

WSR 17-08-001
AGENDA
OFFICE OF
FINANCIAL MANAGEMENT

[Filed March 22, 2017, 1:01 p.m.]

Following is the office of financial management's (OFM) semi-annual rule-making agenda for publication in the Washington State Register. This list identifies rules under development and rules with anticipated rule-making action during the next six months.

This agenda is available on OFM's web site at <http://ofm.wa.gov/rulemaking/default.asp>. The information on our web site is updated as rule-making notices are filed. If OFM should begin rule-making activities for a rule not listed on the following agenda, that information will also be posted.

If you have any questions, please feel free to contact Roselyn Marcus at Roselyn.Marcus@ofm.wa.gov or (360) 902-0434. If you have specific questions about state personnel rules, these can readily be addressed by Kristie Wilson with OFM rules and appeals. Kristie can be reached at Kristie.wilson@ofm.wa.gov or (360) 407-4139.

Semi-Annual Rule-Making Agenda
January 1 through June 30, 2017

WAC Citation	Subject Matter/Purpose of Rule	Current Activity/Approximate Filing Date
WAC 357-52-225	Personnel resources board (PRB), amend rule to allow PRB filings via email.	CR-102 filing anticipated in March.
WAC 357-31-325, 357-31-326	Blood donation, amend rules to align with Executive Order 02-01 and to clarify that leave will not exceed five days in a two year period.	CR-102 filing anticipated in March.
Chapter 82-60 WAC	All payer claims database (APCD), chapter 43.371 RCW directs OFM to adopt rules for APCD. Rule making to implement the APCD will continue, addressing privacy and security, penalties and fees for data	Privacy and security rules will be finalized this spring. CR-101 for the remaining rules were filed, with CR-102 filing anticipated this summer.

WAC Citation	Subject Matter/Purpose of Rule	Current Activity/Approximate Filing Date
	usage, and data formatting.	
Chapter 82-48 WAC	Public disclosure rules need to be updated to match current law and current agency practices.	File CR-101 this summer, with hearing and rules adoption by the end of this year/early next year.

Roselyn Marcus, Assistant Director
 Legal and Legislative Affairs

WSR 17-08-012
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF HEALTH

[Filed March 24, 2017, 1:44 p.m.]

NOTICE OF ADOPTION OF AN INTERPRETIVE OR POLICY STATEMENT

Title of Interpretive or Policy Statement: Nationally recognized organization for anaphylaxis and epinephrine autoinjector training.

Issuing Entity: Department of health.

Subject Matter: Recognizing the American Red Cross as nationally recognized organization for anaphylaxis and epinephrine autoinjector training for the purposes of RCW 70.54.440.

Effective Date: March 27, 2017.

Contact Person: Brett Lorentson.

WSR 17-08-017
NOTICE OF PUBLIC MEETINGS
COMMISSION ON
ASIAN PACIFIC AMERICAN AFFAIRS

[Filed March 27, 2017, 1:05 p.m.]

Following is the schedule of special meetings for the commission on Asian Pacific American affairs for 2017:

Date	Time	Location
May 6, 2017	10:00 a.m. - 4:00 p.m.	Tukwila Community Center 12424 42nd Avenue South Tukwila, WA 98168

If you need further information contact Brianne Ramos, 210 11th Avenue S.W., 301A, Olympia, WA 98504, (360) 725-5667, brianne.amos@capaa.wa.gov, www.capaa.wa.gov.

WSR 17-08-021**HEALTH CARE AUTHORITY**

(Health Technology Clinical Committee)

[Filed March 27, 2017, 4:25 p.m.]

The health technology clinical committee reached final coverage decisions for the following technologies at their March 17, 2017, public meeting:

- Pharmacogenomic testing for selected conditions Decision No. 20170317A
- Artificial disc replacement - Rereview Decision No. 20170317B

All documents related to these evidence assessments, including the final coverage decisions, are available on the health technology assessment program web site www.hca.wa.gov/about-hca/health-technology-assessment.

For further information contact Christine Masters, Program Specialist, WA - Health Technology Assessment, P.O. Box [42712], 626 8th Avenue S.E., Olympia, WA 98504-2712, desk (360) 725-5126, fax (360) 586-8827, christine.masters@hca.wa.gov.

WSR 17-08-025**NOTICE OF PUBLIC MEETINGS****HUMAN RIGHTS COMMISSION**

[Filed March 28, 2017, 1:01 p.m.]

The following date and time is for the April 27, 2017, commission meeting: Washington State Human Rights Commission, Commission Meeting, on April 27, 2017, at 5:30 p.m., Conference Call, (712) 432-0490, Access Code: 833014#.

WSR 17-08-028**INTERPRETIVE STATEMENT****DEPARTMENT OF REVENUE**

[Filed March 28, 2017, 1:38 p.m.]

Interpretive Statement Issued

The department of revenue has issued the following excise tax advisory (ETA):

ETA 3199.2017 - Non-Business Money Transfer Services

This ETA explains how to attribute fees from nonbusiness money transfer services for apportionment purposes.

A copy of this document is available via the internet at Rule and Tax Advisory Adoptions and Repeals.

Kevin Dixon
Tax Policy Manager
Rules Coordinator

WSR 17-08-030**HEALTH CARE AUTHORITY**

[Filed March 28, 2017, 2:52 p.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 17-0018 Add Dental Services to Rural Health Center Encounter-Eligible Services.

Effective Date: April 1, 2017.

Description: The health care authority (the agency) intends to submit SPA 17-0018 to allow rural health centers (RHC) to provide dental services as encounter-eligible services. RHCs currently provide dental services on a fee-for-service (FFS) basis. SPA 17-0018 will allow eligible dentists to provide dental services at RHCs and be paid the encounter rate.

There are one hundred sixteen RHCs in the state, all of which would be eligible to incorporate dental services if SPA 17-0018 is approved. Since RHCs do not currently provide dental services reimbursed as encounter-eligible services, the data necessary for a fiscal analysis is not available at this time.

This notice is published on the agency's web site under Public notices. It is also published in the Washington State Register as a courtesy.

A copy of the draft SPA is available for review by contacting Madina Cavendish, FQHC/RHC Unit, 628 8th Avenue S.E., Olympia, WA 98501, phone (360) 725-1486, TDD/TTY 1-800-848-5429, fax (253) 350-6512, email madina.cavendish@hca.wa.gov.

County Contacts**Adams County**

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Asotin County

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Alt. Phone 1-800-310-4881
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Benton County

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500 North Morain Street
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Alt. Phone 1-800-310-4833
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Chelan County

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805 South Mission Street
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Phone (509) 667-6000

Clallam County

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Columbia County

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 410 East Main
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Cowlitz County

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 711 Vine Street
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 Alt. Phone 1-800-670-8874
 Fax (509) 886-6221

Ferry County

Republic Home and Community Services Office
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 Republic, WA 99166
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 Fax (509) 775-2401

Franklin County

Franklin County Commissioners Office
 1016 North 4th Avenue
 Pasco, WA 99301
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Garfield County

Garfield County District Court
 789 West Main Street
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Pomeroy, WA 99347
 Phone (509) 843-1002

Grant County

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Grays Harbor County

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Island County

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Lincoln County

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Mason County

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Pierce County

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San Juan County

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Stevens County

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Wahkiakum County

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Walla Walla County

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Whatcom County

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Whitman County

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Yakima County

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Alt. Phone 1-800-822-2097
Fax (509) 575-2286

WSR 17-08-035**CLEMENCY AND PARDONS BOARD**

[Filed March 29, 2017, 10:07 a.m.]

Notice of Quarterly Hearing

The Washington state clemency and pardons board hereby gives notice of its quarterly hearing scheduled for June 9, 2017, at 10:00 a.m., in House Hearing Room C, of the John L. O'Brien Building, Olympia, Washington¹. The following petitions will be considered by the board²:

¹ Please note that all board hearings are recorded by a court reporter, open to the public, and broadcast on the state public affairs network, TVW.

² At the board's discretion, the order of the petitions to be called for hearing is subject to change.

Petitioner:	Relief Requested:
Sutton, Brandon V.	Commutation
Lewis, Ray A.	Commutation
Kent, Richard R.	Commutation
Tran, Hy V.	Pardon
Tootell, Francis A.	Pardon
Raney, Edward A.	Pardon
Bruckner, Donald E.	Pardon
Ahmad, Latif M.	Pardon

WSR 17-08-039**INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF HEALTH**

[Filed March 29, 2017, 1:23 p.m.]

NOTICE OF UPDATE TO A POLICY STATEMENT

Title of Policy Statement: Establishing Parentage Following a Surrogacy Contract.

Issuing Entity: Department of health, center for health statistics.

Subject Matter: Birth certificates and surrogacy births.

Effective Date: April 14, 2017.

Contact Person: Jean Remsbecker, Jean.remsbecker@doh.wa.gov, (360) 236-4330.

WSR 17-08-041**HEALTH CARE AUTHORITY**

[Filed March 30, 2017, 7:41 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA) 17-0020.

Effective Date: March 23, 2017.

Description: The health care authority (the agency) intends to submit medicaid SPA 17-0020 in order to comply with Section 5008 of the 21st Century Cures Act (Cures Act) that amended Section 1903(i)(21) of the Social Security Act. The Cures Act prohibits states from receiving federal financial participation or collecting drug rebates for drugs when used for cosmetic purposes or hair growth unless the state has determined that use of these drugs is medically necessary.

The Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program Technical Notice Release Number 179 directs states to remove references to these drugs from their medicaid state plan. States that will provide coverage for these drugs when medically necessary are directed to add a statement to that effect into their state plan.

SPA 17-0020 will not change current policy and practice in Washington state, as these drugs are noncovered. The agency allows exceptions for noncovered services when medically necessary and prior authorized. As directed by CMS, SPA 17-0020 removes the reference to the specified drugs and adds a statement that these noncovered drugs are

covered as an exception to rule when determined to be medically necessary and prior authorized.

SPA 17-0020 does not change current policy and practice. Therefore the SPA is expected to have no effect on annual aggregate expenditures for providers or the state.

The agency would appreciate any input or concerns regarding this SPA. To request a copy of the draft SPA, you may contact the agency in your county listed in the table or the person named below. To submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

NOTE: Effective March 20, 2017, official public notice of proposed medicaid SPAs is published on the agency's web site at the Public Notices link. As a convenience, the agency will continue to publish copies of SPA notices in the Washington State Register through June 30, 2017.

CONTACT: Charles Agte, Pharmacy Services, P.O. Box 45505, Olympia, WA 98504-5506, phone (360) 725-1301, TDD/TTY 1-800-848-5429, fax (360) 725-2141, email charles.agte@hca.wa.gov.

County Contacts

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Ferry County

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Franklin County

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Garfield County

Garfield County District Court
789 West Main Street
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Phone (509) 843-1002

Grant County

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Jefferson County

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King County

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Kittitas County

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Klickitat County

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Lewis County

Chehalis Home and Community Services Office
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Phone (360) 807-7150
Alt. Phone 1-800-487-0360
Fax (360) 330-7552

Lincoln County

Lincoln County Health Department
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Phone (509) 725-1001

Mason County

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2505 Olympic Highway North
Suite 440
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Alt. Phone 1-800-462-4957
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Okanogan County

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Pacific County

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Pend Oreille County

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 Fax (360) 378-7036

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Snohomish County

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Wahkiakum County

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Alt. Phone 1-800-635-5989

Walla Walla County

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WSR 17-08-042**HEALTH CARE AUTHORITY**

[Filed March 30, 2017, 9:43 a.m.]

NOTICE

Title or Subject: Medicaid State Plan Amendment (SPA)
 17-0002 Pharmacy Reimbursement.

Effective Date: April 1, 2017.

Description: The health care authority (the agency) intends to submit medicaid SPA 17-0002 to comply with changes required under the federal covered outpatient drug rule (new federal rule). *See* 81 Fed. Reg. 5170-01 (February 1, 2016) (amending 42 C.F.R. Part 447, Subpart I).

The agency will continue to pay pharmacies both an ingredient cost and a professional dispensing fee (formerly known simply as a dispensing fee). With respect to ingredient costs, the agency, as allowed by the new federal rule, will begin using the National Average Acquisition Drug Cost (NADAC) instead of the average wholesale price as the basis for payment for pharmacy point-of-sale claims. The change will apply for dates of service on and after April 1, 2017. The change applies to fee-for-service claims; the Agency does not mandate the methodology used by medicaid managed care organizations.

The agency engaged in rule-making procedures as required by the state's Administrative Procedure Act, chapter 34.05 RCW, in adopting regulatory amendments to effectuate the changes. *See* WSR 16-14-053 (June 29, 2016) and 16-15-087 (July 20, 2016) (preproposal statements of inquiry); WSR 17-02-083 (January 4, 2017) (content of proposed amendments); WSR 17-07-001 (content of final amendments).

The SPA will also be updated to reflect the following agency rules regarding 340B and contract pharmacies:

- Only the qualified public health service (PHS) entity listed on the exclusion file may bill the agency for 340B discounted drugs.
- The agency does not recognize 340B contract pharmacies.

As a result of the change to the NADAC as the basis of payment, the agency anticipates reimbursement to providers to be reduced, in the aggregate, by less than one-half of one percent (approximately \$1.16M) over a twelve-month period on some fee-for-service point-of-sale claims. Impacts to individual providers will depend on which drugs are dispensed. As allowed under current rules, there are circumstances in which the agency will consider requests by pharmacies for adjustments to individual claims. *See* WAC 182-530-7300.

SPA 17-0002 is in the development process; therefore a copy is not yet available for review. The agency would appreciate any input or concerns regarding this SPA. To request a copy when it becomes available, you may contact the agency in your county listed in the table or the person named below. To submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

NOTE: Effective March 20, 2017, official public notice of proposed medicaid SPAs is published on the agency's web site at the Public Notices link. As a convenience, the agency will continue to publish copies of SPA notices in the Washington State Register through June 30, 2017.

CONTACT: Christy Vaughn, Section Manager, Medicaid Rates and PEB Finance, 626 8th Avenue S.E., Olympia, WA 98501, phone (360) 725-0468, email christy.vaughn@hca.wa.gov.

County Contacts

Adams County

Adams County Health Department
108 West Main
Ritzville, WA 99169
Phone (509) 659-3315

Asotin County

Clarkston Home and Community Services Office
525 Fifth Street
Clarkston, WA 99403
Web site <http://www.altcWashington.com>
Phone (509) 751-4672
Alt. Phone 1-800-310-4881
Fax (509) 758-4593

Benton County

Tri-Cities Home and Community Services Office
500 North Morain Street
Suite 2210
Kennewick, WA 99336
Phone (509) 374-2100
Alt. Phone 1-800-310-4833
Fax (509) 374-7559

Chelan County

Chelan Community Services Office
805 South Mission Street
Wenatchee, WA 98801
Phone (509) 667-6000

Clallam County

Port Angeles Home and Community Services Office
235 West 1st Street
Port Angeles, WA 98362
Phone (360) 565-2160
Alt. Phone 1-800-280-9891
TTY (360) 417-5651
Fax (360) 417-1416

Clark County

Vancouver Home and Community Services Office
800 N.E. 136th Avenue
Suite 220
Vancouver, WA 98684
Phone (360) 397-9500
Alt. Phone 1-800-280-0586
TTY (360) 750-4079
Fax (360) 992-7949

Columbia County

Aging and Disability Resource Center
410 East Main
Dayton, WA 99328
Web site <http://www.altcWashington.com/>
Phone (509) 382-4787

Cowlitz County

Kelso Home and Community Services Office
711 Vine Street
Kelso, WA 98626
Phone (360) 501-2500
Alt. Phone 1-800-605-7322
TTY (360) 577-7591
Fax (360) 578-4106

Douglas County

Wenatchee Home and Community Services Office
50 Simon Street S.E.
Suite B
East Wenatchee, WA 98802
Phone (509) 886-6140
Alt. Phone 1-800-670-8874
Fax (509) 886-6221

Ferry County

Republic Home and Community Services Office
89 East Delaware
Republic, WA 99166

Phone (509) 775-2227
 Alt. Phone 1-888-437-0516
 TTY (509) 775-2661
 Fax (509) 775-2401

Franklin County

Franklin County Commissioners Office
 1016 North 4th Avenue
 Pasco, WA 99301
 Phone (509) 545-3535

Garfield County

Garfield County District Court
 789 West Main Street
 P.O. Box 817 or 819
 Pomeroy, WA 99347
 Phone (509) 843-1002

Grant County

Moses Lake Home and Community Services Office
 1651 South Pilgrim Street
 Moses Lake, WA 98837
 Phone (509) 764-5657
 Alt. Phone 1-800-671-8902
 TTY 1-800-833-6388
 Fax (509) 764-5656

Grays Harbor County

Aberdeen Home and Community Services Office
 415 West Wishkah Street
 Suite A2
 Aberdeen, WA 98520
 Phone (360) 533-9222
 Alt. Phone 1-800-487-0119
 TTY (360) 533-9730
 Fax (360) 533-9782

Island County

Oak Harbor Home and Community Services Office
 900 East College Way
 Suite 210
 Mt. Vernon, WA 98273
 Phone (360) 429-2961
 Alt. Phone 1-866-608-0836
 Fax (360) 429-2958

Jefferson County

Port Townsend Home and Community Services Office
 915 Sheridan Street
 Suite 201
 Port Townsend, WA 98368
 Phone (360) 379-4326
 Alt. Phone 1-800-280-9991
 Fax (360) 344-4600

King County

King County Home and Community Services Office
 1737 Airport Way South
 Suite 130
 P.O. Box 24847
 Seattle, WA 98134
 Phone (206) 341-7750
 Alt. Phone 1-800-346-9257

TTY 1-800-833-6384

Kitsap County

Bremerton Home and Community Services Office
 4710 Auto Center Boulevard
 Bremerton, WA 98312
 Phone (360) 473-2299
 Alt. Phone 1-800-422-7114
 TTY (360) 478-4928
 Fax (360) 478-6467

Kittitas County

Ellensburg Home and Community Services Office
 100 East Jackson Avenue
 Suite 100
 Ellensburg, WA 98926
 Phone (509) 925-0433
 Alt. Phone 1-800-310-4999
 Fax (509) 962-7755

Klickitat County

White Salmon Home and Community Services Office
 221 North Main Street
 White Salmon, WA 98672
 Phone (509) 493-6157
 Alt. Phone 1-800-504-1180

Lewis County

Chehalis Home and Community Services Office
 3451 Galvin Road
 Centralia, WA 98531
 Phone (360) 807-7150
 Alt. Phone 1-800-487-0360
 Fax (360) 330-7552

Lincoln County

Lincoln County Health Department
 90 Nicholls Street
 Davenport, WA 99122
 Phone (509) 725-1001

Mason County

Shelton Home and Community Services Office
 2505 Olympic Highway North
 Suite 440
 Shelton, WA 98584
 Phone (360) 664-9050
 Alt. Phone 1-800-462-4957
 Fax (360) 432-2045

Okanogan County

Omak Home and Community Services Office
 130 South Main
 Omak, WA 98841
 Phone (509) 846-2103
 Alt. Phone 1-888-437-0529
 TTY (509) 826-7389
 Fax (509) 826-7439

Pacific County

South Bend Home and Community Services Office
 307 East Robert Bush Drive
 P.O. Box 87
 South Bend, WA 98586

Phone (360) 875-4222
 Alt. Phone 1-800-458-3747
 Fax (360) 875-0590

Pend Oreille County

Newport Home and Community Services Office
 1600 West First Avenue
 Newport, WA 99156
 Phone (509) 447-6223
 Alt. Phone 1-888-437-0516
 Fax (509) 447-5256

Pierce County

Tacoma Home and Community Services Office
 1949 South State Street
 Tacoma, WA 98405
 Phone (253) 476-7200
 Alt. Phone 1-800-442-5129
 TTY (253) 593-5471
 Fax (253) 597-4161

San Juan County

San Juan County Health Services
 145 Rhone Street
 Friday Harbor, WA 98250
 Phone (360) 378-4474
 Fax (360) 378-7036

Skagit County

Mount Vernon Home and Community Services Office
 900 East College Way
 Suite 210
 Mt. Vernon, WA 98273
 Phone (360) 429-2961
 Alt. Phone 1-866-608-0836
 Fax (360) 416-7401

Skamania County

Stevenson Home and Community Services Office
 266 S.W. Second Street
 P.O. Box 817
 Stevenson, WA 98648
 Phone (509) 427-5611
 Alt. Phone 1-800-505-4203
 Fax (509) 427-4604

Snohomish County

Smokey Point Home and Community Services Office
 3906 172nd Street N.E.
 Suite 101
 Arlington, WA 98223
 Phone (360) 651-6800
 Alt. Phone 1-800-827-2984
 Fax (360) 651-6832

Spokane County

Spokane Home and Community Services Office
 1330 North Washington Street
 Suite 3000
 Spokane, WA 99201
 Phone (509) 568-3700
 Alt. Phone 1-800-459-0421
 TTY (509) 568-3697

Fax (509) 568-3771

Stevens County

Colville Home and Community Services Office
 1100 South Main
 Colville, WA 99114
 Phone (509) 685-5644
 Alt. Phone 1-800-437-0516
 Fax (509) 684-7430

Thurston County

Tumwater Home and Community Services Office
 6639 Capitol Boulevard S.W.
 Tumwater, WA 98512
 Phone (360) 664-9050
 Alt. Phone 1-800-462-4957
 TTY (360) 407-1678
 Fax (360) 664-9107

Wahkiakum County

Health and Human Services
 42 Elochoman Valley Road
 Cathlamet, WA 98612
 Phone (360) 795-8630
 Alt. Phone 1-800-635-5989

Walla Walla County

Walla Walla Home and Community Services Office
 206 West Poplar
 Walla Walla, WA 99362
 Phone (509) 524-4960
 Alt. Phone 1-800-310-5678
 Fax (509) 527-4142

Whatcom County

Bellingham Home and Community Services Office
 600 Lakeway Drive
 Bellingham, WA 98225
 Phone (360) 756-5750
 Alt. Phone 1-800-239-8292
 Fax (360) 676-2239

Whitman County

Colfax Home and Community Services Office
 418 South Main Street
 Suite 3
 Colfax, WA 99111
 Phone (509) 397-5091
 Alt. Phone 1-800-459-0421
 Fax (509) 397-4323

Yakima County

Yakima Home and Community Services Office
 1002 North 16th Avenue
 Yakima, WA 98902
 Phone (509) 225-4400
 Alt. Phone 1-800-822-2097
 Fax (509) 575-2286

WSR 17-08-051

DEPARTMENT OF ECOLOGY

[Filed March 31, 2017, 8:53 a.m.]

PUBLIC NOTICE

Announcing the Modification of the *Zostera Japonica* Management on Commercial Clam Beds in Willapa Bay General Permit

PERMIT: The Washington state department of ecology (ecology) is modifying the *Zostera japonica* management on commercial clam beds in Willapa Bay general permit (permit). This permit modification becomes effective on May 18, 2017, and expires May 2, 2019.

State and federal water quality regulations do not allow the discharge of pollutants to waters of the state without permit coverage. Herbicide products used for management of *Zostera japonica* (*Z. japonica*) are potential pollutants, and therefore require a discharge permit before application to dewatered clam beds. Ecology issues general permits in place of a series of individual permits when the permitted activities are similar.

PURPOSE OF THE PERMIT: This permit regulates the discharge of the aquatic herbicide imazamox for the purpose of managing the noxious weed *Z. japonica* on commercial clam beds in Willapa Bay. The permit covers all *Z. japonica* management activities that result in a discharge of aquatic herbicides containing the active ingredient imazamox and maker dyes from treatment of commercial clam beds to surface waters of the state of Washington. Coverage under this general permit will be available to pesticide applicators with an aquatic license and their sponsor who plan to use imazamox to control *Z. japonica* on commercial clam beds in Willapa Bay.

PERMIT AND SUPPORTING DOCUMENTS: Ecology accepted public comment on the draft permit modification and fact sheet addendum from December 7, 2016, until March 7, 2017. Ecology held a webinar and public workshop and hearing in Lacey, Washington, on January 24, 2017, and a public workshop and hearing in South Bend, Washington, on January 26, 2017. Ecology received oral and written comments during the public comment period and responded to these comments in an addendum to the fact sheet.

You may download copies of the permit, the response to comments, and the fact sheet from the ecology web site at <http://www.ecy.wa.gov/programs/wq/pesticides/eelgrass.html>. You may also request hardcopies of the documents from Nathan Lubliner at nathan.lubliner@ecy.wa.gov or (360) 407-6563.

ECOLOGY CONTACT: Nathan Lubliner, Washington State Department of Ecology, P.O. Box 47696, Olympia, WA 98504-7696, phone (360) 407-6563, email nathan.lubliner@ecy.wa.gov.

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

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

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

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

ADDRESS AND LOCATION INFORMATION:

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

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

WSR 17-08-054

RULES OF COURT

STATE SUPREME COURT

[March 29, 2017]

IN THE MATTER OF THE PROPOSED)	ORDER
NEW RULE GR 36—TRIAL COURT)	NO. 25700-A-1177
SECURITY)	

The Trial Court Security Committee, having recommended the adoption of the proposed new rule GR 36—Trial Court Security, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed new rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the new rule as shown below is adopted.

(b) That the new rule will be published in the Washington Reports and will become effective on September 1, 2017.

DATED at Olympia, Washington this 29th day of March, 2017.

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

PROPOSED GENERAL RULE

Trial Court Security

(a) Purpose. A safe courthouse environment is fundamental to the administration of justice. Employees, case participants, and members of the public should expect safe and secure courthouses. This rule is intended to encourage incident reporting and well-coordinated efforts to provide basic security and safety measures in Washington courts.

(b) Definition. "Incident" is defined as a threat to or assault against the court community, including court personnel, litigants, attorneys, witnesses, jurors or others using the courthouse. It also includes any event or threatening situation that disrupts the court or compromises the safety of the court community.

(c) Incident Reports.

(1) Reporting Method.

(i) The court should make a record of each incident as soon as practicable, but no later than two days after the incident. The report shall be kept on file by the local court administrator.

(ii) The court shall report all incidents electronically to the Administrative Office of the Courts on the AOC Threat/Incident Report Form within one week of the incident.

(d) Court Security Committee.

(1) Role. Each trial court should form a Court Security Committee to coordinate the adoption of court security policies and make recommendations regarding security protocols, policies, and procedures necessary to protect the public, court personnel and users, and court facilities. The Court Security Committee should adopt a Court Security Plan and thereafter revise the Plan as may be necessary.

(2) Committee Composition. The Presiding Judge for each court should convene a Court Security Committee meeting and invite representatives from the following:

(i) Judiciary;

(ii) Court Clerical Staff;

(iii) Prosecuting Authority's Office;

(iv) Public Defender's Office;

(v) Executive Branch;

(vi) Law Enforcement;

(vii) Facilities/Maintenance Department;

(viii) Any other agency of government housed in the same building;

(ix) Any other person the presiding judge deems appropriate;

(e) Court Security Plan. Each Court Security Committee should create a Court Security Plan for each courthouse location. If a Court Security Plan is adopted, the Court Administrator shall keep the Plan on file and accessible to the court community. The Court Security Plan should be in writing and should address:

(1) Routine security operations, including security screening for persons entering the court facility, secure storage of weapons not permitted in the courthouse, parking, landscaping, interior and exterior lighting, interior and exterior doors, intrusion and detection alarms, window security, protocol for building access for first responders, and provision of building floor plans for first responders;

(2) Written or oral threats or declarations of intent to inflict pain or injury upon anyone in the court community;

(3) Physical layout of court facility and escape routes;

(4) Threats - in court or by other means (telephone, email, website, etc.);

(5) Bomb threat;

(6) Hostage situation;

(7) Weapons in the court facility;

(8) Active shooter;

(9) Escaped prisoner;

(10) High risk trial plan;

(11) Routine security operations;

(12) Threat and security incident response techniques in and around the court facility which may include how to diffuse situations and remain calm during an incident;

(13) Personal safety techniques in and around the court facility;

(14) Irate and abusive individuals.

(f) Security Drills. Each court may hold security drills as determined by the Court Security Committee, as deemed necessary by the Presiding Judge in consultation with other authorities in the courthouse. Drills should include all court personnel, prosecutors, defense attorneys, law enforcement, and other regular court users.

(g) Minimum Court Security Standards. Every Court shall endeavor to meet or exceed the following minimum standards. Should the Court fail to meet the Minimum Court Security Standards, the Court should state in the Court Security Plan why the minimum standards were not met.

(1) Policy and Procedure Guide for all court and clerk personnel. Trial courts shall develop a Court Security Policy and Procedure Guide, using as examples the guides from Spokane County and Seattle Municipal Court, which guides are available from the Administrative Office of the Courts.

(2) Weapons screening by uniformed security personnel at all public entrances. Uniformed security personnel shall perform weapons screening at all public entrances, using as a minimum metal-detector wand screening and physical examination of bags, briefcases, packages, etc.

(3) Security audits every three years. Trial courts shall conduct a security audit at least every three years. Updates to the Court Security Policy and Procedure Guide shall be disseminated to all court and clerk personnel.

(4) Security cameras recording with loops of at least 7 days, with signage that recording is taking place. Security cameras shall be placed at strategic locations as determined by the Court Security Committee, with signs posted nearby advising that recording is taking place. Security camera footage shall be retained for at least 7 days.

(5) Duress alarms at multiple strategic locations, such as clerk's office, administration, and courtrooms, with broadcasting to the nearest law enforcement agency with jurisdiction over the court site. Easily accessible and discreetly placed duress alarms shall be located at multiple strategic locations as determined by the Court Security Committee. The duress alarm shall broadcast to the law enforcement agency that has jurisdiction to respond to the site, and which is closest to the site.

(6) Emergency notification broadcast system in place, with standardized color coding, and all personnel trained on the system. An emergency notification broadcast system shall be established with standardized color coding denoting the level of emergency. All court and clerk personnel shall be trained on use of the system.

(7) Active shooter training for all court and clerk personnel. Active shooter training shall be delivered to all court and clerk personnel.

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

WSR 17-08-055
RULES OF COURT
STATE SUPREME COURT

[March 29, 2017]

IN THE MATTER OF THE SUGGESTED) ORDER
AMENDMENT TO RAP 10.4 (a)(1)—) NO. 25700-A-1178
PREPARATION AND FILING OF BRIEF)
BY PARTY)

The Washington Association of Criminal Defense Lawyers, having recommended the suggested amendment to RAP 10.4 (a)(1)—Preparation and Filing of Brief by Party, and the Court having considered the amendments and comments submitted thereto;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed 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 expeditiously.

(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 July 28, 2017. 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 29th day of March, 2017.

For the Court

Fairhurst, C.J.

CHIEF JUSTICE

GR 9 Cover Sheet

Suggested Amendment to RAP 10.4 (a)(1)

Date: April 20, 2016
Proponent: Washington Association of Criminal Defense Lawyers
1511 Third Ave., Suite 503
Seattle, WA 98101
Ph. (206) 623-1302
Fax. (206) 623-4257
Purpose: To permit an appellate brief that is printed on white paper to also contain excerpts of the record or exhibits on white paper that depict images accurately that were originally in color.

Sources Relied Upon:

WACDL would like to thank Marla Zink of the Washington Appellate Project for information and input for this proposed amendment.

The current RAP 10.4 contains the following prohibition: "The brief shall not contain any tabs, colored pages, or binding and should be stapled in the left-hand corner." Sometimes, and increasingly, the trial exhibits and the trial court record contain color images or colored text. The purpose of the rule seems to be to prohibit the use of colored sheets of paper, as opposed to prohibiting an accurate representation of an exhibit or record that contains color. Sometimes clerks of the court of appeals reject a submission because the brief contains colored images or text that are accurate reprints from trial.

Amending the rule by changing the words "colored pages" to "colored sheets of paper" would clarify that colored sheets of paper should not be used, while permitting accurate representation of exhibits or portions of the record that contain color images or colored text. This amendment would benefit both the State and the defense and allow more accurate representation of the record from trial.

RAP 10.4 (a)(1)

(a) Typing or Printing Brief. Briefs shall conform to the following requirements:

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

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

WSR 17-08-056
RULES OF COURT
STATE SUPREME COURT

[March 29, 2017]

IN THE MATTER OF SUGGESTED) ORDER
AMENDMENT TO CR 11(b)—SIGNING,) NO. 25700-A-1179
AND DRAFTING OF PLEADINGS,)
MOTIONS, AND LEGAL MEMO-)
RANDA: SANCTIONS)

Ms. Ruth Laura Edlund, having recommended the suggested amendment to CR 11(b)—Signing, and Drafting of Pleadings, Motions, and Legal Memoranda: Sanctions, and the Court having considered the amendments and comments submitted thereto;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed 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 expeditiously.

(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 July 28, 2017. 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 29th day of March, 2017.

For the Court

Fairhurst, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

**Suggested
Amendment
CIVIL RULE 11(b)**

**Submitted by Ruth
Laura Edlund**

A. Name of Proponent:

Ruth Laura Edlund, WSBA # 17279
Wechsler Becker, LLP
701 Fifth Avenue, Ste 4550
Seattle, WA 98104
Phone: (206)624-4900
rle@wechslerbecker.com

B. Spokesperson:

Ruth Laura Edlund
Wechsler Becker, LLP
701 Fifth Avenue, Ste 4550
Seattle, WA 98104
Phone: (206)624-4900
rle@wechslerbecker.com

C. Purpose: The primary purpose for the suggested amendment to Civil Rule 11(b) is to clarify the ethical obligations, and the limits of those obligations, of a Limited License Legal Technician (LLLT) who is assisting an otherwise self-represented person by preparing documents for him or her. Civil Rule 11(b) currently applies by its terms only to lawyers providing such assistance. APR 28 G.(4) requires a LLLT to *sign* documents prepared for a client, but specifies no circumstances under which the LLLT must make *inquiry* into the facts represented by the client.

In addition, current CR 11(b) does not allow a court to impose sanctions on an LLLT for assisting an otherwise self-

represented person in filing a frivolous pleading, when a lawyer can be sanctioned by a court in the same situation. LLLT RPC 3.1 (a)(1) forbids a LLLT from counseling a client to engage, or assist in a client in engaging, in conduct including taking positions that are frivolous or lacking a good-faith basis in fact or law. LLLT RPC 3.1 (a)(3) forbids a LLLT from counseling a client or assisting a client in submitting false statements of fact or evidence known to be false. However, disciplinary proceedings are slow and may actually be overkill. The courts should have the ability to impose an immediate sanction on behavior by a LLLT that would not merit the revocation of his or her license.

APR 28 K.(1) already holds a LLLT to the standard of care of a Washington lawyer. The suggested inclusion of LLLTs within the ambit of Civil Rule 11(b) will assist in implementing this standard of care, and protect the public, by allowing a court to impose immediate sanctions for LLLT misconduct when appropriate, particularly when license revocation would be too severe a consequence. The suggested revision to CR 11(b) also clarifies that a LLLT, like a lawyer, is entitled to rely on the otherwise self-represented person's representation of facts, unless the LLLT has reason to believe that the representations are false or materially insufficient. This therefore provides useful guidance to LLLTs as to the limits of their obligations.

Conclusion. The suggested amendment to Civil Rule 11(b) is a harmonizing change needed to clarify that the ethical obligations towards otherwise self-represented persons with regard to their assertions of fact when assisting in document drafting are the same—no higher but no lower—for LLLTs as they are for lawyers.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material: Suggested rule amendment, blacklined and clean. WSBA Pro Bono and Public Service Committee Memorandum on Unbundling Legal Services [by lawyers] in Washington State, revised 8-25-2016.

SUGGESTED CIVIL RULE 11 AMENDMENT BLACKLINED

[(a) no change]

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney or Limited License Legal Technician (LLLT) certifies that the attorney or LLLT has read the pleading, motion, or legal memorandum, and that to the best of the attorney's or LLLT's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is well grounded in fact;

(2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney or LLLT in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts,

unless the attorney or LLLT has reason to believe that such representations are false or materially insufficient, in which instance the attorney or LLLT shall make an independent reasonable inquiry into the facts.

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

WSR 17-08-057
RULES OF COURT
STATE SUPREME COURT

[March 29, 2017]

IN THE MATTER OF THE SUGGESTED)	ORDER
AMENDMENTS TO GR 35(e)—OFFI-)	NO. 25700-A-1180
CIAL CERTIFIED SUPERIOR COURT)	
TRANSCRIPTS, RAP 9.2(c)—VERBA-)	
TIM REPORT OF PROCEEDINGS, RAP)	
9.5—FILING AND SERVICE OF)	
REPORT OF PROCEEDINGS, RAP)	
10.2—TIME FOR FILING BRIEFS, RAP)	
11.3—DATE OF ARGUMENT, RAP)	
15.2—DETERMINATION OF INDI-)	
GENCY AND RIGHTS OF INDIGENT)	
PARTY, RAP 15.4—CLAIM FOR PAY-)	
MENT OF EXPENSE FOR INDIGENT)	
PARTY, RAP 17.3—CONTENT OF)	
MOTION, RAP 17.7—OBJECTION TO)	
RULING—REVIEW OF DECISION ON)	
MOTION, RAP 18.13—ACCELERATED)	
REVIEW OF DISPOSITIONS IN JUVE-)	
NILE OFFENSE PROCEEDINGS, RAP)	
18.13A—ACCELERATED REVIEW OF)	
JUVENILE DEPENDENCY DISPOSI-)	
TION ORDERS, ORDERS TERMINAT-)	
ING PARENTAL RIGHTS, AND)	
DEPENDENCY GUARDIANSHIP)	
ORDERS, RAP FORM 12—ORDER OF)	
INDIGENCY, RAP FORM 15A—)	
NOTICE OF FILING VERBATIM)	
REPORT OF PROCEEDINGS (RAP 9.5))	

The Court of Appeals' Rules Committee, having recommended the suggested amendments to GR 35(e)—Official Certified Superior Court Transcripts, RAP 9.2(c)—Verbatim Report of Proceedings, RAP 9.5—Filing and Service of Report of Proceedings, RAP 10.2—Time for Filing Briefs, RAP 11.3—Date of Argument, RAP 15.2—Determination of Indigency and Rights of Indigent Party, RAP 15.4—Claim for Payment of Expense for Indigent Party, RAP 17.3—Content of Motion, RAP 17.7—Objection to Ruling—Review of Decision on Motion, RAP 18.13—Accelerated Review of Dispositions in Juvenile Offense Proceedings, RAP 18.13A—Accelerated Review of Juvenile Dependency Disposition Orders, Orders Terminating Parental Rights, and Dependency Guardianship Orders, RAP Form 12—Order of Indigency, RAP Form 15A—Notice of Filing Verbatim Report of Proceedings (RAP 9.5), and the Court having considered the amendments and comments submitted thereto;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed 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 expeditiously.

(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 July 28, 2017. 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 29th day of March, 2017.

For the Court

Fairhurst, 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 17-09 issue of the Register.

WSR 17-08-058
RULES OF COURT
STATE SUPREME COURT

[March 29, 2017]

IN THE MATTER OF THE SUGGESTED)	ORDER
AMENDMENTS TO ELPOC 15.5—)	NO. 25700-A-1181
DECLARATION, DISCIPLINARY REG-)	
ULATIONS APPLICABLE TO ELPOC)	
TITLE 15)	

The Washington State Bar Association, having recommended the suggested amendments to ELPOC 15.5—Declaration, Disciplinary Regulations Applicable to ELPOC Title 15, and the Court having considered the amendments and comments submitted thereto;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed 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 expeditiously.

(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 July 28, 2017. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supremc@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 29th day of March, 2017.

For the Court

Fairhurst, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET
Suggested Amendments
RULES FOR THE ENFORCEMENT OF LIMITED PRACTICE
OFFICER CONDUCT (ELPOC)

Rule 15.5 & Disciplinary Regulations Applicable to
ELPOC Title 15.

Submitted by the Washington State Bar Association

A. Name of Proponent:

Washington State Bar Association
 1325 Fourth Avenue, Suite 600
 Seattle, WA 98101-2539

Robin L. Haynes, President
 Washington State Bar Association
 1325 Fourth Avenue, Suite 600
 Seattle, WA 98101-2539

B. Spokesperson:

Paula C. Littlewood, Executive Director
 Washington State Bar Association
 1325 Fourth Avenue, Suite 600
 Seattle, WA 98101-2539

Jean K. McElroy
 General Counsel/Chief Regulatory Counsel
 Washington State Bar Association
 1325 Fourth Avenue, Suite 600
 Seattle, WA 98101-2539 (Phone: 206-727-8277)

C. Purpose:

The primary purpose of the suggested amendments to ELPOC Title 15 is to align the administrative procedures of trust account regulation for limited practice officers with the procedures for lawyer trust account regulation as part of the regulatory coordination project that the WSBA is currently undertaking.

All three license types (lawyers, LLLTs and LPOs) are required to provide trust account information. The processes WSBA uses to collect this information can be standardized across the three license types in order to achieve greater efficiency. The suggested amendments to this rule remove an audit for cause provision when an LPO fails to provide the annual trust account information and instead provide for suspension from practice for an LPO who does not comply with the trust account reporting requirements. The suggested changes are consistent with the lawyer and LLLT trust account rules.

The repeal of the LPO trust account regulations would remove requirements for LPO trust account reporting that are unduly burdensome and inconsistent with the requirements for other license types. In addition, they eliminate detailed

auditing procedures that (1) are outdated, (2) have never been used in practice and (3) are based on lawyer trust account regulations that have since been repealed. Trust account auditing procedures will be addressed and consistent procedures adopted as part of the ongoing coordinated discipline project by the WSBA.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: The WSBA asks that the Court consider these suggested amendments together with, and on the same timeline as, the suggested amendments to the Admission and Practice Rules.

F. Supporting Material: None.

SUGGESTED AMENDMENTS TO ELPOC 15.5

TITLE
RULES FOR THE ENFORCEMENT OF LIMITED PRACTICE
OFFICER CONDUCT (ELPOC)
ELPOC 15.5. DECLARATION

(a) Declaration. Each active LPO must file a trust account declaration as required by APR 12.

(b) Noncompliance. Failure to file the declaration may subject the an active LPO to a full audit of his or her books and records, or the Closing Firm's records, as provided in rule 15.1(e), upon request of the Clerk or disciplinary counsel to the discipline committee. A copy of any request made under this section must be served on the LPO. The request must be granted on a showing that the LPO has failed to comply with section (a) of this rule. If the LPO should later comply, the discipline committee has discretion to determine whether an audit should be conducted, and if so the scope of that audit. An LPO or Closing Firm audited under this section is liable for all actual costs of conducting such audit, and also a charge of \$100 per day spent by the auditor in conducting the audit and preparing an audit report. Costs and charges are assessed in the same manner as costs under rule 5.3(e) suspension from practice pursuant to APR 17.

SUGGESTED AMENDMENTS TO DISCIPLINARY REGULATIONS
APPLICABLE TO ELPOC TITLE 15

TITLE
RULES FOR THE ENFORCEMENT OF LIMITED PRACTICE
OFFICER CONDUCT (ELPOC)
~~**DISCIPLINARY REGULATIONS APPLICABLE TO ELPOC TITLE**~~
~~**15**~~
~~REGULATION 101. DEFINITIONS~~

~~The definitions in ELPOC 1.3 apply to these Regulations. In addition, the following definitions shall apply:~~

~~(a) The "auditor" shall mean the person or accounting firm conducting the audits and examinations specified in ELPOC Title 15.~~

~~(b) "Examination" shall mean a review and testing by the audit of the internal controls and procedures by an LPO or Closing Firm to receive, hold, disburse and account for money and property in which the client or other person has an interest using generally accepted auditing standards, to the extent they apply, without, however, making outside confirmations. In order to conduct such review and testing, the auditor shall have access to all of the internal books and records kept by the LPO or Closing Firm which comprise the LPO's or Closing Firm's financial records showing financial transactions involving the receipt of client's funds for fees, costs, or other purposes, either from the client or third per-~~

sons and all expenditures by the Closing Firm or LPO for clients or third persons and all distributions to the LPO or LPOs including but not necessarily limited to all journals, ledgers, books of accounts, canceled checks, deposit slips, bank statements, check registers, cash accounts, receipts, correspondence, records of accounts receivable, income and expense statements, balance sheets, tax returns of all types, federal, state, county, and city excepting, however, income tax returns.

(c) "Audit" shall encompass "examination" but in addition may include positive or negative confirmation from external sources.

REGULATION 102. PERSONS AUTHORIZED TO CONDUCT AUDITS

Audits shall be conducted by an auditor or auditor(s) provided by the Board.

REGULATION 103. EXAMINATION AND AUDIT REPORTS

(a) The auditor shall furnish a written report of each examination or audit to the Board.

(b) The report shall contain the date of the audit or examination, the name of the Closing Firm or LPO, and a statement of the scope of the examination or audit. In respect to each examination, it shall include a statement to the effect that either 1) as a result of the examination, an audit or further examination is indicated, or 2) during the course of the examination, the auditor has not observed anything which would indicate a need for further examination or audit at this time. In respect to each audit, the report shall state either 1) as a result of the audit, the auditor concludes that LPORPC 1.12A and B have not been complied with (stating the particulars), or 2) as a result of the audit, the auditor has not observed anything which would indicate LPORPC 1.12A and B have not been complied with. The auditor shall further state an opinion, as to whether the LPO or Closing Firm has cooperated as required by ELPOC 15.2, giving the particulars if lack of cooperation is claimed.

(c) Upon request by the Chair, the auditor shall make available the working papers in respect to particular examinations or audits, for review by the Board and shall consult with the Board in respect to particular examinations and audits.

(d) Upon conclusion of the examination or audit, the auditor shall make available to the LPO or Closing Firm a copy of the audit report.

(e) The auditor shall preserve inviolate all confidences and secrets of clients of the examined LPO or Closing Firm. No client name or information which would permit the identification of a particular client shall be revealed in the working papers or the report of the auditor, except that the name or names of clients who have filed complaints with the Board may be released.

(f) When the audit is concluded, if it is determined pursuant to Regulation 104 that no further investigation, examination or action is appropriate, the Board's copies of the audit report, working papers, or other materials relating to the audit shall be destroyed, except that the Board shall maintain a record showing the identity of any LPO or Closing Firm audited and the dates of the audit to ensure that the restrictions of Regulation 105 are complied with.

REGULATION 104. DETERMINATION THAT FURTHER EXAMINATION AND AUDIT OR OTHER ACTIONS ARE WARRANTED

(a) The Chair or a delegate shall review all reports of the auditor. After such review and upon further investigation, which the Chair may direct, and after such consultation, if any, as the Chair deems appropriate with the Board, the Chair shall make such order in respect to further examination and audit as the Chair deems appropriate, consistent with ELPOC 15.1. In addition, the Chair may order other actions by the LPO and Closing Firm as are necessary to ensure that the LPO's or Closing Firm's handling of client funds complies with the requirements of the LPORPC.

(b) Auditor's Opinions Advisory Only. The opinions expressed in the report of the Auditor shall be advisory only. They shall not in and of themselves constitute findings of fact in any disciplinary proceedings against any LPO unless so stipulated by the LPO or LPO's counsel.

REGULATION 105. METHOD OF SELECTION OF LPO AND CLOSING FIRMS TO BE EXAMINED

(a) At such time and from time to time as the Board determines, random examination of LPOs or Closing Firms may be conducted. Procedures shall be established by the Board for the selection of the LPOs or Closing Firms to be examined which 1) will utilize the principle of random selection, and 2) will distribute the examinations among the congressional districts of the state substantially in the ratio that the number of LPOs in each district bears to the total number of active LPOs in the state. If the number drawn is that of an LPO who is an employee of a Closing Firm, the Closing Firm shall be examined. If the number is that of an active LPO who is an independent business owner, the active LPO's records shall be examined. If the number is that of an LPO who, either as an individual or as a Closing Firm employee, has been audited in the twenty four (24) months immediately preceding the drawing, the Chair may in the Chair's discretion excuse the LPO or Closing Firm from examination.

(b) Upon consent of an active LPO, the LPO's books and records or those of a Closing Firm may be examined even though the active LPO's number has not been selected randomly.

(c) The Chair may at all times upon the receipt of information that a particular LPO or Closing Firm may not be in compliance with LPORPC 1.12A and B authorize an examination.

REGULATION 106. CONTENTS OF LPO DECLARATION

Annually, the Board shall mail to each active LPO, a written declaration to be completed and delivered to the Board on or before July 1 of that year. The declaration shall be comprised of two parts. Part One shall be completed and signed by each active LPO. Part Two shall be completed and signed by the individual who manages the trust accounts(s) for the Closing Firm, on behalf of the Closing Firm and all LPOs employed in the Closing Firm. Parts One and Two each shall be separately signed and verified by the signer under penalty of perjury and shall require disclosure of the following information:

Part I - LPO Verification

1. Name, current address and telephone number of the LPO.

2. Whether the LPO is actively providing services authorized by APR 12(d).

3. If the answer to (2) is no, whether the LPO is nonetheless engaged in any LPO activities which involves or might involve the handling of client's funds or property.

4. Whether the LPO or Closing Firm maintains identifiable bank account(s) within the state for the deposit of funds of clients and third persons and a record keeping system to record funds, securities and other properties of clients and third persons coming into the LPO's or Closing Firm's possession (to be answered by all LPOs unless the answers to both (2) and (3) are "no").

Part II - Account Information Verification

1. The name of the bank(s) and branch(es) and account number(s) where the separate identifiable bank accounts are maintained as the depository (or depositories) for client funds.

2. Whether the accounts identified in "1" above are maintained in the manner specified in LPORPC 1.12A and B, and whether all clients' funds to the extent required by LPORPC 1.12 A and B, are kept therein.

3. Whether all funds, securities, and other properties of clients coming into the LPO's or Closing Firm's possession are held in the manner specified in LPORPC 1.12A and B and whether records in respect thereto are maintained in the manner specified in LPORPC 1.12A and B.

4. That the signatories acknowledge they are subject to examination and audit under ELPOC Title 15 and these regulations to verify compliance with LPORPC 1.12A and B.

Washington State Bar Association and Administrative Office of the Court's websites expeditiously.

(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 July 28, 2017. 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 29th day of March, 2017.

For the Court

Fairhurst, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET
Suggested Amendments to
THE RULES OF PROFESSIONAL CONDUCT (RPC)
Rules 1.0A, 1.10, 1.11

Submitted by the Board of Governors of the Washington State Bar Association

A. Name of Proponent: Washington State Bar Association.

B. Spokepersons:

- Mark Fucile, Chair, WSBA Committee on Professional Ethics Fucile & Reising LLP, 800 NW 6th Ave Ste. 211, Portland, OR 97209-3783 (telephone 503-224-4895)
Jeanne Marie Clavere, Professional Responsibility Counsel and Staff Liaison Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539. (telephone 206-727-8298)

C. Purpose: The proposal is result of a member inquiry received by the WSBA Committee on Professional Ethics (CPE). The current Rules of Professional Conduct (RPC) treat public defender imputed conflicts differently depending on whether the public defender is a government employee or works for a private entity (a law firm or nonprofit). The reason for differential treatment is because of the special conflict of interest rules applicable to lawyers who are government employees. After much research, the CPE concluded the issue of public defender imputation of conflicts would be better resolved by a rule amendment rather than an advisory opinion.

The typical lawyer who is a government employee represents the government, or possibly the government and individual employees of the government. The CPE concluded that the RPCs had overlooked the unusual situation presented by public defenders who are paid by the government to represent private individuals. Public defenders handle similar work regardless of whether they are employed by a private entity or the government. There is no basis for having different rules pertaining to imputed conflicts of interest dependent on the identity of the public defender's employer. The CPE

WSR 17-08-059
RULES OF COURT
STATE SUPREME COURT
[March 29, 2017]

IN THE MATTER OF THE SUGGESTED) ORDER
AMENDMENTS TO RPC 1.0A—TER-) NO. 25700-A-1182
MINOLOGY, RPC 1.10—IMPUTATION)
OF CONFLICTS OF INTEREST: GEN-)
ERAL RULE, AND RPC 1.11—SPECIAL)
CONFLICTS OF INTEREST FOR FOR-)
MER AND CURRENT GOVERNMENT)
OFFICERS AND EMPLOYEES)

The Washington State Bar Association, having recommended the suggested amendments to RPC 1.0A—Terminology, RPC 1.10—Imputation of Conflicts of Interest: General Rule, and RPC 1.11—Special Conflicts of Interest for Former and Current Government Officers and Employees, and the Court having considered the amendments and comments submitted thereto;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendments as shown below are to be published for comment in the Washington Reports, Washington Register,

concluded that a rule change was necessary to address this circumstance.

Suggested Rule Amendments:

- Add comment to RPC 1.0A to clarify that fully independent offices of a public defender agency qualify as independent law firms for conflict of interest purposes.
- Amend RPC 1.10(d) to make RPC 1.10 applicable to all public defenders regardless of whether they are government employees.
- Add comments to RPC 1.10 and 1.11 stating that imputed conflicts for public defenders are determined under RPC 1.10 rather than RPC 1.11.

The preliminary draft rules were circulated to interested parties for comment, including both state and federal public defender agencies, the Council on Public Defense, the WSBA Criminal Law Section, the WSBA Juvenile Law Section, and the Washington Defenders Association. There was widespread support for the proposed changes. Only one comment was received in opposition to the changes.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material: Redline and clean versions of RPC 1.0A, 1.10 and 1.11.

SUGGESTED AMENDMENT
RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 1.0A - TERMINOLOGY

(a) - (n) [Unchanged.]

Comment

[1] - [3] [Unchanged.]

Firm

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

See also Washington Comments [12] and [13].

Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

See also Washington Comment [13] [14].

Informed Consent

[6] [Unchanged.]

[7] [Washington revision] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other per-

son who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (n) and (b). Rule 1.8(a) requires that a client's consent be obtained in a writing signed by the client. See also Rule 1.5(c)(1) (requiring that a contingent fee agreement be "in a writing signed by the client"). For a definition of "signed," see paragraph (n).

See also Washington Comment [14] [15].

Screened

[8] - [9] [Unchanged.]

[10] [Washington revision] In order to be effective, screening measures must be implemented as soon as practical after a lawyer, LLLT, or law firm knows or reasonably should know that there is a need for screening.

See also Washington Comment [15] [16].

Additional Washington Comments (11 - 16 17)

[11] - [12] [Unchanged.]

[13] An office or subdivision of an organization employing lawyers who are appointed or assigned to represent indigent members of the public is considered a separate law firm if it is fully independent from other units of the organization including physical separation and no shared access to client information.

Fraud

[13] [14] Model Rule 1.0A(d) was modified to clarify that the terms "fraud" and "fraudulent" in the Rules of Professional Conduct do not include an element of damage or reliance.

Informed Consent

[14] [15] In order for the communication to the client to be adequate it must be accomplished in a manner that can be easily understood by the client.

Screened

[15] [16] See Rules 1.10 and 6.5 for specific screening requirements under the circumstances covered by those Rules.

Other

[16] [17] For the scope of the phrase "information relating to the representation of a client," which is not defined in Rule 1.0A, see Comment [19] to Rule 1.6.

**RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 1.10. IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE**

(a) - (c) [Unchanged.]

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11. However, lawyers appointed or assigned to represent indigent members of the public (public defenders) are subject to this rule regardless of whether they are government employees.

(e) - (f) [Unchanged.]

Comment

[1] - [8] [Unchanged.]
Additional Washington Comments (9 - ~~13~~ 15)

[9] - [14] [Unchanged.]

[15] Public defenders represent individuals, not the government. For this reason, imputed conflicts in public defender firms are determined under this rule rather than RPC 1.11.

RULES OF PROFESSIONAL CONDUCT (RPC)

RULE 1.11. SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) - (e) [Unchanged.]

Comment

[1] - [10] [Unchanged.]

Additional Washington Comment (11)

[11] Public defenders represent individuals, not the government. For this reason, imputed conflicts in public defender firms are determined under RPC 1.10 rather than this rule regardless of whether the lawyers are public officers or employees.

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

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

WSR 17-08-060

RULES OF COURT

STATE SUPREME COURT

[March 29, 2017]

IN THE MATTER OF THE SUGGESTED) ORDER
AMENDMENT TO GR 10—ETHICS) NO. 25700-A-1183
ADVISORY COMMITTEE REGARD-)
ING ADVISORY OPINIONS ON JUDI-)
CIAL CONDUCT)

The State Court Administrator, having recommended the expeditious adoption of the suggested amendment to GR 10—Ethics Advisory Committee Regarding Advisory Opinions on Judicial Conduct, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendment as shown below is adopted.

(b) That the amendment will be published expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 29th day of March, 2017.

Fairhurst, C.J.

Johnson, J.

Charles Wiggins

Owens, J.

Steven Gonzalez

Stephens, J.

Sheryl Gordon McCloud

Madsen, J.

Mary Yu

GR 10

ETHICS ADVISORY COMMITTEE REGARDING ADVISORY OPINIONS ON JUDICIAL CONDUCT

(a) The Chief Justice shall appoint an Ethics Advisory Committee consisting of seven members. Of the members first appointed, four shall be appointed for 2 years, and three shall be appointed for 3 years. Thereafter, appointments shall be for a 2-year term. One member shall be appointed from the Court of Appeals, two members from the superior courts, two members from the courts of limited jurisdiction, one member from the Washington State Bar Association, and the Administrator for the Courts or a designee. The Chief Justice shall designate one of the members as chairman. The committee (1) is designated as the body to give advice with respect to the application of the provisions of the Code of Judicial Conduct to officials of the Judicial Branch as defined in article 4 of the Washington Constitution and (2) shall from time to time submit to the Supreme Court recommendations for necessary or advisable changes in the Code of Judicial Conduct.

(b) - (c) Unchanged

WSR 17-08-068

NOTICE OF PUBLIC MEETINGS
GAMBLING COMMISSION

[Filed March 31, 2017, 4:15 p.m.]

Approved 2017 Commission Meetings Schedule

Table with 2 columns: Date/Day and Location/Contact Info. Rows include January 12 (Red Lion Olympia), February (Washington State Gambling Commission), March 9 (Hampton Inn and Suites), April 13 (Hampton Inn and Suites), May 11 (Great Wolf Lodge), and June (No meeting).

July 13 and 14	Quality Inn and Conference Center 1700 South Canyon Road Ellensburg, WA 98926 (509) 925-9800
August 10 and 11	South Puget Sound Community College 4220 6th Avenue S.E. Lacey, WA 98503 (360) 596-5333
September 14 and 15	Red Lion Spokane 700 North Division Spokane, WA 99202 (509) 323-2579
October 12 and 13	Hampton Inn and Suites 4301 Martin Way East Olympia, WA 98516 (360) 459-5000
November 16 and 17	Washington State Labor and Industries 7273 Linderson Way S.W. Tumwater, WA 98501 I-5 Exit 101
December	No meeting

No meeting in June or December.
Contact Julie Anderson, (360) 486-3453, Julie.anderson@wsgc.wa.gov.

WSR 17-08-083
RULES COORDINATOR
CHARTER SCHOOL COMMISSION

[Filed April 4, 2017, 9:45 a.m.]

Pursuant to RCW 34.05.312, the rules coordinator for the Washington state charter school commission is Amanda Martinez, 1068 Washington Street S.E., Olympia, WA 98504, phone (360) 725-5511, email Amanda.martinez@k12.wa.us.

Amanda Martinez
Executive Assistant