

WSR 23-09-022
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1502
SAR 15—COMMISSIONER OF THE )
SUPREME COURT )

Supreme Court Commissioner Michael Johnston, having recommended the adoption of the suggested amendments to SAR 15—Commissioner of the Supreme Court, 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 immediately.

DATED at Olympia, Washington this 6th day of April, 2023.

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

GR 9 Cover Sheet
Suggested change to SAR 15(k)

Proponent: Commissioner Michael E. Johnston.
Spokesperson: Commissioner Michael E. Johnston.
Date Submitted: January 24, 2023.

Purpose: SAR 15(k) prohibits the commissioner and attorneys employed by the commissioner from "acting as an attorney." The plain language of this rule prohibits a commissioner or a staff attorney from engaging in reserve military service as a judge advocate in the United States military's Judge Advocate General's Corps (JAG). Attorneys in other state government entities serve as reserve judge advocates, and such service provides veteran attorneys opportunities for military service credit. Furthermore, there are no apparent legal or ethical conflicts within the Washington appellate court system in light of the wide separation between military and state justice systems. Nevertheless, reserve judge advocate service by a staff attorney conflicts with SAR 15(k). This broad prohibition likely will have a disparate impact on court staff attorneys wishing to engage in reserve JAG service, potentially violating the United Service Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 et seq. Furthermore, strict application of the rule in this context may interfere with the commissioner's efforts to recruit a more diverse team of staff attorneys. Amending the rule to allow staff attorneys to engage in reserve judge advocate service will remedy this situation. The proposed change does not apply to the commissioner or deputy commissioner

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

**Expedited Consideration:** The proponent requests expedited consideration of this suggested rule change in light of ongoing recruiting efforts.

**Suggested Change:**

The commissioner and the attorneys employed by the commissioner are prohibited, during term of office, from acting as an attorney unless a staff attorney is acting as a reserve judge advocate within the Judge Advocate General's Corps (JAG) in such a capacity as not to create a conflict with the staff attorney's duties with the Washington Supreme Court.

SAR 15

COMMISSIONER OF THE SUPREME COURT

(a) - (j) [Unchanged.]

(k) **Prohibition From Practice of Law.** The commissioner and the attorneys employed by the commissioner are prohibited, during term of office, from acting as an attorney unless a staff attorney is acting as a reserve judge advocate within the Judge Advocate General's Corps (JAG) in such a capacity as not to create a conflict with the staff attorney's duties with the Washington Supreme Court.

(l) [Unchanged.]