

WSR 22-01-097
RULES OF COURT
STATE SUPREME COURT
[December 7, 2021]

IN THE MATTER OF THE) AMENDED
SUGGESTED AMENDMENT TO APR) ORDER
6—LAW CLERK PROGRAM) NO. 25700-A-1413

The Washington State Bar Association Board of Governors, having recommended the suggested amendments to APR 6—Law Clerk Program, and the Court having approved the suggested amendments for publication; 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 for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2022.

(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, 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 7th day of December, 2021.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendments to
ADMISSION AND PRACTICE RULES (APR)
RULE 6. Law Clerk Program
Submitted by the WSBA Board of Governors

A. Name of Proponent:

Brian Tollefson, WSBA President

B. Spokesperson:

Bobby Henry

Associate Director, Regulatory Services Department

Renata de Carvalho Garcia, Chief Regulatory Counsel

C. Purpose: The suggested amendments to APR 6 and the law clerk program regulations are intended to clarify and expand the program requirements, provide for increased accessibility to the program, and to make the program more efficient to administer by the Law Clerk Board (Board) and WSBA staff.

Background: The Board submitted these suggested amendments to APR 6 and the Law Clerk Program Regulations for consideration by the Board of Governors on July 16, 2021 for first review. The Board of Governors unanimously approved the suggested amendments.

APR 6: Many of the suggested changes are meant to address issues that come up frequently and need more clarity to provide the Board

with consistency in its decision making and approval process. Significant elements of the submission are the following:

- Out-of-State Applicants and Employers

The Law Clerk Program was only available to Washington State residents, but this limitation was challenged by applicants working in states bordering Washington. The Board recommends a new provision in APR 6 (b)(8) allowing a law clerk to have an out-of-state employer when certain criteria are met. This change will provide more opportunities to those out-of-state applicants who may live in Washington and work in a bordering state. An out-of-state applicant must meet specific criteria by maintaining a caseload of 51 percent of Washington law. This criteria effectively minimizes applicants from non-bordering states. The proposed provision includes the following main requirements for an applicant with an out-of-state employer, as outlined in proposed Regulation 3-1 (A)(3):

- The primary tutor must be an active member of the Washington State Bar Association.
- The primary tutor must certify that the tutor's, or tutor's workplace, has a case load with at least 51 percent of caseload involving Washington law.
- The tutor must agree to maintain a caseload that has substantial contact with Washington State. Substantial contact means having a caseload where at least 51 percent of the cases on average in a given year involve Washington law. The tutor will be required to submit an annual certification regarding WA caseload to remain eligible.
- Law clerks and tutors are required to attend evaluations, regardless of distance.
- Tutor Qualifications
 - The amendment to Rule 6(c) expands tutor eligibility to include judicial members instead of limiting proposed tutors to elected judges.
- Certificates
 - Amending the deadline for submission of exams to 10 days rather than 10 business days so the due date is consistent rather than changing month to month. This proposed change would prevent clerks from being too far into the next month of study before completing their exams for the prior month of study. It also provides a consistent deadline that is easy to calculate, remember and administer. Rule 6 (e)(2).
- Evaluations
 - Permitting the Board to determine the intervals at which a law clerk and tutor must appear for an evaluation. This would clarify that it is the Board's decision whether it is necessary for a law clerk to participate in an evaluation of the law clerk's progress with the tutor. Rule 6 (e)(4).

Additional proposed changes seek to resolve issues that cause confusion to participants and Board members:

- Clarification to ensure applicants to the program understand that completion of the APR 6 law clerk program meets the educational requirements for applying for the lawyer bar examination in Washington State. Rule 6(a).
- The course of study must be completed within 6 years from the law clerks date of enrollment. This amendment removes the word "ini-

tial" to account for the possibility of more than one enrollment period. Rule 6 (d) (3).

- Adding the word "timely" and removing confusing language that is or may be misconstrued as inconsistent that is contained in APR 6 (e) (2) (providing that certificates are due "within 10 business days following the end of the month), and APR 6 (g) (2) (certificates are due "at the end of each month in which they are due").

APR 6 Regulations: The Regulations were approved by the Board of Governors pending adoption of the APR 6 amendments by the Court. The Regulations do not need to be approved by the Court. However, the Court may provide direction to the Board of Governors regarding the Regulations. These changes include:

- **Employment Waiver Policy**

There is currently a written policy (previously approved by the Board of Governors) authorizing a tutor who is not employed by the law clerk's employer when certain conditions are met. The Board proposes to incorporate these policies, referred to as the employment waiver policies, into the regulations. See regulation 3-1 (A) (2). There are no substantive changes to the existing policy. The purpose of the proposed changes is to include the policy in the regulations to avoid confusion and to make the information more readily and easily accessible to applicants and participants.

- Allowing the Bar Association staff to direct how applications, petitions, and requests are submitted as technology and procedures improve over time. Regulation 2-4.
- Filing materials via alternative methods rather than requiring materials to be physically delivered at WSBA's office. Regulation 3-1(A).
- Clarifying that an applicant who was previously enrolled in the program may seek advanced standing for courses completed in the prior enrollment (but only those completed in the last five years from the date of application). Regulation 3-2 (A) (2).
- Providing applicants with flexibility to choose when to enroll in the program. The proposed change will allow the applicant to amend the enrollment date. Regulation 3-4 and 3-5.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Materials:

1. Redline version of Suggested Amendments to APR 6, showing change suggestions.
2. Clean version of Suggested Amendments to APR 6, showing rules as they would be with suggested amendments adopted.
3. Redline version of Suggested Amendments to APR 6 Law Clerk Program Regulations, showing change suggestions.
4. Clean version of Suggested Amendments to APR 6 Law Clerk Program Regulations, showing regulations as they would be with suggested amendments adopted.

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

SUGGESTED AMENDMENTS TO ADMISSION AND PRACTICE RULES

RULE 6 - LAW CLERK PROGRAM

RULE 6. Law Clerk Program

(a) Purpose. The Law Clerk Program provides access to legal education guided by a qualified tutor using an apprenticeship model that

includes theoretical, experiential, and clinical components. Successful completion of the Law Clerk Program provides a way to meet the education requirement to apply for the lawyer bar examination in Washington; it is not a special admission or limited license to practice law.

(b) Application. Every applicant for enrollment in the law clerk program shall:

(1) - (7) Unchanged.

(8) Where the Bar is satisfied that the applicant has employment with a tutor whose practice has substantial contacts with Washington state, the requirement that the full-time employment be in Washington state may be waived.

(c) Tutors. To be eligible to act as a tutor in the law clerk program, a lawyer, or ~~judge~~ judicial member as defined in the WSBA By-laws, shall:

(1) Unchanged.

(2) Be an active member in good standing of the Bar, or be a judicial member ~~who is currently elected or appointed to an elected position of the Bar~~, who has not received a disciplinary sanction in the last 5 years, provided that if there is discipline pending or a disciplinary sanction has been imposed upon the member more than 5 years preceding the law clerk's application for enrollment, the Bar shall have the discretion to accept or reject the member as tutor;

(3) - (5) Unchanged.

(d) Unchanged.

(e) Course of Study. The subjects to be studied, the sequence in which they are to be studied, and any other requirement to successfully complete the program shall be prescribed in the Law Clerk Program Regulations. Progress toward completion of the program shall be evaluated by submission of examinations, certificates, reports and evaluations as follows:

(1) Unchanged.

(2) **Certificates.** Within 10 days following the month of study, ~~t~~The tutor shall submit the examination, including the grade given for the examination and comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study, and the tutor's personal supervision ~~within 10 business days following the month of study~~. If an examination is not given, the monthly certificate shall be submitted stating the reason.

(3) Unchanged.

(4) **Evaluations.** ~~Annually, or at other intervals deemed necessary by the Bar,~~ the law clerk shall participate with the tutor in an evaluation of the law clerk's progress.

(f) Unchanged.

(g) Termination. The Bar may direct a law clerk to change tutors if approval of a tutor is withdrawn. The Bar may terminate a law clerk's enrollment in the program for:

(1) Unchanged.

(2) Failure of the tutor to timely submit the monthly examinations and certificates ~~at the end of each month in which they are due;~~

(3) - (4) Unchanged.

(h) Unchanged.

(i) Confidentiality. Unless expressly authorized by the Supreme Court, the program applicant, or by a current or former law clerk, enrollment and related records, documents, and proceedings are confidential and shall be privileged against disclosure. ~~except that the fact~~

~~of successful completion of the program shall be subject to disclosure.~~

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**Amendments to APR 6 Law
Clerk Program Regulations**

APR 6 LAW CLERK BOARD PROGRAM REGULATIONS

1-1 Authority

Regulation 1. GENERAL

A. The law clerk program established in Rule 6 of the Admission and Practice Rules (APR6) and implemented in these regulations is conducted by the Washington State Bar Association at the direction of the Supreme Court. It is administered by the Law Clerk Board under the direction of the Board of Governors.

B. The good moral character and fitness of an applicant is determined by the ~~Character and Fitness Board~~ pursuant to ~~Admission and Practice Rules APR 7~~ and 20 through 24.34(a).

C. To facilitate prompt administration of APR 6 and these regulations, designated staff of the Washington State Bar Association may act on behalf of the Law Clerk Board under APR 6 and these regulations.

D. The Law Clerk Board, with the approval of the Board of Governors, may amend these regulations as necessary. Revisions of these regulations shall not apply retroactively to an enrolled law clerk. These changes shall apply to applications, petitions and requests made after the effective date of the revisions.

1-2 Purpose and Expectations.

A. The law clerk program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, scholastic and clinical components. Successful completion of the law clerk program qualifies a person to apply for the Washington State bar exam. Participation in the law clerk program is not a special admission or limited license to practice law.

B. The program relies on the good faith and integrity of the participants. The Board cannot administer and supervise the clerkship on a daily basis. The Board assumes the tutor and the law clerk will adhere to the letter and spirit of the program.

C. The law clerk program is an alternative legal education. The program issues a certificate of completion; it is not approved by the American Bar Association and it does not confer a Juris Doctor degree or other degree.

D. The Board will not assist an applicant for the law clerk program to find employment or to evaluate in advance the qualifications of a potential tutor.

1-3 Definitions.

For the purpose of these regulations, the following terms are defined:

A. "Approved accreditation" means accredited by an accrediting agency recognized by the US Department of Education.

B. "Assistant Tutor" means a qualifying lawyer or judge who has been approved to teach specific courses.

C. "Bar Association" means the Washington State Bar Association.

D. "Board of Governors" means the Board of Governors of the Washington State Bar Association.

E. "Board" means the Law Clerk Board as authorized by APR 2.

F. "Board Liaison" means an individual member of the Law Clerk Board in his or her role as liaison between the law clerk and the Board.

G. "Employment waiver" means a relationship in which the primary tutor is not the law clerk's direct employer but has received Board approval of an alternative relationship under APR 6 (b) (7) and Regulation 3-1A(2).

H. "Employment location waiver" means an employment arrangement in which the law clerk is not employed in Washington state but has received Board approval for an out-of-state employer under APR 6 (b) (8) and Regulation 3-1A(3).

I. ~~H.~~ "Law clerk" means a person whose application for enrollment in the law clerk program has been accepted by the Board. It refers to applicants to the program in that applicants must have employment as a law clerk, legal assistant, or equivalent to qualify for enrollment. Law clerks are not authorized or licensed to engage in the practice of law by virtue of APR 6.

J. ~~I.~~ "Program" means the law clerk program established by APR 6 and implemented in these regulations.

K. ~~J.~~ "Regular, full-time employment" means that the law clerk is hired by the tutor or the tutor's employer in a (i) law office, (ii) legal department, or (iii) a court ~~of general, limited, or appellate jurisdiction located~~ in Washington State, for an average of 32 hours per week for at least 48 weeks each calendar year.

L. ~~K.~~ "Tutor" means a qualifying lawyer or judicial member judge who has agreed to teach the law clerk and be responsible for all aspects of compliance with the program.

Regulation 2. LAW CLERK BOARD

2-1 Responsibilities.

The Board will make decisions regarding:

- A. Approval or rejection of an application for enrollment in the program.
- B. Approval or rejection of a lawyer or a judge to act as a tutor.
- C. A petition for advanced standing.
- D. A direction to the law clerk to change tutors.
- E. A recommendation to the Board of Governors for the termination of a law clerk's enrollment in the program.
- F. A petition for readmission.
- G. Changes in course contents, course descriptions, or program completion requirements.
- H. Applicability of the effect of prior decisions regarding other law clerks and tutors.
- I. Recommendations to the Board of Governors regarding amendments to these regulations.
- J. Any other matter related to the program or referred to the Board by the Board of Governors.

2-2 Board Liaisons.

- A. A law clerk will be assigned to a Board member who shall act as a liaison between the law clerk and the Board.
- B. A Board liaison will make decisions regarding:
 - (1) Recommendations to the Board regarding the acceptance or rejection of an applicant.
 - (2) An annual evaluation of the law clerk's second and third years.
 - (3) Recommendations regarding any other matter related to the program or referred to the Board.

2-3 Staff Administration.

A. The Board may delegate duties to staff to facilitate prompt administration of the program.

B. The duties may regularly include but are not limited to:

- (1) Review of applications to the program, recommendation regarding their qualifications for the program, and assignment of a Board Liaison;
- (2) Approval of assistant tutors to teach specific courses;
- (3) Approval of leaves of absence of less than 12 months;
- (4) Approval of petitions by law clerks to take courses or electives out of order;
- (5) Approval of the 4th year courses; and
- (6) Notices of involuntary withdrawal.

2-4 Filing, general.

All applications, petitions or requests shall be submitted in writing and shall be directed to the Board in a form and manner as directed by at the Bar Association office.

2-5 Review Procedure.

A. Review of Right. An applicant, law clerk or tutor, has a right to have the Board of Governors review the following decisions of the Board:

- (1) Rejection of an application for enrollment in the program;
- (2) Termination of a law clerk's enrollment in the program; or
- (3) Requiring a law clerk to change tutors.

B. Discretionary. An applicant, law clerk or tutor may ask the Board of Governors to review any decision made by the Board.

C. Filing. A petition requesting either review of right or discretionary review shall be:

- (1) in writing,
- (2) directed to the Board of Governors;
- (3) filed with at the Bar Association office; and
- (4) filed within 30 days of the date the law clerk or applicant received notice of the decision.

Regulation 3. APPLICATION PROCEDURE

3-1 Applicants. Every applicant for enrollment in the program shall:

A. Be engaged in regular, full-time employment as defined in Regulation 1-3 unless requesting an employment waiver or employment location waiver as defined in Reg. 1-3.

(1) Under no circumstances may the tutor assess a fee or require any other form of compensation in return for instructing or employing the law clerk. The law clerk shall receive monetary compensation in compliance with federal and state law governing employment. The Board may require proof of employment as deemed necessary.

(2) Approval of any relationship requiring an employment waiver is within the discretion of the Board. The applicant and proposed tutor must explicitly describe the alternative relationship, show how the purpose of the program will be maintained, and describe how client confidentiality and conflicts of interest will be resolved. Applications or requests for reinstatement that include a petition to waive the requirement that the primary tutor or primary tutor's employer be the law clerk's employer, may be approved under the following conditions:

(a) The Board receives applications for the law clerk, primary tutor and the employing lawyer. The employing lawyer must establish that the clerk's employment includes tasks and duties that contribute

to the practical aspects of engaging in the practice of law required by APR 6 (b) (3).

(b) The employing lawyer must at least meet the requirements of an assistant tutor (whether or not they teach a course). Regulation 4-2A defines the assistant tutor's qualifications as meeting all the qualifications of a tutor except that only five years of active practice is required.

(c) The minimum three hours a week of personal supervision between the law clerk and the tutor required by APR 6 (d) (2) must occur in person. Because the pair do not otherwise work together, a minimum amount of personal contact is required.

(d) The law clerk, employing lawyer and primary tutor must have regular contact. It is anticipated that the lawyers develop a relationship to discuss the progress of the clerk and guide work and course assignments as required of the tutor in Regulation 4-1D(7).

(e) The employing lawyer must agree to contribute to the monthly certificate. The certificate will include prompts for what the employing lawyer should include in their report.

(f) All three participants must agree to meet with the liaison for their initial interview and at any other meeting the Law Clerk Board requests. The employing lawyer, as the provider of the practical and experiential component of the program, may not be a passive participant.

(g) A law clerk with an employment waiver may not work or learn in a primarily virtual/remote office situation.

(3) Approval of employment with an out-of-state employer is within the discretion of the Board. The applicant and proposed tutor must explicitly describe the out-of-state location, its proximity to Washington, the type and amount of interaction with the laws and courts of Washington state, and how the purpose of the program will be maintained. Applications or requests for reinstatement that include a petition to waive the requirement that the law clerk be employed in Washington state may be approved under the following conditions:

(a) The primary tutor must be an active member of the Bar Association and intend to remain so throughout the law clerk's course of study.

(b) The primary tutor must certify that the tutor's, or the tutor's workplace, has a caseload with at least 51 percent of the cases involving Washington law or being subject to the jurisdiction of the Washington state courts, and that the law clerk will spend some work time on these cases.

(c) The tutor must agree to maintain a caseload that has substantial contact with Washington State. Substantial contact means having a caseload where at least 51 percent of the cases on average in a given year involve Washington law or are subject to the jurisdiction of Washington State courts. The tutor must annually certify that the caseload meets the substantial contact definition and must notify the Board if the caseload fails to meet the substantial contact definition.

B. Submit the following with the application fee by the deadlines established by the Board:

(1) A completed program application and all required supplemental information;

(2) Official transcripts from all undergraduate and graduate institutions attended, which show the grades received, the date a bachelor's degree was awarded by a school with approved accreditation, and the subject in which it was granted;

(3) Two letters attesting to the applicant's good moral character and appraising the applicant's ability to undertake and successfully complete the program; and

(4) The tutor's application establishing the applicant's and the tutor's eligibility and certifying to compliance with APR 6 and these regulations.

C. Appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board, ~~the Character & Fitness Board, or the Board of Governors, or pursuant to APR 20-24.3. No decision regarding the good moral character of an applicant made in connection with a program pursuant to APR 6 is binding on the Bar Association or Character and Fitness Board at the time an applicant applies for admission to practice law and membership in the Bar Association, and such issues may be reinvestigated and reconsidered by Bar staff, Bar Counsel, and the Character and Fitness Board. The Bar Association may require any disclosures and conditions of applicant and tutor that appear reasonably necessary to safeguard against unethical conduct by the applicant during for enrollment in the program.~~

3-2 Advanced Standing. A petition to request consideration for advanced standing for law school courses completed or previous enrollment in the law clerk program must be submitted with an application for enrollment.

A. Petition for Advanced Standing. All law clerks must pass the prescribed courses established in these regulations. No courses may be waived. Applicants seeking advanced standing must establish, to the satisfaction of the Board, that the courses for which they seek credit are equivalent to specified prescribed courses in these regulations. The petition shall include:

(1) A list of courses in the law clerk program for which advanced standing is sought. No advanced standing may be sought for Basic Legal Skills;

(2) A list of law clerk program courses completed during a prior enrollment in the program to be used to satisfy the request for advanced standing. Law clerk program courses completed more than five years prior to the application date will not be considered for advanced standing;

(3)~~(2)~~ A list of the law school courses and course descriptions from the law school course catalogue with an explanation of how each course is equivalent to the law clerk program courses;

(4)~~(3)~~ Official transcripts for the law school courses. Courses in which the applicant earned a grade less than a B- or 2.7 and/or completed more than five years prior to the Law Clerk Program application date will not be considered. For applicants admitted to the practice of law in a foreign jurisdiction, grades older than five years may be considered in combination with proof of current good standing and active practice of law for three out of the last five years; and

(5)~~(4)~~ Any additional information the applicant believes will be helpful or which the Board has requested.

B. Determination. In granting advanced standing, the Board will specify:

(1) Any prescribed courses or portions thereof that the law clerk applicant has been deemed to have completed;

(2) Any prescribed courses or portions thereof that the law clerk applicant will be required to pass; and

(3) Any law school courses that the law clerk applicant will be allowed to use to satisfy the fourth-year curriculum.

3-3 Additional and Remedial Courses. In its discretion, the Board may also require the law clerk applicant to take and pass certain subjects which appear necessary to prepare the applicant to practice law in this state, regardless of whether or not those courses are prescribed courses or approved elective courses. The Board may require the law clerk applicant to take remedial or other legal or nonlegal instruction.

3-4 Notification. The Board will notify an applicant of acceptance or rejection of the application for enrollment. If accepted, the notification will specify the month the law clerk is authorized to begin the program. ~~All programs shall begin the first day of the month specified in the notice.~~ If rejected, the notification will provide the basis for the rejection.

3-5 Acknowledgement of Enrollment

A. Before beginning the program the law clerk must acknowledge enrollment, pay the annual fee, and agree to ~~inform~~ disclose in writing to the Bar Association in writing of any incident that occurs any new conduct or information relevant to the questions in the program application while enrolled in the law clerk program is enrolled that might call the law clerk's moral character or fitness into question.

B. The Bar Association may require the law clerk to disclose to the tutor any new conduct or information disclosed by the law clerk during enrollment.

C. All programs shall begin the first day of the month specified by the law clerk in the acknowledgement of enrollment; this will be the enrollment date. The enrollment date must not be more than six months after the date of approval by the Board. Any changes to the enrollment date must be amended with a new acknowledgment of enrollment form.

Regulation 4. TUTORS

4-1 Tutor's Responsibilities.

A. The tutor is responsible for supervising and guiding the law clerk's education, and for setting an example of the highest ethical and professional conduct. The tutor has an obligation not only to instruct the law clerk, but to ensure only fully competent law clerks are deemed to be qualified to sit for the bar examination.

B. In addition to any other requirements, a potential tutor shall appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board.

C. The tutor is required to continue to meet the qualifications for a tutor established in APR 6 and remain in good standing throughout the period of the clerkship.

D. In addition to the "personal supervision" required by APR 6, defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments, the tutor's responsibilities include:

(1) Guiding and assisting the law clerk's study of each subject, using the course descriptions as a basic outline of course content and emphasizing pertinent state law;

(2) Choosing textbooks, casebooks, and other written, legal materials, selected from those in use at any of the law schools in the state, to guide the law clerk through the subject matter of each course;

(3) Assisting the law clerk in planning the sequence and timing of each prescribed course and of the fourth-year curriculum;

(4) Evaluating the law clerk's progress;

(5) Developing, administering, and grading the monthly examinations;

(6) Submitting the graded monthly examination with written comments and the required certificate to the Board within 10 ~~working~~ days of the end of the month in which it was administered;

(7) Assigning the law clerk tasks and duties which are intended to contribute to the law clerk's understanding of the practical aspects of engaging in the practice of law; and

(8) Providing the law clerk with an adequate work station and with reasonable access to an adequate law library.

4-2 Assistant Tutors. When an assistant tutor is proposed to teach a course instead of the primary tutor, the Board may approve the application(s) of one or more assistant tutors for up to 6 months of each year of study. The assistant tutor may teach only the course(s) for which ~~he/she~~ the assistant tutor was approved by the Board. Informal assistance to a lesser degree, by other lawyers, judges or staff is generally acceptable without specific approval.

A. Qualification. The assistant tutor shall meet all the qualifications and continuing qualifications established for the tutor in APR 6 and these regulations, except the assistant tutor shall have been actively and continuously engaged in the practice of law or have held the required judicial position for at least five years immediately preceding the commencement of the assistant tutorship.

B. Scope of Delegation.

(1) The assistant tutor may undertake the following duties for the course(s) for which the assistant tutor is approved:

i. Choosing textbooks, casebooks, and resource materials for the course.

ii. Guiding and assisting the law clerk's study of the subject, using the course description as a basic outline of course content and emphasizing pertinent state law.

iii. Developing, administering, and grading the monthly examination.

(2) The primary tutor shall:

i. In consultation with the assistant tutor, determine if the law clerk passed or failed the course;

ii. Remain ultimately responsible for the conduct of the clerkship;

iii. Complete all monthly and other certificates; and

iv. Appear with the law clerk at all oral evaluations with the Board, although the assistant tutor may also be in attendance where appropriate.

Regulation 5. COURSE OF STUDY

5-1 Structure.

A. The program is designed to be a four year course of study in combination with employment. Each year consists of 12 months during which the law clerk is required to study 6 subjects, pass 12 exams and submit 3 book reports.

B. The program is structured so the law clerk studies only one subject at a time and passes it before beginning the next subject. All courses in a given year, including jurisprudence reading, must be completed before the law clerk may study courses in a subsequent year. A law clerk may not take more course work in any calendar year than is prescribed by these regulations without prior Board approval. The length of time to be devoted to each subject is prescribed by regulation.

C. A law clerk may take leave or vacation in increments of one month upon written notice to the Board. A law clerk may take leave of longer than one month only upon advance written request and approval by the Board. Exceptions for emergency medical situations may be considered. A law clerk may not request leave of more than 12 consecutive months.

5-2 Subjects.

A. Jurisprudence Reading. Every law clerk is required to take the Jurisprudence course, which is a four year reading program, intended to familiarize the law clerk with legal history, philosophy, theory and biography.

B. First Year. To complete the first year of the program, the law clerk shall pass the following prescribed courses. The course entitled "Basic Legal Skills" shall be studied and passed first. Thereafter, the courses may be studied in any order.

| Course | Months |
|-----------------------|--------|
| Basic Legal Skills | 2 |
| Civil Procedure | 2 |
| Torts | 2 |
| Contracts | 2 |
| Agency & Partnerships | 2 |
| Property | 2 |

C. Second Year. To complete the second year of the program, the law clerk shall pass the following prescribed courses, in any order:

| Course | Months |
|-------------------------|--------|
| Community Property | 1 |
| Criminal Law | 2 |
| Constitutional Law I | 2 |
| Corporations | 2 |
| Evidence | 2 |
| Uniform Commercial Code | 3 |

D. Third Year. To complete the third year of the program, the law clerk shall pass the following prescribed courses, in any order:

| Course | Months |
|------------------------------------|--------|
| Constitutional Law II | 2 |
| Professional Responsibility | 1 |
| Domestic Relations | 2 |
| Wills, Estates, Trusts, Probate | 3 |
| Conflict of Laws | 2 |
| Criminal Procedure | 2 |

E. Fourth Year. The fourth year of the program is devoted to elective subjects. The law clerk, in consultation with the tutor, shall develop a fourth year curriculum of six electives. The law clerk shall then make a written petition to the Board, at least six months prior to the commencement of the fourth year, for approval of the proposed fourth year course of study.

(1) Under no circumstances will approval or recognition be given to courses directed to fulfillment of a continuing legal or other pro-

fessional education requirement, or intended to provide a preparation for a bar examination, or taught through correspondence or any equivalent.

(2) Recommended Electives. The following electives are recommended because they will broaden the law clerk's legal background, perspective, and skills. A law clerk may petition the Board for approval of alternative areas of study by including a detailed course description for each proposed course.

| Course | Months |
|-----------------------------|--------|
| Administrative Law | 2 |
| Personal Federal Income Tax | 2 |
| Land Use | 2 |
| Labor Law | 2 |
| Remedies | 2 |
| Antitrust | 2 |
| Creditor-Debtor Relations | 2 |
| Securities Regulation | 2 |
| Legal Accounting | 2 |
| International Law | 2 |
| Insurance | 2 |
| Consumer Protection | 2 |
| Environmental Law | 2 |
| Real Property Security | 2 |
| American Indian Law | 2 |
| Trial Practicum | 2 |
| Elder and Disability Law | 2 |

5-3 Monthly Examinations. The tutor is responsible for the content and administration of all monthly examinations.

A. Content. Although no specific substantive content is prescribed by the Board, it is anticipated such an examination will test the law clerk's comprehension of the current subject matter, and the law clerk's understanding of the ethical, professional and practical aspects of practicing law.

B. Course Descriptions. The course descriptions in Regulation 7 state the minimum level of knowledge the Board expects a law clerk to obtain in each subject, and provide guidance to the tutor in formulating monthly examinations.

C. Timing. The tutor shall administer an examination covering that month's subjects to the law clerk on or before the last business day of each month.

D. Grading. All courses in the program are to be graded as pass/fail only. "Pass" means that the law clerk has exhibited reasonable comprehension of the theory and practice of any given subject to the satisfaction of the tutor and the Board. If a law clerk earns a "Fail" grade the law clerk ~~he or she~~ shall continue to study the subject for an additional month.

E. Certificates. Within 10 days following the month of study, ~~t~~The tutor shall submit the exam, including the grade given for the examination and written comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision, ~~within 10 business days following the month of study.~~

(1) If an exam is not given, the monthly certificate shall be submitted stating the reason.

(2) The date of receipt will be recorded. A pattern of late certificates may be cause for remedial action or termination from the program.

5-4 Board Evaluations. ~~Annually, or at such other intervals as may be established by the Board, the Board shall conduct an evaluation at which the law clerk and the tutor shall be personally present. The Board may at any other time, in its discretion, conduct an evaluation at which the law clerk and the tutor shall be personally present~~ when if required by the Board to do so.

A. The Board will not normally test the law clerk's substantive knowledge, but may do so to evaluate whether or not the law clerk is progressing satisfactorily in the program.

B. Materials. In making its evaluation, the Board may consider:

- (1) The substantive contents of all monthly examinations;
- (2) The tutor's monthly certificates and timeliness of receipt;
- (3) Any written course work; and
- (4) Any other written or oral materials deemed to be pertinent by the Board.

C. Decision. At the conclusion of the evaluation, the Board may:

- (1) Determine the law clerk has successfully mastered the preceding year's course work and is eligible and authorized to begin the next year of the program;
- (2) Determine the law clerk has satisfactorily completed the program and is qualified to sit for the bar examination, subject to any other requirements for sitting for the bar examination as set forth in the Admission and Practice Rules;
- (3) Advise the tutor regarding the quality, timeliness, or appropriateness of coursework, exams, and certificates;
- (4) Direct the law clerk to repeat designated prescribed or elective courses, devote more time to each course, take remedial legal or nonlegal instruction, appear before the Board at more frequent intervals for an examination which may be written or oral;
- (5) Require the law clerk to change tutors;
- (6) Advise the law clerk that the law clerk's enrollment in the program is terminated.

D. At the conclusion of any evaluation, the Board will provide a brief written summary of its decision to the law clerk and to the tutor.

Regulation 6. WITHDRAWAL AND TERMINATION OF ENROLLMENT

6-1 Withdrawal by Law Clerk.

A. Voluntary. A law clerk who wishes to withdraw from the program shall notify the Board in writing, filed as required by Regulation 2-4.

B. Involuntary. A law clerk will be deemed to have withdrawn from the program if:

- (1) The law clerk is absent from the program for more than one month in any calendar year without the Board's prior approval of a petition for a leave of absence. Failure to submit exams and tutor's certificates shall be interpreted as absence from the program;
- (2) The law clerk takes a leave of absence from the program for more than 12 consecutive months; or
- (3) The annual fee is not paid by the established deadline.

6-2 Withdrawal by Tutor.

A. Voluntary. A tutor who wishes to withdraw from that position shall notify the Board and the law clerk in writing, filed as required by Regulation 2-4.

B. Involuntary. If a disciplinary sanction is imposed upon a tutor, the tutor will be deemed to have withdrawn from that position. The Board may determine that the imposition of a sanction does not necessitate automatic withdrawal.

C. The Board may direct a law clerk to change tutors if approval of a tutor is withdrawn.

6-3 Termination of Enrollment by the Board. ~~The Board may terminate a law clerk's participation in the program for:~~

A. The Board must terminate a law clerk's participation in the program for:

(1) Failure to complete the prescribed course of study within 6 years from the date of enrollment; or

(2) A determination by the ~~Character and Fitness Board~~ that the applicant clerk does not meet the character or fitness requirement for continued enrollment in the program.

B. The Board may terminate a law clerk's participation in the program for the law clerk's failure to otherwise comply with the requirements of the program or a decision or order of the Board. ~~;~~ ~~or~~

C. ~~A determination by the Character and Fitness Board that the applicant does not meet the character or fitness requirement for enrollment in the program.~~

Regulation 7. COURSE DESCRIPTIONS

7-1 Jurisprudence Reading. A four-year course of reading consisting of three (3) books each year, to be selected from a list approved by the Board. The Board has discretion to select and require specific books which must be read to meet this requirement.

A. Upon completion of each book, the law clerk shall prepare and submit to the Board a short book report. Reports ~~shall~~ should be submitted every 4 months.

B. A year's coursework shall not be deemed completed unless the book reports are submitted. A law clerk may not begin the next year's course work until the current year's book reports are completed and submitted to the Board.

7-2 First Year Clerkship.

A. Basic Legal Skills. Introduction to basic legal reference materials (including judicial, legislative and administrative primary and secondary sources) and their use; techniques of legal reasoning, analysis and synthesis; legal writing styles. Familiarization with the structure of the federal and state court systems; the concept of case law in a common law jurisdiction; fundamental principles of stare decisis and precedent; the legislative process; principles of statutory construction and interpretation. Law Clerk should be assigned projects of increasing difficulty such as: case abstracts; analysis of a trial record to identify issues; short quizzes to demonstrate ability to locate primary and secondary sources; office memoranda or a trial oriented memorandum of authorities to demonstrate ability to find the law applicable to a factual situation and to differentiate unfavorable authority; an appellate level brief.

B. Civil Procedure. Fundamentals of pleading and procedure in civil litigation, as structured by the Federal Rules of Civil Procedure and the Washington Superior Court Civil Rules. Study shall include: jurisdiction over the person and subject matter; venue; time limits; commencement of actions; pleadings; parties; impleader; interpleader; motions; class actions and intervention; res judicata and

collateral estoppel; discovery and other pretrial devices; joinder; summary judgment; judgments; post-trial motions. Law Clerk should be required to draft summons; pleadings; motions; findings of fact and conclusions of law; judgment; interrogatories; requests for admission.

C. Contracts. Study of legal principles related to the formation, operation and termination of the legal relation called contract. General topics include: offer and acceptance; consideration; issues of interpretation; conditions; performance; breach; damages or other remedies; discharge; the parol-evidence rule; the statute of frauds; illegality; assignments; beneficiaries.

D. Property. Study of the ownership, use, and transfer of real property in both historical and modern times. Topics include: estates and interests in land; concurrent ownership; easements; equitable servitudes; conveyances; real estate contracts; nuisance; adverse possession; land use controls; landlord-tenant; the recording system; title insurance.

E. Torts. Study of the historical development, principles, concepts and purposes of the law relating to redress of private injuries. Topics include: conversion; trespass; nuisance; intentional tort; negligence; strict liability; products liability; concepts of duty, causation, and damage; limitations on liability such as proximate cause, contributory negligence, assumption of the risk, immunity; comparative negligence.

F. Agency and Partnership. Legal principles of agency law including definition of the agency relationship, authority and power of agents, notice and knowledge, rights and duties between participants in the relationship, termination of agency relationship, master-servant relationship. Partnership law using the Revised Uniform Partnership Act as a model code. Topics include: formation, partners' rights and duties between themselves, powers, unauthorized acts, notice and knowledge, incoming partner liability, indemnification, contribution, partner's two-fold ownership interest, co-ownership interests and liabilities, creditor's claims and remedies, dissolution events, winding up, distribution of asset rules. Study of the Uniform Limited Partnership Act and joint venture law.

7-3 Second Year Clerkship.

A. Community Property. Relationship necessary for creation of community property, classification of property as community or separate, management and control of community assets, rights of creditors, disposition of community property upon dissolution of the community, problems of conflict of laws encountered in transactions with common-law jurisdictions.

B. Criminal Law. Study of substantive criminal law including concepts such as elements of criminal responsibility; principles of justification and excuse; parties; attempts, conspiracy; specific crimes; statutory interpretation; some introduction to sentencing philosophies and to juvenile offender law.

C. Constitutional Law I. Course covers basic constitutional document, excluding the Bill of Rights. Topics include: taxing clause, commerce clause, contract clause, war power and treaty power. Allocation and distribution of power within the federal system, and between federal and state systems, including economic regulatory power and police power; limitations on powers of state and national governments; constitutional role of the courts.

D. Corporations. Business corporations for profit using the Model Business Corporations Act and state law provisions. Topics include: promotion, formation and organization; theories of corporations; cor-

porate purposes and powers; disregard of corporateness; common law and statutory duties and liabilities of shareholders, directors, and officers; allocation of control, profit and risk; rights of shareholders; derivative suits and class action suits by shareholders; mergers and consolidations, sale of assets, and other fundamental changes in corporate structure; corporate dissolution; SEC proxy rules and Rule 10(b)(5).

E. Evidence. Rules of proof applicable to judicial trials. Topics include: admission and exclusion of evidence, relevancy, hearsay rule and its exceptions, authentication of writings, the best evidence rule, examination and competency of witnesses, privileges, opinion and expert testimony, demonstrative evidence, presumptions, burden of proof, judicial notice.

F. Uniform Commercial Code. Course covers Articles I, II, III, IV, VI, VII, and X of the Uniform Commercial Code. Course first examines problems in the sale of goods as governed by Article II (with a brief survey of its antecedents) including: warranty, risk of loss, acceptance and rejection, tender of delivery, revocation, remedies for breach of contract. Some discussion of other laws relating to warranties, Article VI on Bulk Sales, and Article VII on documents of title and bills of lading. Course next examines commercial paper, bank deposits and collections under UCC Articles III and IV, including: formation and use of negotiable instruments with an emphasis on checks, rights and liability of parties to negotiable instruments, defenses to liability, study of bank collection process and bank's relationship with its customers. Course finally examines secured transactions under UCC Article IX, including: types of security interests, perfection of such interests, priority of claims, rights to proceeds of collateral, multi-state transactions, rights of parties after debtor's default.

7-4 Third Year Clerkship.

A. Constitutional Law II. Course examines the Bill of Rights. Topics include: free speech, prior restraint, obscenity, libel, fair trial and free press, loyalty oaths, compulsory disclosure laws, sedition and national security, picketing, symbolic conduct, protest, subversive advocacy; due process; equal protection development and analysis; fundamental rights and entitlements; religious clause; jury trial right in civil actions; constitutional protection and interpretation under state as contrasted to federal constitutional documents.

B. Professional Responsibility. Study of legal ethics and a lawyer's roles in society, including lawyer-client relations, lawyer-public relations, and a lawyer's responsibility to the courts and the profession. Topics also include: organization of an integrated bar, Supreme Court's supervisory powers, professional service corporations, pre-paid legal services arrangements, malpractice, the Admission to Practice Rules, the Rules for the Enforcement of Lawyer Conduct, the Rules of Professional Conduct and the ABA Model Rules of Professional Conduct.

C. Domestic Relations. Study of the substantive and procedural law affecting the formation, disintegration and dissolution of family relations, including those of husband and wife, parent and child, and non-marital. Topics include: jurisdiction, procedure, costs, maintenance, child support, property division, custody, modification and enforcement of orders, some discussion of conflict of laws, taxation, URESA and UPA.

D. Wills, Estates, Trusts, Probate. Study of the voluntary transmission of assets in contemplation of and at death. Topics include: disposition by will, creation of and disposition by a trust, effec-

tiveness of the disposition in the creation of present and future interests in property, intestate succession, construction problems, powers of appointment, restrictions on perpetuities and accumulations, alternative methods of wealth transmission, some introduction to the basic tax framework important in formulating plans of disposition, and fiduciary administration and management of decedent's estates and trusts.

E. Conflict of Laws. Study of that part of the law that determines by which state's law a legal problem will be solved. Topics include: choice-of-law problems in torts, contracts, property, domestic relations, administration of estates, and business associations.

F. Criminal Procedure. Constitutional doctrines governing criminal procedure. Topics include: Fourth, Fifth, Sixth and Eighth Amendments, pertinent due process provisions of Fourteenth Amendment; search and seizure, confessions, identification procedures, right to counsel, arrest, jury trial, double jeopardy, and pertinent provisions of the state constitution. The Superior Court Criminal Rules are examined as they relate to the procedural aspects of raising the constitutional issues.

7-5 Fourth Year Clerkship; Electives.

A. Administrative Law. Study of the administrative process and its role in the legal system. Subjects include: powers and procedures of administrative agencies, relationship of administrative agencies to executive, judicial and legislative departments of government.

B. Personal Federal Income Tax. Examination of federal income tax law as it applies to individuals, but not in their role as partners, shareholders, or beneficiaries of trusts or estates. Topics include: concepts of income, gross income, net income, when income should be taxed, to whom it should be taxed and its character as unearned, earned or capital gain income. Deductions are also examined in detail.

C. Land Use. Study of legal principles and constitutional limitations affecting systems for public regulation of the use of private land. Topics include: planning, zoning, variances, special use permits, subdivision controls, environmental legislation, nuisance, eminent domain, powers of public agencies, "taking" without just compensation, due process, administrative procedures and judicial review, exclusionary zoning and growth control.

D. Labor Law. Study of the organizational rights of employees and unions and the governance of the use of economic force by employers and unions. Other topics include the duty to bargain collectively, the manner in which collective bargaining is conducted, subjects to which it extends, administration and enforcement of collective bargaining agreements, and relations between a union and its members.

E. Remedies. Historical development and use of judicial remedies that provide relief for past or potential injuries to interests in real or personal property. Topics include: history of equity, power of equity courts, restitution, specific performance, injunctions, equitable defenses, compensatory and punitive damages, unjust enrichment, constructive trusts, equitable liens, tracing and subrogation.

F. Antitrust. An examination of the antitrust laws including the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act; and topics such as monopolies, restraint of trade, mergers, price fixing, boycotts, market allocation, tying arrangements, exclusive dealing and state antitrust law.

G. Creditor-Debtor Relations. Rights and remedies of creditors and debtors under the Federal Bankruptcy Code, particularly in straight bankruptcy cases and under state laws relating to judgments,

judgment liens, executions, attachments, garnishments, fraudulent conveyances, compositions, assignments for the benefit of creditors, and debtor's exemptions.

H. Securities Regulation. Study of legal control over the issuance and distribution of corporate securities. Topics include: registration and distribution of securities under the Federal Securities Act of 1933, including the definition of a security; basic structure, applicability, and prohibitions of the Act; underwriting; preparation, processing and use of registration statement and prospectuses; exemptions from registration under the Act, including Regulation A, private offerings, and business reorganizations and recapitalizations; secondary distributions; brokers transactions; and civil liability for violation of the Act. Registration, distribution and regulation of securities under state "blue sky" laws, including the State of Washington Securities Act. Regulation of franchise arrangements under the Federal Securities Act of 1933 and the State of Washington Franchise Investment Protection Act. Regulation of national securities exchanges and broker-dealers; registration and listing of securities on national securities exchanges; periodic reporting and public disclosure of information requirements for companies whose securities are traded on national securities exchanges; and civil liability for violation of the Act. Regulation of mutual funds and other types of investment companies under the Federal Investment Company Act of 1940.

I. Legal Accounting. Bookkeeping, use of journals and ledgers, analysis of financial statements, professional responsibility of a lawyer to a corporate client and relationship to accountants involved in a client's financial affairs. Course also addresses lawyer's accounting and recordkeeping obligations to his or her client under the Rules of Professional Conduct or its successor.

J. International Law. Legal process by which interests are adjusted and authoritative decisions made on the international level. Topics include: nature and source of international law, law of treaties, jurisdiction, some discussion of international legal organizations, state responsibility and international claims for wrongs to citizens abroad, and application of international law in United States courts.

K. Insurance. Legal principles governing formal mechanisms for the distribution of risk of loss. Emphasis is on property, casualty, life insurance. Topics include: marketing of insurance, indemnity principle, insurable interest, amount of recovery and subrogation, persons and interests protected, brokers, and identification of risks transferred by insurance.

L. Consumer Protection. Selected laws for protection of consumers, including federal, state and local laws that prohibit deceptive advertising, mandate disclosure of information, regulate credit practices, license occupations, establish quality standards for products and services, and condemn "unfair" practices. Emphasis on the theoretical justifications for governmental intervention in the marketplace. Attention to problems of consumer justice administration, including informal dispute resolution procedures and representation of consumer interests in administrative and legislative proceedings.

M. Environmental Law. Survey of citizen, legislative, administrative and judicial action in response to the reality and the threat of man-induced alteration to the natural environment; focuses on National Environmental Policy Act, federal air and water pollution control legislation, state air and water pollution control statutes and shoreline management.

N. Real Property Security. Methods by which an obligation may be secured by real property of the obligor or of a third person. Covers the common-law principles and statutes that regulate the creation, operation, and extinguishment of the legal relations known as the real property mortgage and deed of trust, considered in the context of financing the purchase or development of land. Some attention must be given to principles governing operation of the lending industry.

O. American Indian Law. Tribal/state/federal judicial and legislative jurisdiction in Indian country. Criminal and civil jurisdiction. Indian religious freedom. Indian water rights. Special hunting and fishing rights. History of federal laws and policies towards Indians. Current federal law and policy. Judicial trends in Indian cases. The federal trust responsibility toward Indian tribes; tribal powers of self government. Tribal courts. Federal supremacy (preemption) over state law in Indian country.

P. Trial Practicum. Advanced course in preparing for trial. Resources should include sample cases and textbooks as well as evidence and civil rules. The clerk will write a fully researched brief, motions in limine, prepare ER 904; prepare objections to opposition motions in limine and ER 904; argue pretrial motions; research and perform voir dire; prepare and give an opening statement; prepare and give a direct exam with introduction of multiple exhibits; prepare and give a cross exam with introduction of exhibits; draft and argue jury instructions; prepare and give a closing statement.

Then to be assigned an actual case in litigation and add to the above, a mock trial which includes: prepared statement of the "story" of the case; illustrate how each witness fits into the story and what evidence is to be used with each witness; develop direct examination of one witness, cross examination of one witness and at least one exhibit for each witness; prepare and give an opening; conduct voir dire of volunteers; examine a witness; handle objections; and argue sample motions in limine. The clerk is expected to attend court proceedings regularly, and participate to the extent permitted by APR 9, if licensed.

Q. Elder and Disability Law. An examination and study of the complex legal needs of people who are elderly and people who have a disability. This course examines major issues and substantive laws affecting people who are elderly or who have a disability including income protection, asset preservation and protection, options for financing long-term care and healthcare, planning for incapacity and the use of traditional and nontraditional estate and life care planning devices such as wills, trusts, special needs trusts, powers of attorney, guardianships, adult protection actions and other devices but in the context of the needs of people who are elderly or who have a disability. This course will also address the special ethical challenges and concerns of lawyers who are practicing elder and disability law.

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

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.