defendants do not have to take time off from work and travel to court for routine matters. However, when defense counsel provides notice of a hearing for which the defendant fails to appear, defense counsel is ethically prohibited from revealing whether their client received actual notice or when notice was provided, because doing so causes them to reveal attorney-client confidential communications in violation of RPCs 1.6 and 3.3. The Washington State Bar Association Committee on Professional Ethics reached the same conclusion when previously asked to examine this issue:

> The Committee reviewed your inquiry concerning informal meetings between you as a public defender and the presiding judge, during which the judge asks whether clients have been meeting with you. The Committee was of the opinion that such information would constitute confidences or secrets of your client, and that pursuant to RPC 1.6 you could not disclose such information unless your client consented to disclosure or you were ordered to do so by the court. The Committee was further of the opinion that RPC 3.3 would prohibit you from making evasive answers to such questions.

WSBA Advisory Op. 1311.

Revealing these communications also risks placing defense counsel in the position of becoming a witness, potentially leading to withdrawal from the case and appointment or retention of a new attorney, which would add court costs and cause delays.

Because of the risks and collateral consequences of issuing a warrant for arrest, when the defendant's notice is constructive, many stakeholders have asked courts to attempt additional service of notice prior to issuing a bench warrant for failure to appear. If service is mailed by the court, the court can confirm service was timely completed *without* requiring a declaration or testimony from defense counsel. Our proposed rule ensures that a mailed summons for the hearing has been attempted prior to issuance of a bench warrant when notice of that court date was provided through defense counsel. This process preserves the integrity of the attorney-client privilege while retaining the efficiencies of CrRLJ 3.4. This process is not intended to apply when the defendant has been provided other forms of notice, such as when the court instructs the defendant of their hearing date on the record in court.

Under this rule, when a defendant fails to appear for a hearing for which notice was provided only through defense counsel, the court will issue a summons to the defendant to appear for a new hearing. The court will also note the nonappearance so as to suspend the time for speedy trial consistent with CrRLJ 3.3 (c)(2)(ii). Should the defendant fail to appear for the new hearing, the court has provided two forms of notice to the defendant and a bench warrant may issue at the court's discretion. We believe this proposal strikes the right balance between preserving the benefits of CrRLJ 3.4 and ensuring that defense counsel follow through on their ethical obligations.

Regarding where to place the proposed language in the court rules, the Adult Criminal Committee discussed at length whether this proposal should be submitted as a proposed amendment to CrRLJ 3.4 or as a stand-alone rule. The Adult Criminal Committee decided to submit this proposal as a separate rule because there are other proposals seeking to amend CrRLJ 3.4, and it was unclear to the Adult Criminal Committee where the proposed language would best fit. Otherwise, as CrRLJ 3.4 is currently written, the proposed language could be added to CrRLJ 3.4(d).

HEARING: We do not believe that a public hearing is necessary.

EXPEDITED CONSIDERATION: We do not believe that expedited consideration is necessary.

[NEW]

Proposed CrRLJ 4.11

NOTICE OF COURT DATES TO DEFENDANT

The Court shall provide notice of new hearing dates to the defendant by delivering a copy of the notice to the defendant or the defendant's attorney, by mailing the notice to the defendant's last known address, or by providing notice to the defendant on the record in open court. Notice of new hearing dates provided to the defendant only through the defendant's attorney shall not constitute notice sufficient to issue a warrant for failure to appear for a hearing that requires the physical presence of the defendant under CrRLJ 3.4. When a defendant fails to appear at a hearing where the defendant's physical presence was required under CrRLJ 3.4 and the only notice of that hearing was provided to the defendant through the defendant's attorney, the court shall note the non-appearance in accordance with CrRLJ

3.3 (c)(2)(ii) and summons the defendant to a hearing where, if the defendant fails to appear, the court may order the clerk to issue a warrant for the defendant's arrest.

WSR 22-08-082
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE SUGGESTED NEW RULES CrR 4.12 —SIGNATURES AND CrRLJ 4.12— SIGNATURES	))))	ORDER NO. 25700-A-1422

The Board for Judicial Administration COVID Recovery Task Force Adult Criminal Committee, having recommended the suggested new rules CrR 4.12—Signatures and CrRLJ 4.12—Signatures, and the Court having approved the suggested new rules for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested new rules as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2023.

(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, 2023. 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 31st day of March, 2022.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

PROPONENT: Proposed new rule CrR 4.12 is submitted and endorsed solely by the Adult Criminal Committee of the BJA Court Recovery Task Force. This proposal does not necessarily reflect all of the BJA Court Recovery Task Force members' perspectives.

SPOKESPERSON: Amy Muth, Chair; 206-940-0294; amy@amymuthlaw.com

PURPOSE: The proposed rule memorializes Supreme Court Order No. 25700-B-658 (13)(a), which permits attorneys to submit orders to continue criminal or juvenile offender matters without obtaining the defendant's or respondent's signature. Allowing an attorney to sign on a defendant or respondent's behalf to advance the case has created efficiency for attorneys and courts in managing criminal calendars, and particularly benefits public defenders, who no longer need to visit multiple in-custody clients for the purpose of obtaining a signature to continue a routine matter.

HEARING: We do not believe that a public hearing is necessary.

EXPEDITED CONSIDERATION: We do not believe that expedited consideration is necessary.

[NEW]
Proposed CrR 4.12
SIGNATURES

Defense counsel is not required to obtain signatures from defendants or respondents on orders to continue criminal or juvenile offender matters. An attorney's signature on an order to continue constitutes a representation that the defendant or respondent has been consulted and agrees to the continuance.

PROPONENT: Proposed new rule CrRLJ 4.12 is submitted and endorsed solely by the Adult Criminal Committee of the BJA Court Recovery Task Force. This proposal does not necessarily reflect all of the BJA Court Recovery Task Force members' perspectives.

SPOKESPERSON: Amy Muth, Chair; 206-940-0294; amy@amymuthlaw.com

PURPOSE: The proposed rule memorializes Supreme Court Order No. 25700-B-658 (13)(a), which permits attorneys to submit orders to continue criminal matters without obtaining the defendant's signature. Allowing an attorney to sign on a defendant's behalf to advance the case has created efficiency for attorneys and courts in managing criminal calendars, and particularly benefits public defenders, who no longer need to visit multiple in-custody clients for the purpose of obtaining a signature to continue a routine matter.

HEARING: We do not believe that a public hearing is necessary.

EXPEDITED CONSIDERATION: We do not believe that expedited consideration is necessary.

[NEW]

Proposed CrRLJ 4.12

SIGNATURES

Defense counsel is not required to obtain signatures from defendants on orders to continue criminal matters. An attorney's signature on an order to continue constitutes a representation that the defendant has been consulted and agrees to the continuance.

WSR 22-08-083
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE SUGGESTED AMENDMENT TO CR 65—INJUNCTIONS	)))	ORDER NO. 25700-A-1423

Jack Fiander, having recommended the suggested amendment to CR 65 —Injunctions, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as shown below is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2023.

(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, 2023. 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 31st day of March, 2022.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

AMENDMENT TO
SUPERIOR COURT CIVIL RULE 65

(c) Security. Except as otherwise provided by statute, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof or of an Indian tribe within the State of Washington with a governing body duly recognized by the United States Secretary of Interior. Pursuant to RCW 4.92.080 no security shall be required of the State of Washington, municipal corporations or political subdivisions of the State of Washington.

The provisions of rule 65.1 apply to a surety upon a bond or undertaking under this rule.

WSR 22-08-084
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE SUGGESTED AMENDMENT TO RPC 1.8—CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES	)))))	ORDER NO. 25700-A-1424

The Washington State Bar Association Committee on Professional Ethics, having recommended the suggested amendment to RPC 1.8—Conflict of Interest: Current Clients: Specific Rules, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as shown below is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2023.

(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, 2023. 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 31st day of March, 2022.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendments to

RULES OF PROFESSIONAL CONDUCT (RPC)

Rule 1.8(e) and Comments

A. Proponent: Washington State Bar Association, Board of Governors, Committee on Professional Ethics

B. Spokepersons:

Brian Tollefson, President, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

Terra Nevitt, Executive Director, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

Jeanne Marie Clavere, Professional Responsibility Counsel, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

C. Purpose: Based on changes to the Model Rules of Professional Conduct, the amendment would permit lawyers to pay court costs and expenses of litigation on behalf of indigent clients, and to provide modest gifts for living expenses to indigent clients in limited circumstances.

Background

On April 30, 2020, Chief Justice Debra Stephens asked for review of potential regulatory modifications to improve access to justice during the Covid-19 pandemic, including whether to amend 1.8(e) to permit attorneys to provide financial assistance to clients in limited circumstances. *See* Memo to WSBA President from WSBA Chief Disciplinary Counsel and Chief Regulatory Counsel (May 8, 2020) (attached hereto as Exhibit A) *and* Supplemental Memo to WSBA President from WSBA Chief Disciplinary Counsel (August 5, 2020) (attached hereto as Exhibit B).

The WSBA Office of Disciplinary Counsel, in a memo dated May 8, 2020 (Exhibit A), provided information regarding the complicated history of attempted modifications of this Rule. Furthermore, the Chief Disciplinary Counsel's August 5, 2020 memo to the WSBA President summarized updates regarding the developments in New York and at the American Bar Association which had changed the analytic landscape around the issue. *See Exhibit B.* Pursuant to a request by the WSBA Board of Governors then President Rajeev Majumdar on August 6, 2020, the Committee on Professional Ethics (CPE) formed a subcommittee and studied the changes to ABA Model Rule 1.8(e) and commentary as well as the history of Washington RPC 1.8(e), the Washington revised Comment [10] and additional Washington Comment [21]. The CPE then consulted with key WSBA and public stakeholders including the Northwest Justice Project, Pro Bono Council of the Washington Alliance for Public Justice, and WSBA Chief Disciplinary Counsel.

Recommendation

The CPE concurred with the reasoning of the ABA Standing Committees on Ethics and Professional Responsibility and Legal Aid and Indigent Defendants as described in their August 2020 report. (https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/107-annual-2020.pdf, last accessed December 7, 2021). The CPE concluded that a financial assistance exception in RPC 1.8(e) could serve to increase access to justice for the public and serve the public interest.

The CPE recommended to the WSBA Board of Governors appropriate changes to Washington RPC 1.8(e) and comments, (redlined and clean versions attached hereto as Exhibits C and D). These recommended changes differ from the new ABA Model Rule in the following key respects:

- The word "pro bono" as a modifier is removed from recommended Subsection (3) for lawyers representing clients through a non-profit legal service, public interest organization, law school clinical, or pro bono program to clarify that attorneys employed as staff in such programs are included in the rule together with private attorneys who are volunteering with such programs.
- Model Rule 1.8 (e)(2) only allows for an attorney's payment of litigation and court expenses in the case of an indigent client and pro bono representation. The CPE recommends that such payment be allowed in other non-profit contexts as well, for instance by staff attorneys of legal aid organizations, law school clinics, and others.
- Washington Comment [21] and Comment [10] [Washington Revision] are amended and combined into a new Comment [10] [Washington Revision] to clarify that the prohibition in Rule 1.8(e) is intended to prevent attorneys from influencing clients to pursue litigation primarily for the private financial gain or to advance

other interests of the attorney. The CPE does not believe the public interest is served by discouraging litigants who lack resources from pursuing otherwise meritorious lawsuits.

- Washington Comment [21] and Comment [10] [Washington Revision] are also amended and combined into a new Comment [10] [Washington Revision] to preserve the original interpretation of RPC 1.8 that, other than in indigent client context, the client remains ultimately liable.
- The proposed Washington revised Comment [11] mirrors, with slight modifications, ABA Model Comment [11]. Proposed Washington Comment [12] and [13] have the same language as Model Rules of Professional Conduct RPC 1.8 Comments [12] and [13].

The CPE concluded that creating a clear, permissible financial assistance exception in RPC 1.8(e) will serve the public and their lawyers who want to ethically provide financial assistance to their clients within the parameters of RPC 1.8(e).

At their board meeting dated January 13, 2022, the WSBA Board of Governors approved the request by the Committee on Professional Ethics to submit these amendments to the Washington Supreme Court for consideration.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material:

- Exhibit A: Memo to WSBA President from WSBA Chief Disciplinary Counsel and Chief Regulatory Counsel dated May 8, 2020.
- Exhibit B: Supplemental Memo to WSBA President from WSBA Chief Disciplinary Counsel dated August 5, 2020.
- Exhibit C: Proposed redline changes to RPC 1.8(e) and Comments
- Exhibit D: Proposed clean changes to RPC 1.8(e) and Comments

SUGGESTED AMENDMENTS TO

RULES OF PROFESSIONAL CONDUCT 1.8

RPC 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

…

(e) A lawyer shall not, while representing a client in connection with contemplated or pending litigation, advance or guarantee financial assistance to a client, except that:

(1) a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses; and

(2) in matters maintained as class actions only, repayment of expenses of litigation may be contingent on the outcome of the matter.; and

(3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client through a nonprofit legal services or public interest organization, and a lawyer representing an indigent client through a law school clinical or pro bono program may pay court costs and expenses of litigation on behalf of the client. The lawyer may also provide modest gifts to the indigent client for food, rent, transportation, medicine and other basic living expenses. The lawyer:

(i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) may not seek or accept reimbursement for these gifts from the client, a relative of the client or anyone affiliated with the client; and

(iii) may not publicize or advertise a willingness to provide such gifts to prospective clients.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.

…

Financial Assistance

[10] [**Washington revision**] Except as otherwise provided in the Rules, Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. See Washington Comment [21]. Paragraph (e) of Washington's Rule differs in part from the Model Rule. Paragraphs (e)(1) and (2) are based on former Washington RPC 1.8(e). The minor structural modifications to the general prohibition on providing financial assistance to a client do not represent a change in Washington law, and paragraph (e) is intended to preserve prior interpretations of the Rule and prior Washington practice.

[11] [**Washington revision**] For purposes of 1.8(e), the term "indigent" has its ordinary meaning and in addition includes definitions of eligibility used by nonprofit legal services providers, court-annexed pro bono programs, law school clinics and similar programs that operate to protect and expand public access to our courts and to legal representation. A lawyer representing an indigent client without fee, a lawyer representing an indigent client through a nonprofit legal services or public interest organization and a lawyer representing an indigent client through a law school clinical or pro bono program may give the client modest gifts. Gifts permitted under paragraph (e)(3) include modest contributions for food, rent, transportation, medicine and similar basic necessities of life. If the gift may have consequences for the client, including, e.g., for receipt of government benefits, social services, or tax liability, the lawyer should consult with the client about these. See Rule 1.4.

[12] The paragraph (e)(3) exception is narrow. Modest gifts are allowed in specific circumstances where it is unlikely to create conflicts of interest or invite abuse. Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or implying the availability of gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client or anyone affiliated with the client; and (iii) publicizing or advertising a willingness to provide gifts to prospective clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings.

[13] Financial assistance, including modest gifts pursuant to paragraph (e)(3), may be provided even if the representation is eligible for fees under a fee-shifting statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

…

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.

WSR 22-08-085
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE SUGGESTED NEW GENERAL RULE REGARDING PRONOUNS	)))	ORDER NO. 25700-A-1425

A Consortium, having recommended the suggested new general rule regarding pronouns, and the Court having approved the suggested new general rule for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested new general rule as shown below is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2023.

(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, 2023. 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 31st day of March, 2022.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 Cover Sheet

Proponents: Beverly K. Tsai (she/they)
Erin L. Lennon, Supreme Court Clerk
J. Denise Diskin, Executive Director, QLaw Foundation
Dana Savage (she/her), President Elect, QLaw Association of Washington
Ada Danelo (they/she), Vice President, QLaw Association of Washington
Adrien Leavitt
Danny Waxwing

Spokesperson: Beverly K. Tsai (she/they)

Purpose:

Our courts and court filing practices should establish rules and procedures that strive to be inclusive. This proposed new General Rule 40 is intended to provide a signing attorney or party with the option to identify their personal pronouns[1] in the signature block and title page of filed documents. Under this new rule, the preparer may also designate any person's personal pronouns in the text of the document. Giving people the opportunity to self-identify their personal pronouns in court filings will help our courts be more inclusive by aiming to minimize misgendering, transphobia, trans-exclusion, and anti-LGBTQIA+ experiences in our courts.

1 In this cover sheet, we call them "personal pronouns" to reflect the fact that they refer to a unique and individual person. MYPRONOUNS.ORG, *What and Why*, www.mypronouns.org/what-and-why. We do not call them "gender pronouns" because they do not necessarily reflect or indicate a person's gender, and we also do not call them "preferred pronouns" because pronouns are part of a person's identity, not a preference. GLSEN, *Pronoun Guide*, https://www.glsen.org/activity/pronouns-guide-glsen.

Personal pronouns are related to the person's gender identity. Gender identity is a person's internal sense of their own gender. While a person's sex is a biological identity assigned at birth, gender identity is unique. A person's gender identity may be male, female, both, or neither.[2] Some people are "cisgender," meaning their gender identity matches the sex they were assigned at birth, male or female.[3] Some people are "transgender," meaning their gender identity is different than what they were assigned at birth. Some people's gender identity may be "gender-expansive," meaning they do not identify as exclusively male or female. For example, a person may be "genderfluid" or "genderqueer" if they do not identify with one gender or the other and instead have an unfixed gender identity. A "non-binary" or "gender nonconforming" person may identify as neither male nor female, both male and female, as a third gender, or something else. In some Native American cultures, people may identify as "two-spirit," meaning they identify as neither male nor female but as a different gender and fulfill a different gender role in their communities.[4]

2 Human Rights Campaign, *Sexual Orientation and Gender Identity Definitions,* https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions?utm_source=GS&utm_medium=AD&utm_campaign=BPI-HRC-Grant&utm_content=454887071989&utm_term=gender%20identity&gclid=EAIaIQobChMI7seHg_2z8gIVAz6tBh0v8wolEAAYASAAEgKHM_D_BwE.
3 Human Rights Campaign, *Glossary of Terms*, https://www.hrc.org/resources/glossary-of-terms.
4 Indian Health Service, *Two-Spirit*, https://www.ihs.gov/lgbt/health/twospirit/.

Gender expression is the external appearance of a person's gender identity.[5] This includes, among many other characteristics, their appearance, mannerisms, clothing, hair, makeup, and voice. A person's gender expression may be described using words such as masculine, feminine, or androgynous. A person's gender expression may or may not conform to expressions that are typically associated with a certain gender identity or sexual orientation.

5 Human Rights Campaign, *supra* note 2.

A person's personal pronouns are how that person wishes to be addressed aside from their name, and personal pronouns are as expansive and unique as gender identity. While they are sometimes related to gender identity, personal pronouns do not necessarily indicate a person's gender identity, nor does a person's gender expression necessarily indicate their personal pronouns. Personal pronouns are unique to each individual person and they are often very important to their personal identity. "Using someone's correct personal pronouns is a way to respect them and create an inclusive environment, just as using a person's name can be a way to respect them."[6] "She/her/hers" and "he/him/his" are some commonly used pronouns that are often associated with the female or male gender, respectively. "They/them/theirs"[7] are gender-neutral pronouns that some people use, and they are also often used if someone's personal pronouns are not known. Some people may use more than one personal pronoun,[8] and some may not use pronouns at all.[9] There are no rules about "right" or "wrong" personal pronouns except for what a person decides for themselves.

6 MyPronouns.org, *supra* note 1.
7 Other examples of personal pronouns are "ze/zem/zir," and "xe/xem/xer." These are known as "neopronouns." Shige Sajurai, *Neopronouns*, MyPronouns.org, www.mypronouns.org/neopronouns.
8 Paige Cohen, *My Pronouns Are She/They. What Are Yours?* Harvard Business Review (June 15, 2021), https://hbr.org/2021/06/my-pronouns-are-she-they-what-are-yours.
9 Sam Krauss, *What do you do when someone doesn't use any pronouns?* PFLAG, https://pflag.org/blog/what-do-you-do-when-someone-doesn%E2%80%99t-use-any-pronouns.

As a society, people often make assumptions about a person's gender identity and personal pronouns based on their appearance, name, or gender expression. These assumptions are often based on gender stereotypes and gender norms. Gender identity is an internal sense of self, and we cannot know a person's personal pronouns just by looking at them. Therefore, guessing a person's personal pronouns based on assumptions can be very harmful and can create unsafe environments. Even if it is unintentional, using the wrong personal pronoun to refer to somebody can make them feel disrespected, invalidated, and dismissed, and it alienates people for not conforming to the gender-binary and expectations based on stereotypes. This results in bias and discrimination.

This proposed new General Rule 40 creates an opportunity for a person to offer their personal pronouns and also provides an opportunity for others to learn how to respectfully address them. Providing opportunities for people to identify how they wished to be addressed in addition to their name will help prevent others from acting on assumptions and using incorrect pronouns. It will also help minimize the burden of having to correct someone after they use the wrong pronouns to address someone. This proposed new General Rule 40 will allow court staff, clerks, justices and judges, and other parties and attorneys to be aware of and use the correct personal pronouns in communication, documents, discussions, and oral argument. It will improve our courts by helping to create an environment that is welcoming and respectful of people and their identities.

The proposed new General Rule 40 provides a signing attorney or party the option to indicate their personal pronouns in the signature block and title page of filed documents. If the person so chooses, they can list their personal pronouns along with their name, address, telephone number, and Washington State Bar Association membership number in the signature block and title page of filed documents. A person's personal pronouns may also be designated in the text of the document. This is not limited to attorneys or signing parties. Under this proposed new rule, providing personal pronouns is not mandatory, but merely optional. A permissive rule such as this will provide opportunities for those who wish to disclose their personal pronouns without pressuring those who may be uncomfortable or not ready to disclose their personal pronouns. It also allows the person to write in their personal pronouns and does not limit a person to the more commonly used pronouns.

Hearing: The proponent does not believe a public hearing is necessary.

Expedited Consideration: The proponent does not believe that expedited consideration is necessary.

GR 40

[NEW]

PERSONAL PRONOUNS

(a) Policy and Purpose. The purpose of this rule is to promote inclusive practices in courtrooms and court filing procedures.

(b) Scope. This rule applies to all courts of the State of Washington.

(c) Option to Indicate Personal Pronouns on Court Filings. Any person's personal pronouns may be indicated in the text of filed documents. A signing attorney or party may indicate their personal pronouns in the signature block and on the title page of filed documents.

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.

WSR 22-08-094
HEALTH CARE AUTHORITY
[Filed April 5, 2022, 3:46 p.m.]

NOTICE

Subject: Medicaid state plan amendment (SPA) 22-0017 Community First Choice, and Copes, New Freedom, and Residential Support Waivers ——Medicaid Long-Term Services and Supports Eligibility Determinations Completed by Federally Recognized Indian Tribes.

Effective Date: July 1, 2022, or as soon as approved.

Description: On March 31, 2022, Governor Inslee signed SB 5866 authorizing federally recognized Indian tribes to provide eligibility determinations and case management for medicaid long-term services and supports (LTSS). The health care authority (HCA) and the department of social and health services (DSHS) intend to submit SPA 22-0017 and amendments for the community options program entry system, new freedom, and residential support waivers to allow DSHS to contract with federally recognized Indian tribes to provide eligibility determinations and case management services for medicaid LTSS.

SPA 22-0017 is anticipated to increase income received by federally recognized tribes for providing long-term care eligibility determinations and case management services to tribal members.

SPA 22-0017 and the waiver amendments are under development. HCA and DSHS would appreciate any input or concerns regarding the SPA and waiver amendments. To request copies when they become 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: Grace Brower, Waiver Program Manager, 4450 10th Avenue S.E., Lacey, WA 98503, phone 360-725-3293, TTY 711, email grace.brower1@dshs.wa.gov.

WSR 22-08-102
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed April 5, 2022, 5:30 p.m.]

Notice of Interpretive or Policy Statement

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

Economic Services Administration
Division of Child Support (DCS)

Document Title: CN-312: DCS Stops Establishing Joint NCP Obligations.

Subject: CN-312.

Effective Date: March 24, 2022.

Document Description: This DCS canary notice (CN) explains how DCS will discontinue setting joint obligations effective April 1, 2022. Establishing separate obligations for each parent promotes right sized orders and better aligns with DCS's goals to support family reunification.

To receive a copy of the interpretive or policy statements, contact Kirsten Turner, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone 360-664-5178, TDD/TTY 360-753-9122, fax 360-664-5342, email Kirsten.Turner@dshs.wa.gov, website http://www.dshs.wa.gov/dcs/.

WSR 22-08-103
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
NATURAL RESOURCES
(Committee on Geographic Names)
[Filed April 5, 2022, 7:31 p.m.]

Please accept this memo as notification of a special board of natural resources meeting on April 7, 2022. This special meeting is to discuss providing comment to the United States Department of the Interior regarding its proposal to rename 18 geographic features throughout Washington state that bear a derogatory term for Native American women.

If you have any questions, please feel free to call Caleb Maki at 360-902-1280.

WSR 22-08-109
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE
REHABILITATION COUNCIL
[Filed April 6, 2022, 10:34 a.m.]

[Meeting on] Thursday, May 12, 2022, at 9:00 a.m. - 12:00 p.m. Meeting will be open starting at 8:45 a.m. if you want to check your connection.

[Meeting on] Friday, May 13, 2022, at 9:00 a.m. - 12:00 p.m. Meeting will be open starting at 8:45 a.m. if you want to check your connection. Public comment is from 11:00 - 11:25 a.m.

Join Zoom meeting https://dshs-telehealth.zoom.us/j/88398684694?pwd=N2cwS25CRm8xSTNZY2phTDdvdGNWQT09, Meeting ID 883 9868 4694, Passcode 536175, Phone Audio 253-215-8782. Please contact wsrc@dshs.wa.gov for details.

To request a reasonable accommodation, an ASL interpreter, a spoken language interpreter, or to provide a written comment, please contact the Washington state rehabilitation council office by emailing wsrc@dshs.wa.gov or calling 360-791-5473 no later than Friday, April 29, 2022.

WSR 22-08-114
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed April 6, 2022, 11:56 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 22-002: Mandatory Reporting of Insurance Claims.

Subject: DCS PCM 22-002.

Effective Date: March 23, 2022.

Document Description: This PCM explains how SHB 1416 affects DCS in regards to receiving and processing insurance claims related to bodily injury, wrongful death, workers' compensation, and life insurance policies.

To receive a copy of the interpretive or policy statements, contact Kirsten Turner, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone 360-664-5178, TDD/TTY 360-753-9122, fax 360-664-5342, email Kirsten.Turner@dshs.wa.gov, website http://www.dshs.wa.gov/dcs/.