PART I
RULES OF GENERAL APPLICATION

GENERAL RULES (GR)
TABLE OF RULES

Rule	
1	Classification System for Court Rules
2	Holidays
3	Filings and Hearings--Time Extended
3.1	Service and Filing by an Inmate Confined in an Institution
4	Law Librarian
5	Audits
6	Sessions of Courts
7	Local Rules--Filing and Effective Date
8	Reserved, Chapter 136, Laws 2002
9	Supreme Court Rulemaking Procedure
10	Ethics Advisory Committee Regarding Advisory Opinions on Judicial Conduct
11	Court Interpreters
11.1	Purpose and Scope of Interpreter Commission
11.2	Code of Conduct for Court Interpreters
11.3	Telephonic Interpretation
12.1	Washington State Bar Association: Purposes
12.2	Washington State Bar Association Administration of Supreme Court-Created Boards and Committees
12.3	Immunity
13	Use of Unsworn Statement in Lieu of Affidavit
14	Format for Pleadings and Other Papers
14	Appendix 1 - Office of Reporter of Decisions Style Sheet
15	Destruction and Sealing of Court Records
16	Courtroom Photography and Recording by the News Media
17	Facsimile Transmission
18	Jury Source List
19	Video Conference Proceedings
20	Security in Handling Court Exhibits
21	Emergency Court Closure
22	Access to Family Law Court Records
23	Rule for Certifying Professional Guardians
24	Definition of the Practice of Law
25	Practice of Law Board
26	Mandatory Continuing Judicial Education
27	Family Law Courthouse Facilitators
28	Jury Service Postponement, Excusal, and Disqualification
29	Presiding Judge in Superior Court District and Limited Jurisdiction Court District
30	Electronic Filing
32	Court Performance Audits

RULE 1
CLASSIFICATION SYSTEM FOR COURT RULES

PART I: RULES OF GENERAL APPLICATION

General Rules	GR
Code of Judicial Conduct	CJC
Discipline Rules for Judges	DRJ
Board for Judicial Administration Rules	BJAR
Admission to Practice Rules	APR
Rules of Professional Conduct	RPC
Rules for Enforcement of Lawyer Conduct	ELC
Judicial Information System Committee Rules	JISCR
Rules of Evidence	ER

PART II: RULES FOR APPELLATE COURT ADMINISTRATION

Supreme Court Administrative Rules	SAR
Court of Appeals Administrative Rules	CAR

PART III: RULES ON APPEAL

Rules of Appellate Procedure	RAP

PART IV: RULES FOR SUPERIOR COURT

Superior Court Administrative Rules	AR
Superior Court Civil Rules	CR
Superior Court Mandatory Arbitration Rules	MAR
Superior Court Special Proceedings Rules	SPR
Superior Court Guardian ad Litem Rules	GALR
Superior Court Criminal Rules	CrR
Superior Court Special Proceeding Rules - Criminal	SPCR
Superior Court Mental Proceedings Rules	MPR
Juvenile Court Rules	JuCR

PART V: RULES FOR COURTS OF LIMITED JURISDICTION

Administrative Rules for Courts of Limited Jurisdiction	ARLJ
Rules for Appeal of Decisions of Courts of Limited Jurisdiction	RALJ
Civil Rules for Courts of Limited Jurisdiction	CRLJ
Criminal Rules for Courts of Limited Jurisdiction	CrRLJ
Infraction Rules for Courts of Limited Jurisdiction	IRLJ

[Amended January 1, 1974; July 1, 1974; July 1, 1976;
September 24, 1976; April 2, 1979; January 1, 1981; May 14, 1982;
January 21, 1983; amended effective September 1, 1985;
December 8, 1986; September 1, 1987; September 1, 1989;
September 1, 1992; March 9,1999;
amended effective November 27, 2001; October 1, 2002.]

RULE 2
HOLIDAYS

(a) In event any legal holiday falls on Saturday all the courts of the state shall be closed on the preceding day (Friday).
(b) In event any legal holiday falls on Sunday all the courts of the state shall be closed on the following day (Monday).
(c) All clerk's offices shall likewise be closed on such days.

[Adopted effective February 3, 1977.]

GR 3
FILINGS AND HEARINGS--TIME EXTENDED

In event the last day for filing any document, having any hearing or for doing any other thing or matter in any court shall fall upon a day when such court shall be closed according to rule 2 or rule 21, then and in that event the time for such filing, hearing, or other thing or matter shall be extended until the end of the next business day upon which such court shall be open for business. Notwithstanding this rule, extensions of time for trial are governed by CrR 3.3(d)(8) and CrRLJ 3.3(d)(8).

[Adopted effective February 3, 1977; amended effective October 19, 1999.]

RULE GR 3.1
Service and Filing by an Inmate Confined in an Institution

(a) If an inmate confined in an institution files a document in any proceeding, the document is timely filed if deposited in the institution's internal mail system within the time permitted for filing.

(b) Whenever service of a document on a party is permitted to be made by mail, the document is deemed "mailed" at the time of deposit in the institution's internal mail system addressed to the parties on whom the document is being served.

(c) If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing or mailing may be shown by a declaration or notarized affidavit in form substantially as follows:

DECLARATION

I, [name of inmate], declare that, on [date], I deposited the foregoing [name of document], or a copy thereof, in the internal mail system of [name of institution] and made arrangements for postage, addressed to:

[name and address of court or other place of filing];

[name and address of parties or attorneys to be served].

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at [city, state] on [date].

_____
[signature]

(d) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after filing or service of a document, and if an inmate files or serves the document under this rule, that period shall begin to run on the date the document is received by the party.

[Adopted effective September 1, 2006.]

RULE 4
LAW LIBRARIAN

The time and manner of observing holidays by the Law Library on days herein designated and on days immediately before and/or after such days

shall be subject to the direction of the State Law Librarian.

[Adopted effective February 3, 1977.]

RULE 5
AUDITS

The judicial branch of the government of the State of Washington is a separate and co-equal division of said state government. The funds for operation of the judicial branch and many funds which pass through the courts are public funds of the state and/or of various subdivisions, agencies, or municipalities of the state. Every court in this state must, upon demand, submit all financial records of such court to the State Auditor or his agents for inspection and audit, as to all funds received, disbursed, or in possession of said court.

[Adopted effective February 8, 1977.]

RULE 6
SESSIONS OF COURTS

(a) Sessions of the Supreme Court shall be held in accordance with SAR 4.

(b) Sessions of the Court of Appeals shall be held in accordance with CAR 4.

(c) Sessions of the Superior Court shall be held in accordance with CR 77(f).

[Adopted effective January 30, 1978.]

RULE GR 7
LOCAL RULES--FILING AND EFFECTIVE DATE

(a) Generally. Fifty copies of rules of court authorized by law to be adopted or amended by courts other than the Supreme Court must be filed with the state Administrator for the Courts. New proposed rules and amendments must be filed on or before July 1, to be effective September 1 of the same year. Promulgation or amendment of rules that describe only the structure, internal management and organization of the court but do not affect courtroom procedures are not governed by the time limitations above.

(b) Form. All local rules shall be consistent with rules adopted by the Supreme Court, and shall conform in numbering system and in format to these rules to facilitate their use. Each rule and amendment filed shall state its effective date in brackets following the rule. Prior to adopting a local rule, the court may informally submit a copy of its local rule to the Administrative Office of the Courts for comments as to its conformity in number and format to the Official Rules of Court, and suggestions with reference thereto.

(c) Distribution. On or before September 1 of each year, the Administrator for the Courts shall distribute all local rules, and amendments thereto, to the state law library, the libraries of the three divisions of the Court of Appeals, all county law libraries, Washington law school libraries, and to such other places as are deemed appropriate by the Administrative Office of the Courts.

(d) Availability of Local Rules; The clerk of the court adopting the rules shall maintain a complete set of current local rules, which shall be available for inspection and copying.

(e) Emergency Rules.

(1) In the event a court other than the Supreme Court deems that an emergency exists which requires a change in its rules, such court shall, in addition to filing the rules or amendments as provided in section (a), distribute them to all county law libraries.

(2) A rule or amendment adopted on an emergency basis shall become effective immediately on filing with the Administrator for the Courts. The rule or amendment shall remain effective for a period of 90 days after filing, unless readopted in accordance with section (e)(1) or submitted as a permanent rule or amendment under section (a) within the 90-day period.

(f) Filing Local Rules Electronically. The Administrator for the Courts shall establish the specifications necessary for a court to file its local court rules electronically.

[Adopted effective January 1, 1981; amended effective September 1, 1991; March 19, 1993; November 25, 2003.]

GR 8

RESERVED, CHAPTER 136, LAWS 2002

[Repeal effective January 1, 2003.]

RULE GR 9
SUPREME COURT RULEMAKING

(a) Statement of Purpose. The purpose of rules of court is to provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and expeditious process. In promulgating rules of court, the Washington Supreme Court seeks to ensure that:

(1) The adoption and amendment of rules proceed in an orderly and uniform manner;

(2) All interested persons and groups receive notice and an opportunity to express views regarding proposed rules;

(3) There is adequate notice of the adoption and effective date of new and revised rules;

(4) Proposed rules are necessary statewide;

(5) Minimal disruption in court practice occurs, by limiting the frequency of rule changes; and

(6) Rules of court are clear and definite in application.

(b) Definitions. As used in this rule, the following terms have these meanings:

(1) "Suggested rule" means a request for a rule change or a new rule that has been submitted to the Supreme Court.

(2) "Proposed rule" means a suggested rule that the Supreme Court has ordered published for public comment.

(c) Request for Notification. Any person or group may file a request with the Supreme Court to receive notice of a suggested rule. The request may be limited to certain kinds of rule changes. The request shall state the name and address of the person or group to whom the suggested rule is to be sent. Once filed, the request shall remain in effect until withdrawn or unless notice sent by regular, first-class U.S. mail is returned for lack of a valid address.

(d) Initiation of Rules Changes. Any person or group may submit to the Supreme Court a request to adopt, amend, or repeal a court rule. The Supreme Court shall determine whether the request is clearly stated and in the form required by section (e) of this rule. If the Supreme Court determines that a request is unclear or does not comply with section (e), the Supreme Court may (1) accept the request notwithstanding its noncompliance, (2) ask the proponent to resubmit the request in the proper format, or (3) reject the request, with or without a written notice of the reason or reasons for such rejection.

(e) Form for Submitting a Request to Change Rules

(1) The text of all suggested rules should be submitted on 8 1/2 - by 11-inch line-numbered paper with consecutive page numbering and in an electronic form as may be specified by the Supreme Court. If the suggested rule affects an existing rule, deleted portions should be shown and stricken through; new portions should be underlined once.

(2) A suggested rule should be accompanied by a cover sheet and not more than 25 pages of supporting information, including letters, memoranda, minutes of meetings, research studies, or the like. The cover sheet should contain the following:

(A) Name of Proponent - the name of the person or group requesting the rule change;

(B) Spokesperson - a designation of the person who is knowledgeable about the proposed rule and who can provide additional information;

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

(D) Hearing - whether the proponent believes a public hearing is needed and, if so, why;

(E) Expedited Consideration - whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule, notwithstanding the schedule set forth in section (i).

(f) Consideration of Suggested Rule by Supreme Court.

(1) The Supreme Court shall initially determine whether a suggested rule has merit and whether it involves a significant or merely technical change. A "technical change" is one which corrects a clerical mistake or an error arising from oversight or omission. The Supreme Court shall also initially determine whether the suggested rule should be considered under the schedule provided for

in section (i) or should receive expedited consideration for the reason or reasons to be set forth in the transmittal form provided for in section (f)(2). The Supreme Court may consult with other persons or groups, in making this initial determination.

(2) After making its initial determinations, the Supreme Court shall forward each suggested rule, except those deemed "without merit", along with a transmittal form setting forth such determinations, to the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals for their consideration. The transmittal shall include the cover sheet and any additional information provided by the proponent. The Supreme Court shall also forward the suggested rule and cover sheet to any person or group that has filed a notice pursuant to section (c), and to any other person or group the Supreme Court believes may be interested. The transmittal form shall specify a deadline by which the recipients may comment in advance of any determination under section (f)(3) of this rule. If the Supreme Court determines that the suggested rule should receive expedited consideration, it shall so indicate on the transmittal form. The form may contain a brief statement of the reason or reasons for such consideration.

(3) After the expiration of the deadline set forth in the transmittal form, the Supreme Court may reject the suggested rule, adopt a merely technical change without public comment, or order the suggested rule published for public comment.

(g) Publication for Comment.

(1) A proposed rule shall be published for public comment in such media of mass communication as the Supreme Court deems appropriate, including, but not limited to, the Washington Reports Advance Sheets and the Washington State Register. The proposed rule shall also be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association. The purpose statement required by section (e)(2)(C) shall be published along with the proposed rule. Publication of a proposed rule shall be announced in the Washington State Bar News.

(2) Publication of a proposed rule in the Washington State Register shall not subject Supreme Court rulemaking to the provisions of the Administrative Procedures Act.

(3) All comments on a proposed rule shall be submitted in writing to the Supreme Court by the deadline set forth in section (i).

(4) If a comment includes a suggested rule, it should be in the format set forth in section (e). All comments received will be kept on file in the office of the Clerk of the Supreme Court for public inspection and copying.

(h) Final Action by the Supreme Court, Publication, and Effective Date.

(1) After considering a suggested rule, or after considering any comments or written or oral testimony received regarding a proposed rule, the Supreme Court may adopt, amend, or reject the rule change or take such other action as the Supreme Court deems appropriate.

Prior to action by the Supreme Court, the court may, in its discretion, hold a hearing on a proposed rule at a time and in a manner defined by the court. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing.

(2) Regarding action on a suggested rule:

(A) If the Supreme Court rejects the suggested rule, it may provide the proponent with the reason or reasons for such rejection.

(B) If the Supreme Court adopts the suggested rule without public comment, it shall publish the rule and may set forth the reason or reasons for such adoption.

(3) Regarding action on a proposed rule:

(A) If the Supreme Court rejects a proposed rule, it may publish its reason or reasons for such rejection.

(B) If the Supreme Court adopts a proposed rule, it may publish the rule along with the purpose statement from the cover sheet.

(C) If the Supreme Court amends and then adopts a proposed rule, it should publish the rule as amended along with a revised purpose statement.

(4) All adopted rules, or other final action by the Supreme Court for which this rule requires publication, shall be published in a July edition of the Washington Reports advance sheets and in the Washington State Register immediately after such action. The adopted rules or other Supreme Court final action shall also be posted on the Internet sites of the Supreme Court and the Washington State Bar Association. An announcement of such publication shall be made in the Washington State Bar News.

(5) All adopted rules shall become effective as provided in section (i) unless the Supreme Court determines that a different effective date is necessary.

(i) Schedule for Review and Adoption of Rules.

(1) In order to be published for comment in January, as provided in section (i) (2), a suggested rule must be received no later than October 15 of the preceding year.

(2) Proposed rules shall be published for comment in January of each year.

(3) Comments must be received by April 30 of the year in which the proposed rule is published.

(4) Proposed rules published in January and adopted by the Supreme Court shall be republished in July and shall take effect the following September 1.

(5) All suggested rules will be considered pursuant to the schedule set forth in this section, unless the Supreme Court determines that exceptional circumstances justify more immediate action.

(6) The Supreme Court, in consultation with the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals, shall develop a schedule for the periodic review of particular court rules. The schedule shall be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association.

(j) Miscellaneous Provisions.

(1) The Supreme Court may adopt, amend, or rescind a rule, or take any emergency action with respect to a rule without following the procedures set forth in this rule. Upon taking such action or upon adopting a rule outside of the schedule set forth in section (i) because of exceptional circumstances, the Supreme Court shall publish the rule in accordance with sections (g) or (h) as applicable.

(2) This rule shall take effect on _____ and apply to all rules not yet adopted by the Supreme Court by that date.

[Adopted effective March 19, 1982; amended effective September 1, 1984; September 1, 2000.]

RULE 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. 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) Any judge may in writing request the opinion of the committee. Compliance with an opinion issued by the committee shall be considered as evidence of good faith by the Supreme Court.

(c) Every opinion issued pursuant to this rule shall be circulated by the Administrator for the Courts. A request for an opinion is confidential and not public information unless the Supreme Court otherwise directs. The Administrator for the Courts shall publish regularly opinions issued pursuant to this rule.

[Adopted effective September 1, 1983; amended effective November 11, 1983; May 25, 1984.]

RULE 11
COURT INTERPRETERS

The use of qualified interpreters is authorized in judicial proceedings involving hearing impaired or non-English speaking individuals.

[Adopted effective July 17, 1987.]

RULE 11.1
PURPOSE AND SCOPE OF INTERPRETER COMMISSION

(a) Purpose and Scope. This rule establishes the Interpreter Commission ("Commission") and prescribes the conditions of its activities. This rule does not modify or duplicate the statutory process directing the Court Certified Interpreter Program as it is administered by the Administrative Office of the Courts (AOC) (RCW 2.43). The Interpreter Commission will develop policies for the Interpreter Program and the Program Policy Manual, published on the Washington Court's website at www.courts.wa.gov, which shall constitute the official version of policies governing the Court Certified Interpreter Program.

(b) Jurisdiction and Powers. All certified court interpreters who are certified in the state of Washington by AOC are subject to rules and regulations specified in the

Interpreter Program Manual. The Commission shall establish three committees to fulfill ongoing functions related to issues, discipline, and judicial/court administration education. Each committee shall consist of three Commission members and one member shall be identified as the chair.

(1) The Issues Committee is assigned issues, complaints, and/or requests from interpreters for review and response. If the situation cannot be resolved at the Issues Committee level, the matter will be submitted by written referral to the Disciplinary Committee.

(2) The Disciplinary Committee has the authority to decertify and deny certification of interpreters based on the disciplinary procedures for: (a) violations of continuing education/court hour requirements, (b) failure to comply with Interpreter Code of Conduct (GR 11.2) or professional standards, or (3) violations of law that may interfere with their duties as a certified court interpreter. The Disciplinary Committee will decide on appeal any issues submitted by the Issues Committee.

(3) The Judicial and Court Administration Education Committee shall provide ongoing opportunities for training and resources to judicial officers and court administrators related to court interpretation improvement.

(c) Establishment. The Supreme Court shall appoint members to the Interpreter Commission. The Supreme Court shall designate the chair of the Commission. The Commission shall include representatives from the following areas of expertise: judicial officers from the appellate and each trial court level (3), interpreter (2), court administrator (1), attorney (1), public member (2), representative from ethnic organization (1), and AOC representative (1). The term for a member of the Commission shall be three years. Members are eligible to serve a subsequent 3 year term. The Commission shall consist of eleven members. Members shall only serve on one committee and committees may be supplemented by ad hoc professionals as designated by the chair. Ad hoc members may not serve as the chair of a committee.

(d) Regulations. Policies outlining rules and regulations directing the interpreter program are specified in the Interpreter Program Manual. The Commission, through the Issues Committee and Disciplinary Committee, shall enforce the policies of the interpreter program. Interpreter program policies may be modified at any time by the Commission and AOC.

(e) Existing Law Unchanged. This rule shall not expand, narrow, or otherwise affect existing law, including but not limited to RCW chapter 2.43.

(f) Meetings. The Commission shall hold meetings as determined necessary by the chair. Meetings of the Commission are open to the public except for executive sessions and disciplinary meetings related to action against a certified interpreter.

(g) Immunity from Liability. No cause of action against the Commission, its standing members or ad hoc members appointed by the Commission, shall accrue in favor of a certified court interpreter or any other person arising from any act taken pursuant to this rule, provided that the Commission members or ad hoc members acted in good faith. The burden of proving that the acts were not taken in good faith shall be on the party asserting it.

[Adopted effective September 1, 2005]

RULE 11.2
CODE OF CONDUCT FOR COURT INTERPRETERS

PREAMBLE. All language interpreters serving in a legal proceeding, whether certified or uncertified, shall abide by the following Code of Conduct:

A language interpreter who violates any of the provisions of this code is subject to a citation for contempt, disciplinary action or any other sanction that may be imposed by law. The purpose of this Code of Conduct is to establish and maintain high standards of conduct to preserve the integrity and independence of the adjudicative system.

(a) A language interpreter, like an officer of the court, shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice.

(b) A language interpreter shall interpret or translate the material thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker, giving consideration to variations in grammar and syntax for both languages involved. A language interpreter shall use the level of communication that best

conveys the meaning of the source, and shall not interject the interpreters personal moods or attitudes.

(c) When a language interpreter has any reservation about ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the parties and to the court. If the communication mode or language of the non-English speaking person cannot be readily interpreted, the interpreter shall notify the appointing authority or the court.

(d) No language interpreter shall render services in any matter in which the interpreter is a potential witness, associate, friend, or relative of a contending party, unless a specific exception is allowed by the appointing authority for good cause noted on the record. Neither shall the interpreter serve in any matter in which the interpreter has an interest, financial or otherwise, in the outcome. Nor shall any language interpreter serve in a matter where the interpreter has participated in the choice of counsel.

(e) Except in the interpreters official capacity, no language interpreter shall discuss, report, or comment upon a matter in which the person serves as interpreter. Interpreters shall not disclose any communication that is privileged by law without the written consent of the parties to the communication, or pursuant to court order.

(f) A language interpreter shall report immediately to the appointing authority in the proceeding any solicitation or effort by another to induce or encourage the interpreter to violate any law, any provision of the rules which may be approved by the courts for the practice of language interpreting, or any provisions of this Code of Conduct.

(g) Language interpreters shall not give legal advice and shall refrain from the unauthorized practice of law.

[Adopted effective November 17, 1989; September 1, 2005.]

GR 11.3
TELEPHONIC INTERPRETATION

(a) Interpreters may be appointed to serve by telephone for brief, nonevidentiary proceedings, including initial appearances and arraignments, when interpreters are not readily available to the court. Telephone interpretation is not authorized for evidentiary hearings.

(b) RCW 2.43 and GR 11.2 must be followed regarding the interpreter's qualifications and other matters.

(c) Electronic equipment used during the hearing must ensure that the non-English speaking party hears all statements made by the participants. If electronic equipment is not available for simultaneous interpreting, the hearing shall be conducted to allow consecutive interpretation of each sentence.

(d) Attorney-client consultations must be interpreted confidentially.

(e) Written documents which would normally be orally translated by the interpreter must be read aloud to allow full oral translation of the material by the interpreter.

(f) An audio recording shall be made of all statements made on the record during their interpretation, and the same shall be preserved.

[Adopted effective July 19, 1987; amended effective December 10, 1993; September 1, 1997; September 1, 2005.]

GR 12.1

WASHINGTON STATE BAR ASSOCIATION: PURPOSES

(a) Purposes: In General. In general, the Washington State Bar Association strives to:
(1) Promote independence of the judiciary and the bar.
(2) Promote an effective legal system, accessible to all.
(3) Provide services to its members.
(4) Foster and maintain high standards of competence, professionalism, and ethics among its members.
(5) Foster collegiality among its members and goodwill between the bar and the public.
(6) Promote diversity and equality in the courts, the legal profession, and the bar.
(7) Administer admissions to the bar and discipline of its members in a manner that protects the public and respects the rights of the applicant or member.
(8) Administer programs of legal education.
(9) Promote understanding of and respect for our legal system and the

law.
(10) Operate a well-managed and financially sound association, with a positive work environment for its employees.
(11) Serve as a state-wide voice to the public and the branches of government on matters relating to these purposes and the activities of the association.
(b) Specific Activities Authorized. In pursuit of these purposes, the Washington State Bar Association may:
(1) Sponsor and maintain committees, sections, and divisions whose activities further these purposes;
(2) Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;
(3) Provide periodic reviews and recommendations concerning court rules and procedures;
(4) Administer examinations and review applicants' character and fitness to practice law;
(5) Inform and advise lawyers regarding their ethical obligations;
(6) Administer an effective system of discipline of its members, including receiving and investigating complaints of lawyer misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;
(7) Maintain a program, pursuant to court rule, requiring members to submit fee dispute to arbitration;
(8) Maintain a program for mediation of disputes between members and their clients and others;
(9) Maintain a program for lawyer practice assistance;
(10) Sponsor, conduct, and assist in producing programs and products of continuing legal education;
(11) Maintain a system for accrediting programs of continuing legal education;
(12) Conduct audits of lawyers' trust accounts;
(13) Maintain a lawyers' fund for client protection in accordance with the Admission to Practice Rules;
(14) Maintain a program for the aid and rehabilitation of impaired members;
(15) Disseminate information about bar activities, interests, and positions;
(16) Monitor, report on, and advise public officials about matters of interest to the bar;
(17) Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about bar positions and concerns;
(18) Encourage public service by members and support programs providing legal services to those in need;
(19) Maintain and foster programs of public information and education about the law and the legal system;
(20) Provide, sponsor and participate in services to its members;
(21) Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the bar's discretion, authorizing collective bargaining;
(22) Collect, allocate, invest, and disburse funds so that its mission, purposes and activities may be effectively and efficiently discharged.
(c) Activities Not Authorized. The Washington State Bar Association will not:
(1) Take positions on issues concerning the politics or social positions of foreign nations;
(2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice;
(3) Support or oppose, in an election, candidates for public office.

[Adopted effective July 19, 1987; amended effective December 10, 1993; September 1, 1997; September 1, 2007.]

GR 12.2

WASHINGTON STATE BAR ASSOCIATION ADMINISTRATION OF SUPREME COURT-CREATED BOARDS AND COMMITTEES

The Supreme Court has delegated to the Washington State Bar Association the authority and responsibility to administer certain boards and committees established by court rule or order. This delegation of authority includes providing and managing staff, overseeing the boards and committees to monitor their compliance with the rules and orders that authorize and regulate them, paying expenses reasonably and necessarily incurred pursuant to a budget approved by the Board of Governors, performing other functions and taking other actions as provided in court rule or order or delegated by the Supreme Court, or taking other actions as are necessary and proper to enable the board or committee to carry out its duties or functions.

[Adopted effective September 1, 2007.]

GR 12.3
Immunity

All boards, committees, or other entities, and their members and personnel, and all personnel and employees of the Washington State Bar Association, acting on behalf of the Supreme Court under the Admission to Practice Rules, the rules for Enforcement of Lawyer Conduct, and the Disciplinary Rules for Limited Practice Officers, shall enjoy quasi-judicial immunity if the Supreme Court

would have immunity in performing the same functions.

Adopted effective January 2, 2008

RULE 13
USE OF UNSWORN STATEMENT IN LIEU
OF AFFIDAVIT

(a) Unsworn Statement Permitted. Except as provided in section
(b) whenever a matter is required or permitted to be supported or proved by affidavit, the matter may be supported or proved by an unsworn written statement, declaration, verification, or certificate executed in accordance with RCW 9A.72.085. The certification or declaration may be in substantially the following form:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

_____ _____
(Date and Place) (Signature)

(b) Exceptions. This rule does not apply to writings requiring an acknowledgment, oaths of office, or oaths required to be taken before a special official other than a notary public.

[Adopted effective September 1, 1989.]

GR 14
FORMAT FOR PLEADINGS AND OTHER PAPERS

(a) Format Requirements. All pleadings, motions, and other papers filed with the court shall be legibly written or printed. The use of letter-size paper (8-1/2 by 11 inches) is mandatory. The writing or printing shall appear on only one side of the page. The top margin of the first page shall be a minimum of three inches, the bottom margin shall be a minimum of one inch and the side margins shall be a minimum of one inch. All subsequent pages shall have a minimum of one inch margins. Papers filed shall not include any colored pages, highlighting or other colored markings. This rule applies to attachments unless the nature of the attachment makes compliance impractical.

(b) Exception for Trial or Hearing Exhibits. This rule is not mandatory for trial or hearing exhibits, but the use of trial or hearing exhibits that comply with this rule is encouraged if it does not impair legibility.

(c) Application of Rule. This rule shall apply to all proceedings in all courts of the State of Washington unless otherwise specifically indicated by court rule.

(d) Citation Format. Citations shall conform with the format prescribed by the Reporter of Decisions. (See Appendix 1.)

[Adopted effective September 1, 1990; amended effective April 1, 2001; September 1, 2003; September 1, 2008.]

RULE 14.1.
Citation to Unpublished Opinions

(a) Washington Court of Appeals. A party may not cite as an authority an unpublished opinion of the Court of Appeals. Unpublished opinions of the Court of Appeals are those opinions not published in the Washington Appellate Reports.

(b) Other Jurisdictions. A party may cite as an authority an opinion designated "unpublished," "not for publication," "non-precedential," "not precedent," or the like that has been issued by any court from a jurisdiction other than Washington state, only if citation to that opinion is permitted under the law of the jurisdiction of the issuing court. The party citing the opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited.

[Adopted effective September 1, 2007.]

---

14 GR 14 - APPENDIX 1 - OFFICE OF REPORTER OF DECISIONS STYLE SHEET

The contents of this item are only available on-line.

RULE GR 15
DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.

(b) Definitions.

(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(2) "Court record" is defined in GR 31(c)(4).

(3) Destroy. To destroy means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.

(4) Seal. To seal means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.

(5) Redact. To redact means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(6) Restricted Personal Identifiers are defined in GR 22(b)(6).

(7) Strike. A motion or order to strike is not a motion or order to seal or destroy.

(8) Vacate. To vacate means to nullify or cancel.

(c) Sealing or Redacting Court Records.

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

(2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

(A) The sealing or redaction is permitted by statute; or

(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or

(C) A conviction has been vacated; or

(D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or

(E) The redaction includes only restricted personal identifiers contained in the court record; or

(F) Another identified compelling circumstance exists that requires the sealing or redaction.

(3) A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (2) above.

(4) Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of

action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, section (d) shall apply. The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

(5) Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records;

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the public.

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(6) Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions. In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type with the notification "DV" if the case involved domestic violence, the adult or juvenile's name, and the notation "vacated."

(e) Grounds and Procedure for Requesting the Unsealing of Sealed Records.

(1) Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record.

(2) Criminal Cases. A sealed court record in a criminal case shall be ordered unsealed only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(3) Civil Cases. A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing no longer exist, or pursuant to RCW 4.24 or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16).

(f) Maintenance of Sealed Court Records. Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

(g) Use of Sealed Records on Appeal. A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

(h) Destruction of Court Records.

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.

(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall;

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Order Destroyed" for the docket entry;

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

(i) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if all parties so stipulate in writing and the court so orders.

(j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor in the exercise of duties conferred by statute.

[Adopted effective September 22, 1989; amended effective September 1, 1995; June 4, 1997; June 16, 1998; September 1, 2000; amended effective October 1, 2002; amended effective July 1, 2006.]

RULE GR 16
COURTROOM PHOTOGRAPHY AND RECORDING BY THE NEWS MEDIA

(a) Video and audio recording and still photography by the news media are allowed in the courtroom during and between sessions, provided

(1) that permission shall have first been expressly granted by the judge; and

(2) that media personnel not, by their appearance or conduct, distract participants in the proceedings or otherwise adversely affect the dignity and fairness of the proceedings.

(b) The judge shall exercise reasonable discretion in

prescribing conditions and limitations with which media personnel shall comply.

(c) If the judge finds that sufficient reasons exist to warrant limitations on courtroom photography or recording, the judge shall make particularized findings on the records at the time of announcing the limitations. This may be done either orally or in a written order. In determining what, if any, limitations should be imposed, the judge shall be guided by the following principles:

(1) Open access is presumed; limitations on access must be supported by reasons found by the judge to be sufficiently compelling to outweigh that presumption;

(2) Prior to imposing any limitations on courtroom photography or recording, the judge shall, upon request, hear from any party and from any other person or entity deemed appropriate by the judge; and

(3) Any reasons found sufficient to support limitations on courtroom photography or recording shall relate to the specific circumstances of the case before the court rather than reflecting merely generalized views.

[Adopted effective December 27, 1991; amended effective January 4, 2005.]

Comment

Before 1991 when GR 16 on "Cameras in the Courtroom" was first adopted, the subject had only been addressed in the Code of Judicial Conduct's Canon 3(A)(7). The intent of the 1991 change was to make clear both that cameras were fully accepted in Washington courtrooms and also that broad discretion was vested in the court to decide what, if any, limitations should be imposed. In subsequent experience, both judges and the media have perceived a need for greater guidance as to how that judicial discretion should be exercised in a particular case. This 2003 amendment to GR 16 is intended to fill that practical need.

While not providing much guidance for the court's exercise of discretion, the Canon did contain some "illustrative guidelines" on how media personnel should conduct themselves while covering the courts. Although these guidelines were no longer a part of the rule once GR 16 was adopted, they continued to be published in the accompanying Comment. Some portions of those guidelines have now become outdated and others are superseded by language in the new GR 16. Because there continues to be potential value in some of the remaining guidelines, they will be here set out in redacted form:

ILLUSTRATIVE BROADCAST GUIDELINES

1. Officers of Court. Broadcast newspersons should advise the bailiff prior to the start of a court session that they desire to electronically record and/or broadcast live from within the courtroom. The bailiff may have prior instructions from the judge as to where the broadcast reporter and/or camera operator may position themselves. In the absence of any directions from the judge or bailiff, the position should be behind the front row of spectator seats by the least used aisleway or other unobtrusive but viable location.

2. Pooling. Unless the judge directs otherwise, no more than one television camera should be taking pictures in the courtroom at any one time. It should be the responsibility of each broadcast news representative present at the opening of each session of court to achieve an understanding with all other broadcast representatives as to how they will pool their photographic coverage. This understanding should be reached outside the courtroom and without imposing on the judge or court personnel.

3. Broadcast Equipment. All running wires used should be securely taped to the floor. All broadcast equipment should be handled as inconspicuously and quietly as reasonably possible. Sufficient film and/or tape capacities should be provided to obviate film and/or tape changes except during court recess. No additional lights should be used without the specific approval of the presiding judge.

4. Decorum. Camera operators should not move tripod-mounted cameras except during court recess. All broadcast equipment should be in place and ready to function no less than 15 minutes before the beginning of each session of court.

An accompanying set of "Illustrative Print Media Guidelines" contained substantially the same provisions from print media personnel. The only additional matters addressed were that still photographers should use cameras operating quietly and without a flash and they should not "assume body positions inappropriate for spectators."

GR 17
FACSIMILE TRANSMISSION

(a) Facsimile Transmission Authorized; Exceptions.

(1) Except as set forth in subsection (a)(5), the clerks of the court may accept for filing documents sent directly to the clerk or to another by electronic facsimile (fax) transmission. A fax copy shall constitute an original for all court purposes. The attorney or party sending the document via fax to the clerk or to another shall retain the original signed document until 60 days after completion of the case. Documents to be transmitted by fax shall bear the notation: "SENT on _____ (DATE) VIA FAX FOR FILING IN COURT.

(2) If a document is transmitted by facsimile to another for filing with a court, the person responsible for the filing must attach an original affidavit as the last page of the document. The affidavit must bear the name of the court, case caption, case number, the name of the document to be filed, and a statement that the individual signing the affidavit has examined the document, determined that it consists of a stated number of pages, including the affidavit page, and that it is complete and legible. The affidavit shall bear the original signature, the printed name, address, phone number and facsimile number of the individual who received the document for filing.

(3) The clerk of the court may use fax transmission to send any document requiring personal service to one charged with personally serving the document. Notices and other documents may be transmitted by the clerk to counsel of record by fax.

(4) Clerks may charge reasonable fees to be established by the Office of the Administrator for the Courts, for receiving, collating, and verifying fax transmissions.

(5) Without prior approval of the clerk of the receiving court, facsimile transmission is not authorized for judge's working copies (courtesy copies) or for those documents for which a filing fee is required. Original wills and negotiable instruments may not be filed by facsimile transmission.

(6) Facsimile Machine Not Required. Nothing in this rule shall require an attorney or a clerk of a court to have a facsimile machine.

(b) Conditions.

(1) Documents transmitted to the clerk by fax shall be letter size (8-1/2 by 11 inches). Documents over 10 pages in length may not be filed by fax without prior approval of the clerk.

(2) Any document transmitted to the clerk by fax must be accompanied by a fax transmittal sheet in a format prescribed by the court. The form must include the case number (if any), case caption, number of pages, the sender's name, the senders voice and facsimile telephone numbers, and fax fee remittance certification. Transmittal sheets are not considered legal filings.

(3) A document transmitted directly to the clerk of the court shall be deemed received at the time the clerk's fax machine electronically registers the transmission of the first page, regardless of when final printing of the document occurs, except that a document received after the close of normal business hours shall be considered received the next judicial day. If a document is not completely transmitted, it will not be considered received. A document transmitted to another for filing with the clerk of the court will be deemed filed when presented to the clerk in the same manner as an original document.

(4) Court personnel will not verify receipt of a facsimile transmission by telephone or return transmission and persons transmitting by facsimile shall not call the clerk's office to verify receipt.

(5) The clerk shall neither accept nor file a document unless it is on bond paper.

(6) The clerk shall develop procedures for the collection of fax service fees for those documents transmitted directly to the clerk. Nonpayment of the fax service fee shall not affect the validity of the filing.

(7) Agencies or individuals exempt from filing fees are not exempt from the fax service fees for documents transmitted directly to the clerk.

[Adopted effective September 1, 1993.]

GR 18
JURY SOURCE LIST

(a) Effective Date. Effective September 1, 1994, all prospective jurors shall be identified using the jury source list as herein provided.

(b) Jury Source List. "Jury source list" means the list of all registered voters of a county, merged with a list of licensed drivers and identicard holders who reside in that county. The list shall specify each person's first and last name, middle initial, date of birth, gender and residence address. When legally available for jury selection use, each such list shall also specify each person's Social Security number.

(c) Order of the Supreme Court. The jury source list shall be created utilizing the methodology and standards set forth by Supreme Court order and by Laws of 1993, ch. 408, subsection 1.

(d) Juror Qualification Confirmation. Each court, after consultation with the county auditor and county clerk of its jurisdiction, shall establish a means to preliminarily determine by written declaration signed under penalty of perjury by each person summoned, the qualifications set forth in RCW 2.36.070 of each person summoned for jury duty prior to the person's appearance at the court to which the person is summoned to serve. Information so provided to the court for preliminary determination of qualification for jury duty may only be used for the term such person is summoned and may not be used for any other

purpose. Provided, that the court, or its designee, may report a change of address or nondelivery of summons of persons summoned for jury duty to the county auditor.

THE SUPREME COURT OF WASHINGTON

In the Matter of the Jury Source List Pursuant to General Rule 18 of the Washington Rules of Court	)	No.
	)	ORDER

General Rule 18 of the Washington Court Rules provides that the Supreme Court of the State of Washington should designate by order the creation of the jury source list.

Now, Therefore, It is hereby ordered:

That the jury source list shall be created according to the attached appendix describing the methodology and standards for creating the jury source list by merging the list of registered voters for a county with the list of licensed drivers and identicard holders who reside in that county.

That each superior court shall receive a jury source list from the Department of Information Services by May 1, 1994, and annually thereafter, which list shall be created according to the methodology and standards set forth in the attached appendix. Provided, that the jury source list may be created, at the direction of the presiding judge of each superior court after consultation with the county auditor and the county clerk of that jurisdiction, by the county, according to the methodology and standards set forth in the attached appendix. If a superior court elects to have the jury source list created by the county the superior court shall so notify the Department of Information Services annually by March 1, 1994, and that superior court shall thereafter receive a separate list of licensed drivers and identicard holders residing in that county and a separate list of registered voters residing in that county from the Department of Information Services by April 1, 1994, and annually thereafter.

That in the event, for any reason, the jury source list is not created and available for use as set forth above, the most recent previously compiled jury source list shall be used by the courts on an emergency basis only for the shortest period of time until a current jury source list is created and available for use as provided for herein.

Dated at Olympia, Washington, this ____ day of _____, 19__.

_____
Chief Justice

APPENDIX

This appendix describes the methodology for merging the list of registered voters and the list of licensed drivers and identicard holders to form a jury source list pursuant to GR 18 and the Supreme Court of Washington order to which this appendix is attached. Records of persons from the list of licensed drivers and identicard holders shall not be used in creating a jury source list if their license or identicard has been expired longer than 90 days. Records of persons from the registered voter list shall not be used in creating a jury source list if they are in an inactive status.

Persons on the list of registered voters and on the list of licensed drivers and identicard holders shall be identified based on the following data: date of birth, last name, first name, middle initial, gender and county code to reflect residence address. Upon notification by the Supreme Court of Washington of the legal availability of the Social Security number for jury selection purposes, the persons on each list shall also be identified by Social Security number.

The list of registered voters and the list of licensed drivers and identicard holders shall be merged to form a jury source list.

Using the identifying information on each person, known duplicate names shall be eliminated during the merging process so that the jury source list shall contain, to the extent reasonably possible, each prospective juror's name only once.

Suspected duplication of prospective jurors' names on the jury source list which cannot be clearly confirmed at the time that the jury source list is created shall be identified on the jury source list for further investigation at the county level. For that purpose only, the jury source list shall identify each person as having been originally listed on the list of registered voters, or the list of licensed drivers and identicard holders, or both. Conflicts of addresses shall be resolved by using the address most currently provided for the lists from which the names originated.

If suspected duplication of names on the jury source list cannot be resolved after reasonable efforts at the county level, the suspected duplicate names shall be stricken from that jury source list.

Selection of persons for the master jury list from the jury source list, and the designation of persons on the master jury list to be summoned, shall be random and totally without regard to whether a person's name originally appeared on the list of registered voters, or on the list of licensed drivers and identicard holders, or both.

[Adopted effective September 1, 1994; amended September 1, 2009.]

GR
RULE 19

VIDEO CONFERENCE PROCEEDINGS

The Office of the Administrator for the Courts (OAC) shall promulgate standards for facilities and equipment and provide technical assistance to courts required.

[Adopted effective September 1, 1997; amended effective December 28, 1999.]

RULE GR 20
SECURITY IN HANDLING COURT EXHIBITS

(a) Hazardous, Valuable, and Bulky Exhibits. Upon petition of the clerk or any party and order of the court, a hazardous exhibit, money, an item of negotiable value, or an item deemed to be excessively bulky, may be admitted and then withdrawn upon the substitution of photograph(s), videotape(s), samples or other facsimile representations as provided by the order. The photograph(s), videotape(s), samples or other facsimile representations may be used to demonstrate the existence, quantity, and physical characteristic of the evidence. The order shall direct the disposition of the original evidence and shall state whether the evidence shall be further documented by a descriptive certificate issued by an authorized agency.

(b) Controlled Substances. When controlled substances or samples thereof are presented in court, such items shall be presented under sealed evidence tape in containers whose labels describe their contents. Sealed controlled substances presented as exhibits shall be unsealed in open court and, upon completion of the action for which unsealing was ordered, the item shall be sealed again.

(c) Original Exhibit. When a photograph, videotape, or other facsimile representation is substituted, the original exhibit must be retained by the presenting party or agency until at least sixty (60) days following case completion and must produce the original exhibit upon the court's direction. Case completion is defined as the date of filing of the judgment of acquittal, final judgment, or dismissal, or the date the judgment becomes final after appeal.

(d) Appeal. Exhibits handled under these rules shall have the same standing for purposes of appeal as would the original exhibits.

(e) Hazardous Exhibits. For purposes of this rule, "hazardous exhibit" means an exhibit that unreasonably threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics. Non-exclusive examples of hazardous exhibits include firearms, knives and other weapons, live ammunition, controlled substances, bodily fluid samples, and bloody clothing.

[Adopted effective September 1, 1997; amended effective September 1, 2000.]

GR 21
EMERGENCY COURT CLOSURE

(a.) Generally. A court may be closed if weather, technological failure or other hazardous or emergency conditions or events are or become such that the safety and welfare of the employees are threatened or the court is unable to operate or demands immediate action to protect the court, its employees or property. Closure may be ordered by the chief justice, the presiding chief judge, presiding judge or other judge so designated by the affected court in his or her discretion during the pendency of such conditions or events.

(b.) Order and Notification. Whenever a court is closed in accordance with section (a), the chief justice, presiding chief judge, presiding judge or other judge directing the closure of the court shall enter an administrative order closing the court which shall be filed with the clerk of the affected court. It shall also be the responsibility of the chief justice, the presiding chief judge, the presiding judge or other judge so designated by the affected court to notify the Office of the Administrator for the Courts of any decision to close a court. All oral notifications to the Office of the Administrator for the Courts shall be followed as soon as practicable with a written statement outlining the condition or event necessitating such action and the length of such closure.

(c.) Filings and Hearings - Time Extended. Reserved. See GR 3.

[Adopted effective October 19, 1999.]

GR 22
ACCESS TO FAMILY LAW AND GUARDIANSHIP COURT RECORDS

(a) Purpose and Scope of this Rule. This rule governs access to family law and guardianship court records, whether the records are maintained in paper or electronic form. The policy of the courts is to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy, will not permit access to records or information defined by law or court rule as confidential, sealed, exempted from disclosure, or otherwise restricted from public access, and will not be unduly burdensome to the ongoing business of the courts.

(b) Definition and Construction of Terms.

(1) "Court record" is defined in GR 31 (c)(4).

(2) "Family law case or guardianship case" means any case filed under Chapters 11.88, 11.92, 26.09, 26.10, 26.12, 26.18, 26.21, 26.23, 26.26, 26.27, 26.50, 26.52, 73.36 and 74.34 RCW.

(3) "Personal Health Care Record" means any record or correspondence that contains health information that: (1) relates to the past, present, or future physical or mental health condition of an individual including past, present, or future payments for health care; or (2) involves genetic parentage testing.

(4) "Personal Privacy" is unreasonably invaded only if disclosure of information about the person or the family (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

(5) "Public access" means unrestricted access to view or copy a requested court record.

(6) "Restricted personal identifiers" means a party's social security number, a party's driver's license number, a party's telephone number, financial account numbers, social security number of a minor child and date of birth of a minor child.

COMMENT

A party is not required to provide a residence address. Petitioners or counsel to a family law case will provide a service or contact address in accordance with CR 4.1 that will be publicly available and all parties and counsel should provide a contact address if otherwise required. Pattern forms shall be modified, as necessary, to reflect the intent of this rule.

(7) "Retirement plan order" means a supplemental order entered for the sole purpose of implementing a property division that is already set forth in a separate order or decree in a family law case. A retirement plan order may not grant substantive relief other that what is set forth in a separate order. Examples of retirement plan orders are orders that implement a division of retirement, pension, insurance, military, or similar benefits as already defined in a decree of dissolution of marriage.

(8) "Sealed financial source documents" means income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, checks or the equivalent, check registers, loan application documents, retirement plan orders, as well as other financial information sealed by court order.

(c) Access to Family Law or Guardianship Court Records.

(1) General Policy. Except as provided in RCW 26.26.610(2) and subsections (c)(2) and (c)(3) below, all court records shall be open to the public for inspection and copying upon request. The Clerk of the court may assess fees, as may be authorized by law, for the production of such records.

(2) Restricted Access. The Confidential Information Form, Sealed Financial Source Documents, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 26.09.440, Sealed Personal Health Care Record, Retirement Plan Order, Confidential Reports as defined in (e)(2)(B), copies of any unredacted Judicial Information System (JIS) database information considered by the court for parenting plan approval as set forth in (f) of this rule, and any Personal Information Sheet necessary for Judicial Information System purposes shall only be accessible as provided in sections (h) and (i) herein.

(3) Excluded Records. This section (c) does not apply to court records that are sealed as provided in GR 15, or to which access is otherwise restricted by law.

(d) Restricted Personal Identifiers Not Required - Except. Parties to a family law case or the protected person in a guardianship case shall not be required to provide restricted personal identifiers in any document filed with the court or required to be provided upon filing a family law or guardianship case, except:

(1) "Sealed financial source documents" filed in accordance with (g)(1).

(2) The following forms: Confidential Information Form, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 26.09.440, Vital Statistics Form, Law Enforcement Information Form, Foreign Protection Order Information Form, and any Personal Information Sheet necessary for Judicial Information System purposes.

(3) Court requested documents that contain restricted personal identifiers, which may be submitted by a party as financial source documents under the provisions of section (g) of this rule.

COMMENT

Court records not meeting the definition of "Sealed Financial Source Documents", "Personal Health Care Records", Retirement Plan Orders, Confidential Reports or court records that otherwise meet the definition but have not been submitted in accordance with (g)(1) are not automatically sealed. Section (3) provides authority for the court to seal court records containing restricted personal identifiers upon motion of a party, or on the court's own motion during a hearing or trial.

(e) Filing of Reports in Family Law and Guardianship cases - Cover Sheet.

(1) This section applies to documents that are intended as reports to the court in Family law and Guardianship cases including, but not limited to, the following:

(A) Parenting evaluations;

(B) Domestic Violence Assessment Reports created by Family Court Services or a qualified expert appointed by the court;

(C) Risk Assessment Reports created by Family Court Services or a qualified expert;

(D) CPS Summary Reports created by Family Court Services or supplied directly by Children's Protective Services;

(E) Sexual abuse evaluations; and

(F) Reports of a guardian ad litem or Court Appointed Special Advocate.

(2) Reports shall be filed as two separate documents, one public and one sealed.

(A) Public Document. The public portion of any report shall include a simple listing of:

(i) Materials or information reviewed;

(ii) Individuals contacted;

(iii) Tests conducted or reviewed; and

(iv) Conclusions and recommendations.

(B) Sealed Document. The sealed portion of the report shall be filed with a coversheet designated: "Sealed Confidential Report." The material filed with this coversheet shall include:

(i) Detailed descriptions of material or information gathered or reviewed;

(ii) Detailed descriptions of all statements reviewed or taken;

(iii) Detailed descriptions of tests conducted or reviewed; and

(iv) Any analysis to support the conclusions and recommendations.

(3) The sealed portion may not be placed in the court file or used as an attachment or exhibit to any other document except under seal.

(f) Information Obtained from JIS Databases with Regard to Approval of a Parenting Plan.

When a judicial officer proposes to consider information from a JIS database relevant to the placement of a child in a parenting plan, the judicial officer shall either orally disclose on the record or disclose the relevant information in written form to each party present at the hearing, and, on timely request, provide any party an opportunity to be heard regarding that information. The judicial officer has discretion not to disclose information that he or she does not propose to consider. The judicial officer may restrict secondary dissemination of written unredacted JIS database information not available to the public.

(g) Sealing Financial Source Documents, Personal Health Care Records, and Sealed Confidential Reports in Family Law and Guardianship cases - Cover Sheet.

(1) Financial source documents, personal health care records, confidential reports as defined in (e)(2)(B) of this rule, and copies of unredacted JIS database records considered by the court for parenting plan approval as set forth in (f) of this rule, shall be submitted to the clerk under a cover sheet designated "SEALED FINANCIAL SOURCE DOCUMENTS", "SEALED PERSONAL HEALTH CARE RECORDS", "SEALED CONFIDENTIAL REPORT" or "JUDICIAL INFORMATION SYSTEM DATABASE RECORDS" for filing in the court record of family law or guardianship cases.

(2) All financial source documents, personal health care records, confidential reports, or judicial information system database records so submitted shall be automatically sealed by the clerk. The cover sheet or a copy thereof shall remain part of the public court file.

(3) The court may order that any financial source documents containing restricted personal identifiers, personal health care records, any report containing information described in (e)(2)(B), or copies of unredacted JIS database records considered by the court for parenting plan approval as described in (f) be sealed, if they have not previously automatically been sealed pursuant to this rule.

(4) These coversheets may not be used for any documents except as provided in this rule. Sanctions may be imposed upon any party or attorney who violates this rule.

COMMENT

See comment to (d)(3) above.

(h) Access by Courts, Agencies, and Parties to Restricted Documents.

(1) Unless otherwise provided by statute or court order, the following persons shall have access to all records in family law or guardianship cases:

(A) Judges, commissioners, other court personnel, the Commission on Judicial Conduct, and the Certified Professional Guardian Board may access and use restricted court records only for the purpose of conducting official business of the court, Commission, or Board.

(B) Any state administrative agency of any state that administers programs under Title IV-A, IV-D, IV-E, or XIX of the federal Social Security Act.

(2) Except as otherwise provided by statute or court order, the following persons shall have access to all documents filed in a family law or guardianship case, except the Personal Information Sheet, Vital Statistics Form, Confidential Information Form, Domestic Violence Information Form, Law Enforcement Information Form, and Foreign Protection Order Form.

(A) Parties of record as to their case.

(B) Attorneys as to cases where they are attorneys of record.

(C) Court appointed Title 11 guardians ad litem as to cases where they are actively involved.

(i) Access to Court Records Restricted Under This Rule.

(1) The parties may stipulate in writing to allow public access to any court records otherwise restricted under section (c)(2) above.

(2) Any person may file a motion, supported by an affidavit showing good cause, for access to any court record otherwise restricted under section (c)(2) above, or to be granted access to such court records with specified information deleted. Written notice of the motion shall be provided to all parties in the manner required by the Superior Court Civil Rules. If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful, or if the motion requests access to redacted JIS database records.

(A) The court shall allow access to court records restricted under this rule, or relevant portions of court records restricted under this rule, if the court finds that the public interests in granting access or the personal interest of the person seeking access outweigh the privacy and safety interests of the parties or dependent children.

(B) Upon receipt of a motion requesting access, the court may provide access to JIS database records described in (f) after the court has reviewed the JIS database records and redacted pursuant to GR 15 (c), any data which is confidential or restricted by statute or court rule.

(C) If the court grants access to restricted court records, the court may enter such orders necessary to balance the personal privacy and safety interests of the parties or dependent children with the public interest or the personal interest of the party seeking access, consistent with this rule.

[Adopted effective October 1, 2001; amended effective July 1, 2006; amended effective August 11, 2009.]

GR 23
Rule for Certifying Professional Guardians

(a) Purpose and Scope. This rule establishes the standards and criteria for the certification of professional guardians as defined by RCW 11.88.008 and prescribes the conditions of and limitations upon their activities. This rule does not duplicate the statutory process by which the courts supervise guardians nor is it a mechanism to appeal a court decision regarding the appointment or conduct of a guardian.

(b) Jurisdiction. All professional guardians who practice in the state of Washington are subject to these rules and regulations. Jurisdiction shall continue whether or not the professional guardian retains certification under this rule, and regardless of the professional guardian's residence.

(c) Certified Professional Guardian Board.

(1) Establishment.

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

(ii) Terms. The term for a member of the Board shall be three years.

No member may serve more than three consecutive full three-year terms, not to exceed nine consecutive years, including any unfilled term. Terms shall be established such that one-third shall end each year. All terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later.

(iii) Leadership. The Supreme Court shall designate the Chair of the Board. The Board shall designate the Vice-Chair, who shall serve in the absence of or at the request of the Chair.

(iv) Vacancies. Any vacancy occurring in the terms of office of Board members shall be filled for the unexpired term.

(2) Duties and Powers.

(i) Applications. The Board shall process applications for professional guardian certification under this rule. The Board may delay or deny certification if an applicant fails to provide required basic or supplemental information.

(ii) Standards of Practice. The Board shall adopt and implement policies or regulations setting forth minimum standards of practice which professional guardians shall meet.

(iii) Training Program. The Board shall adopt and implement regulations establishing a professional guardian training program.

(iv) Examination. The Board may adopt and implement regulations governing the preparation and administration of certification examinations.

(v) Recommendation of Certification. The Board may recommend certification to the Supreme Court. The Supreme Court shall review the Board's recommendation and enter an appropriate order.

(vi) Denial of Certification. The Board may deny certification. If the Board denies certification, it shall notify an applicant in writing of the basis for denial of certification and inform the applicant of the appeal process.

(vii) Continuing Education. The Board may adopt and implement regulations for continuing education.

(viii) Grievances and Disciplinary Sanctions. The Board shall adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians. The Board may take disciplinary action and impose disciplinary sanctions based on findings that establish a of violation of an applicable statute, duty, standard of practice, rule, regulation or other requirement governing the conduct of professional guardians. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

(ix) Investigation. The Board may investigate to determine whether an applicant for certification meets the certification requirements established in this rule. The Board may also investigate to determine whether a professional guardian has violated any statute, duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians.

(x) Authority to Conduct Hearings. The Board may adopt regulations pertaining to the orderly conduct of hearings.

a) Subpoenas. The Chair of the Board, Hearing Officer, or a party's attorney shall have the power to issue subpoenas.

b) Orders. The Chair or Hearing Officer may make such pre-hearing or other orders as are necessary for the orderly conduct of any hearing.

c) Enforcement. The Board may refer a Subpoena or order to the Supreme Court for enforcement.

(xi) Disclosure of Records. The Board may adopt regulations pertaining to the disclosure of records in the Board's possession.

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

(xiii) Fees. The Board shall establish and collect fees in such amounts as are necessary to support the duties and responsibilities of the Board.

(3) Board Expenses. Board members shall not be compensated for their services. Consistent with the Office of Financial Management rules, Board members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid pursuant to a budget submitted to and approved by the Supreme Court. Funds accumulated from examination fees, annual fees, and other revenues shall be used to defray Board expenses.

(4) Agency. Hearing officers are agents of the Board and are accorded rights of such agency.

(5) Immunity from Liability. The Board, its members, or agents, including duly appointed hearing officers, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

(6) Conflict of Interest. A Board member should disqualify himself or herself from making any decisions in a proceeding in which his or her impartiality might reasonably be questioned, including but not limited to, when the Board member has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.

(7) Leave of Absence. The Board may adopt regulations specifying that a

Board member who is the subject of a disciplinary investigation by the Board must take a leave of absence from the Board. A Board member may not continue to serve as a member of the Board if the Board or Supreme Court has imposed a final disciplinary sanction on the Board member.

(8) Administration. The Administrative Office of the Courts (AOC) shall provide administrative support to the Board and may contract with agencies or organizations to carry out the Board's administrative functions.

(d) Certification Requirements. Applicants, Certified Professional Guardians, and Certified Agencies shall comply with the provisions of Chapter 11.88 and 11.92 RCW. In addition, individuals and agencies must meet the following requirements.

(1) Individual Certification. The following requirements apply to applicants and do not apply to currently certified professional guardians, except as stated in subsection (d)(1)(vii). An individual applicant shall:

(i) Be at least 18 years of age;

(ii) Be of sound mind;

(iii) Have no felony or misdemeanor convictions involving moral turpitude;

(iv) Possess an associate's degree from an accredited institution and at least four full years' experience working in a discipline pertinent to the provision of guardianshipservices, or a baccalaureate degree from an accredited institution and at least two full years' experience working in a discipline pertinent to the provision of guardianship services, or a Masters, J.D., Ph.D., or equivalent advanced degree from an accredited institution and at least one year experience working in a discipline pertinent to the provision of guardianship services;

(v) The experience required by this rule is experience in which the applicant has developed skills that are transferable to the provision of guardianship services and must include decision-making or the use of independent judgment for the benefit of others, not limited to incapacitated persons, in the area of legal, financial, social services or healthcare or other disciplines pertinent to the provision of guardianship services;

(vi) Have completed the mandatory certification training.

(vii) Applicants enrolled in the mandatory certification training on September 12, 2008, and who satisfactorily complete that training, shall meet the certification requirements existing on that date, or the date the applicant submitted a complete application for certification, whichever date is earlier, and not the requirements set forth in this rule.

(2) Agency Certification. Agencies must meet the following additional requirements:

(i) All officers and directors of the corporation must meet the qualifications of Chapter 11.88.020 RCW for guardians;

(ii) Each agency shall have at least two (2) individuals in the agency certified as professional guardians, whose residence or principal place of business is in Washington State and who are so designated in minutes or a resolution from the Board of Directors; and

(iii) Each agency shall file and maintain in every guardianship court file a current designation of each certified professional guardian with final decision-making authority for the incapacitated person or their estate.

(3) Training Program and Examination. Applicants must satisfy the Board's training program and examination requirements.

(4) Insurance Coverage. In addition to the bonding requirements of Chapter 11.88 RCW, applicants must be insured or bonded at all times in such amount as may be determined by the Board and shall notify the Board immediately of cancellation of required coverage.

(5) Financial Responsibility. Applicants must provide proof of ability to respond to damages resulting from acts or omissions in the performance of services as a guardian. Proof of financial responsibility shall be in such form and in such amount as the Board may prescribe by regulation.

(6) Application Under Oath. Applicants must execute and file with the Board an approved application under oath.

(7) Application Fees. Applicants must pay fees as the Board may require by regulation.

(8) Disclosure. An applicant for certified professional guardian or certified agency shall disclose upon application:

(i) The existence of a judgment against the applicant arising from the applicant's performance of services as a fiduciary;

(ii) A court finding that the applicant has violated its duties as a fiduciary, or committed a felony or any crime involving moral turpitude;

(iii) Any adjudication of the types specified in RCW 43.43.830, and RCW 43.43.842;

(iv) Pending or final licensing or disciplinary board actions or findings of violations;

(v) The existence of a judgment against the applicant within the preceding eight years in any civil action;

(vi) Whether the applicant has filed for bankruptcy within the last seven years. Disclosure of a bankruptcy filing within the past seven years may require the applicant or guardian to provide a personal credit report from a recognized credit reporting bureau satisfactory to the Board;

(vii) The existence of a judgment against the applicant or any corporation, partnership or limited liability corporation for which the applicant was a managing partner, controlling member or majority shareholder within the preceding eight years in any civil action.

(9) Denial of Certification. The Board may deny certification of an individual or agency based on any of the following criteria:

(i) Failure to satisfy certification requirements provided in section (d) of this rule;

(ii) The existence of a judgment against the applicant arising from the applicant's performance of services as a fiduciary;

(iii) A court finding that the applicant has violated its fiduciary duties or committed a felony or any crime involving moral turpitude;

(iv) Any adjudication of the types specified in RCW 43.43.830, and RCW 43.43.842;

(v) Pending or final licensing or disciplinary board actions or findings of violations;

(vi) A Board determination based on specific findings that the applicant lacks the requisite moral character or is otherwise unqualified to practice as a professional guardian;

(vii) A Board determination based on specific findings that the applicant's financial responsibility background is unsatisfactory.

(10) Designation/Title. An individual certified under this rule may use the initials "CPG" following the individual's name to indicate status as "Certified Professional Guardian." An agency certified under this rule may indicate that it is a "Certified Professional Guardian Agency" by using the initials "CPGA" after its name. An individual or agency may not use the term "certified professional guardian" or "certified professional guardian agency" as part of a business name.

(e) Guardian Disclosure Requirements.

(1) A Certified Professional Guardian or Certified Agency shall disclose to the Board in writing within 30 days of occurrence:

(i) The existence of a judgment against the professional guardian arising from the professional guardian's performance of services as a fiduciary;

(ii) A court finding that the professional guardian violated its fiduciary duties, or committed a felony or any crime involving moral turpitude;

(iii) Any adjudication of the types specified in RCW 43.43.830, and RCW 43.43.842;

(iv) Pending licensing or disciplinary actions related to fiduciary responsibilities or final licensing or disciplinary actions resulting in findings of violations;

(v) Residential or business moves or changes in employment; and

(vi) Names of Certified Professional Guardians they employ or who leave their employ.

(2) Not later than June 30 of each year, each professional guardian and guardian agency shall complete and submit an annual disclosure statement providing information required by the Board.

(f) Regulations. The Board shall adopt regulations to implement this rule.

(g) Personal Identification Number. The Board shall establish an identification numbering system for professional guardians. The Personal Identification Number shall be included with the professional guardian's signature on documents filed with the court.

(h) Ethics Advisory Opinions.

(1) The Board may issue written ethics advisory opinions to inform and advise Certified Professional Guardians and Certified Agencies of their ethical obligations.

(2) Any Certified Professional Guardian or Certified Agency may request in writing an ethical advisory opinion from the Board. Compliance with an opinion issued by the Board shall be considered as evidence of good faith in any subsequent disciplinary proceeding involving a Certified Professional Guardian or Certified Agency.

(3) The Board shall publish opinions issued pursuant to this rule in electronic or paper format. The identity of the person requesting an opinion is confidential and not public information.

(i) Existing Law Unchanged. This rule shall not expand, narrow, or otherwise affect existing law, including but not limited to, Title 11 RCW.

[Adopted effective January 25, 2000; amended effective April 30, 2002; amended effective April 1, 2003; September 1, 2004, amended effective January 13, 2009; amended effective September 1,2010]

GENERAL RULE 24

DEFINITION OF THE PRACTICE OF LAW

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e)Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

[Adopted effective September 1, 2001;
amended effective April 30, 2002.]

GENERAL RULE 25
PRACTICE OF LAW BOARD

(a) Purpose. The purpose of this rule is to create a Practice of Law Board in order to promote expanded access to affordable and reliable legal and law-related services, expand public confidence in the administration of justice, make recommendations regarding the circumstances under which non-lawyers may be involved in the delivery of certain types of legal and law-related services, enforce rules prohibiting individuals and organizations from engaging in unauthorized legal and law-related services that pose a threat to the general public, and to ensure that those engaged in the delivery of legal services in the state of Washington have the requisite skills and competencies necessary to serve the public.

(b) Appointment. The Practice of Law Board shall consist of 13 members, at least four of whom shall be non-lawyers. The appointments shall be made by the Supreme Court after considering nominations from the Board of Governors of the Washington State Bar Association and other interested people and organizations. The members shall be appointed to staggered 3-year terms of 3 years and no member may serve more than 2 consecutive full 3-year terms. Any vacancy shall be filled for the unexpired term. The Supreme Court shall annually designate a chair and vice-chair, who shall be members of the Board.

(c) Powers of the Practice of Law Board.

(1) Advisory Opinions. On request of any person, or in connection with the consideration of any complaint or any investigation made on its own initiative, the Board may render advisory opinions relating to the authority of non-lawyers to perform legal and law-related services and arrange for their publication. No opinion shall be rendered if, to the Board's knowledge, the subject matter either involves or might affect a case or controversy pending in any court. An advisory opinion shall be issued by the Board in writing and shall be transmitted to the person making the inquiry. At the direction of the Board, an opinion may be published in the Washington State Bar News. Published opinions shall not, insofar as practicable, identify the party or parties making an inquiry, or the complainant or respondent.

(2) Complaints. The Board shall have jurisdiction over and shall inquire into and consider complaints alleging the unauthorized practice of law by any person or entity in accordance with the procedures outlined in this rule.

(3) Investigation. The Board may, on its own initiative, and without any complaint being made to it, investigate any condition or situation of which it becomes aware that may involve the unauthorized practice of law.

(4) Recommendations to the Supreme Court Regarding the Provision of Legal and Law-Related Services by Non-Lawyers. On request of the Supreme Court or any person or organization, or on its own initiative, the Board may recommend that non-lawyers be authorized to engage in certain defined activities that otherwise constitute the practice of law as defined in GR 24. In forwarding a recommendation that non-lawyers be authorized to engage in certain legal or law-related activities that constitute the practice of law as defined in GR 24, the Board shall determine whether regulation under authority of the Supreme Court (including the establishment of minimum and uniform standards of competency, conduct, and continuing education) is necessary to protect the public interest. Any recommendation that non-lawyers be authorized to engage in the limited provision of legal or law-related services shall be accompanied by a determination:

(A) that access to affordable and reliable legal and law-related services consistent with protection of the public will be enhanced by permitting non-lawyers to engage in the defined activities set forth in the recommendation;

(B) that the defined activities outlined in the recommendation can be reasonably and competently provided by skilled and trained non-lawyers;

(C) if the public interest requires regulation under authority of the Supreme Court, such regulation is tailored to promote access to affordable legal and law-related services while ensuring that those whose important rights are at stake can reasonably rely on the quality, skill and ability of those non-lawyers who will provide such services;

(D) that, to the extent that the activities authorized will involve the handling of client trust funds, provision has been made to ensure that such funds are handled in a manner consistent with RPC 1.15A and APR 12.1, including the requirement that such funds be placed in interest bearing accounts, with interest paid to the Legal Foundation of Washington; and

(E) that the costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime. Recommendations to authorize non-lawyers to engage in the limited practice of law pursuant to this section shall be forwarded to the Washington State Board of Governors for consideration and comment before transmission to the Supreme Court. Upon approval of such recommendations by the Supreme Court pursuant to the procedures set out in GR 9, those who meet the requirements and comply with applicable regulatory and licensing provisions shall be deemed to be engaged in the authorized practice of law.

(d) Expenses of the Practice of Law Board. The Practice of Law Board shall be supported through annual commitments from the Washington State Bar Association and through a portion of other licensing fees established by the Supreme Court for non-lawyers authorized to engage in the regulated practice of law. The Board shall

be administered and staffed by the Washington State Bar which shall pay all expenses reasonably and necessarily incurred by the Board, pursuant to a budget approved by the Board of Governors. Members of the Board shall not be compensated for their services, but shall be reimbursed for their necessary expenses incurred in connection with the Board in a manner consistent with the Association's reimbursement policies.

(e) Records. All records of the Board shall be filed and maintained at the principal office of the Association.

(f) Procedure.

(1) Committees. The Board may establish such committees as the membership may deem necessary and appropriate to the performance of its assigned tasks.

(2) Quorum. A majority of the Board shall constitute a quorum. The chairperson of the Board may appoint temporary members of the Board or a committee when a member is disqualified or unable to function on a specific matter for good cause.

(3) Action by Board. The full jurisdiction and authority of the Board, as provided in this rule, may be exercised by a committee, except that (1) no advisory opinion may be given without the approval of a majority of the Board; (2) no determination of the unauthorized practice of law by a respondent and referral of a matter to a law enforcement or other agency may be made without the approval of a majority of the Board: and (3) the action of a committee on any matter shall be subject to review and the approval or disapproval of the Board.

(4) Formal Complaint Procedure.

(A) Preliminary Investigation. The investigation or review of a complaint shall be promptly instituted by the Board or by a member thereof designated by the chair of the Board. If a complaint has been filed, the investigating member shall interview the complainant and respondent and shall conduct such further investigation as is deemed appropriate.

(B) Report and Written Agreement. Upon the conclusion of an investigation of a complaint, a report shall be made to the Board. If, after consideration of the report, the Board concludes that there has been no unauthorized practice of law, the complaint shall be dismissed and the Board shall so notify the complainant and the respondent in writing and shall close the file in the matter. If the Board concludes that there has been unauthorized practice of law, the Board shall attempt to persuade the respondent to enter into a written agreement to refrain from such conduct in the future. The written agreement may include a stipulation to penalties in the event of continued violation.

(C) Pending Controversy. The Board may defer investigation if, to the Board's knowledge, the conduct complained of is the subject matter of or might affect a case or controversy pending in any court.

(D) Informal Disposition. The Board may attempt to arrive at an amicable disposition of any matter within its jurisdiction with the respondent. At any time during the pendency of a matter before it, the Board may conduct an informal conference with the respondent. At the Board's discretion, an electronic recording or written transcription of the proceeding may be made. A respondent subject to an informal conference may be represented by counsel. After a finding by the Board of the unauthorized practice of law, the Board shall endeavor to have the respondent enter into a written agreement to refrain in the future from such conduct. If the respondent declines to enter into a written agreement pursuant to this rule, the Board shall refer the matter to an appropriate law enforcement or other agency in accordance with this rule.

(g) Petitions for Review.

(1) Notice. Within 20 days after an opinion is published, or within 30 days after any final action of the Board other than the publication of any opinion, any aggrieved member of the bar, bar association, person or entity may seek review thereof by serving on the Board a notice of petition for review by the Supreme Court and by filing the original notice with the Clerk of the Supreme Court. The notice shall set forth the petitioner's name and address and, if represented, the name and address of counsel. The notice shall designate the action of the Board sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved.

(2) Procedure. Petitions for review to the Supreme Court shall comply with the Rules for Appellate Procedure.

(3) Final Determination. The final determination of a petition for review may be either by written opinion or by order of the Supreme Court and shall state whether the opinion or the action of the Board is affirmed, reversed or modified or shall provide for such other final disposition as is appropriate.

(h) Referral to Enforcement Agency.

(1) Referral. When the Board concludes from its preliminary investigation, or from the failure of an informal conference as provided in these rules, that an amicable disposition of any matter within its jurisdiction cannot be effected with the respondent, it shall, based upon the nature of the complaint, the relief sought, and the facts as then known, refer the matter to the law enforcement or other agency the Board determines is best suited to conduct an investigation and any prosecution of such matter.

(2) Contents of File. Upon making a determination that an amicable disposition of a matter cannot be effected, and that the matter should be referred to a particular law enforcement or other agency, the Board shall send such agency the original complaint, response, evidence or other proof, investigative report and, if an informal conference has been conducted, a transcript of such proceedings. The Board shall retain copies of all such documents for its file.

(3) Notice to Complainant. Upon referring a matter to a law enforcement or other agency, the Board shall notify the complainant of such action in writing.

(i) Immunity from Suit.

(1) The members and staff of the Board shall be absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties.

(2) Persons who bring allegations concerning any individual or entity to the Board shall be immune from suit, whether legal or equitable in nature, for all communications to the Board or to its staff.

(j) Regulations. The Board may adopt regulations pertinent to these powers subject to the approval of the Supreme Court.

[Adopted effective September 1, 2001; September 1, 2006.]

PRACTICE OF LAW BOARD REGULATIONS

REGULATION 1. PURPOSE

The purpose of these regulations is to establish procedures for the Practice of Law Board (POL Board) in order to carry out its purposes and exercise its powers pursuant to General Rule 25 (GR 25).

REGULATION 2. PRACTICE OF LAW

General Rule 24 (GR 24), Definition of the Practice of Law, including any amendments, provides the framework by which the POL Board will carry out its purposes and exercise its powers as set forth in GR 25.

REGULATION 3. ESTABLISHMENT OF THE BOARD

A. Board Members. The POL Board shall consist of 13 members (Member[s]) appointed by the Supreme Court of the State of Washington (Supreme Court) at least four of whom shall be non-lawyer Washington residents and the remainder of whom shall be lawyers licensed to practice law in Washington. Appointments to the POL Board shall be made by the Supreme Court after considering nominations from the WSBA Board of Governors (WSBA Board) and any other interested people or organizations.

B. Member Terms. The Members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three-year terms. No Member may serve more than two consecutive three-year terms.

C. Resignation. A member may resign from the POL Board by letter addressed to the POL Board and the Supreme Court with resignation to be effective two days following the date of the letter or any effective date thereafter which may be specified in the letter.

D. Vacancies. A membership vacancy shall be deemed to occur on the resignation of a Member or upon declaration of a vacancy by the Supreme Court following any request to the Supreme Court by the POL Board for the reasons set forth in section O below, or if a Member has three consecutive unexcused absences from regular POL Board meetings or is not present at more than a majority of the POL Board meetings during any 12-month period as determined by the chairperson. A membership vacancy shall be filled by the Supreme Court for the unexpired term.

E. Administration of Board. The Washington State Bar Association (WSBA), in consultation with the POL Board, shall provide the POL Board with an administrator (Board Administrator) and any additional staff support as designated by the Executive Director of the WSBA. The Board Administrator shall not be entitled to vote on POL Board matters.

F. Funding and Expenses. The POL Board shall prepare an annual budget to be submitted for approval and on a schedule set by the WSBA Board of Governors. The WSBA shall pay all expenses reasonably and necessarily incurred by the POL Board pursuant to the budget and the expense policy of the WSBA. Funding for the POL Board shall be provided by annual commitments from the WSBA and through a portion of other licensing fees established by the Supreme Court.

G. Officers. The Supreme Court shall annually designate a

chairperson and a vice-chairperson from among the POL Board membership.

H. Regular Meetings. The POL Board shall meet as necessary to complete its business not less than once per year as determined by the POL Board or upon call of the chairperson.

I. Regular Meeting / Agenda Notice. The POL Board may file with the Code Reviser a schedule of the time and place of regularly scheduled meetings in January of each year for publication in the Washington State Register. The POL Board shall post an agenda for each regular meeting on the Administrative Office of the Courts website or the WSBA website at least seven days prior to the meeting.

J. Special Meetings. A special meeting of the POL Board may be called at any time by the chairperson or by a majority of the POL Board membership by delivering written notice personally, by mail, or by e-mail to each Member at least two business days before the time of such meeting and by providing notice of the special meeting to the public on the Administrative Office of the Courts website or the WSBA website.

K. Voting. Each Member shall be entitled to one vote on each matter submitted to a vote at a meeting of the POL Board. A majority vote of the Members present at a meeting at which a quorum exists shall, unless a greater vote is required by other provisions of these regulations or by GR 25, decide any issue submitted.

L. Quorum. A majority of the Members shall constitute a quorum. The chairperson may appoint temporary members of the POL Board (or any designated committee) from among former members of the POL Board when a Member is disqualified or unable to function on a specific matter, for good cause. If less than a quorum is present at a meeting, a majority of the Members present may adjourn the meeting and continue it to a later date and time upon notice. At any reconvened meeting at which a quorum is present, any business may be transacted which might have been transacted at the adjourned meeting. Members present at a properly called meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum.

M. Action by Communication Equipment. The Members or any designated committee may participate in a meeting of the POL Board or such designated committee by means of a conference phone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time, and participation by such means will constitute presence in person at a meeting.

N. Action Without a Meeting. Any action required or permitted to be taken at a POL Board meeting in Executive Session may be taken without a meeting if a written consent setting forth the action taken or to be taken is signed by each of the Members. Any such written consent (including facsimile and digital signatures) shall be inserted in the minute book as if it were the minutes of a POL Board meeting in Executive Session. Further, such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed for the public record.

O. Removal of a Member. The POL Board may request the Supreme Court to declare a membership vacancy with respect to any Member whose removal from the POL Board would, upon a two-thirds vote of the POL Board excluding the affected Member, be in the best interest of the POL Board; however, such action may only be taken by the POL Board at a regular or special meeting following notice of such proposed action.

P. Committees. The POL Board may establish such committees as the POL Board deems necessary and appropriate with each committee (designated committee) having a specified function determined by the POL Board and having the full jurisdiction and authority of the POL Board as provided in GR 25, except that: 1) no advisory opinion may be issued without the approval of the POL Board; 2) no determination of the unauthorized practice of law by a respondent and referral of a matter to a law enforcement or other agency may be made without the approval of the POL Board; and 3) the action of a designated committee on any matter shall be subject to review and approval/disapproval of the POL Board. The chairperson shall designate a committee chair for each designated committee to serve for a one-year term.

Q. Records. The Board Administrator shall maintain minutes of the POL Board and its designated committees, deliberations, recommendations, and decisions. All records of the POL Board and its committees shall be filed and maintained at the principal office of the WSBA.

R. R. Open Meeting and Records. All records, files, meetings and proceedings of the POL Board and its designated committees shall be open and public, except that the POL Board may meet in executive session and records and files may be made confidential where the preservation of confidentiality is desirable or where public disclosure might result in the violation of individual rights or in unwarranted private or personal harm. All discussions of particular complaints and investigations will be held in Executive Session. Nothing in these regulations shall be construed to deny access to relevant information by professional licensing or discipline agencies, or other law enforcement authorities, as the Board shall authorize.

S. Public Participation. The chairperson or the chair of any designated committee may allow for public participation at any meeting. Members of the public who wish to address the POL Board

or a designated committee at any meeting shall be required to provide contact information on a form provided for that purpose and shall be required to comply with any time limitation deemed appropriate by the chairperson or the designated committee chair.

T. Letterhead. Use of POL Board letterhead shall be limited to official business of the POL Board and specifically shall not be used in connection with any political campaign or to support or oppose any public issue unless the POL Board has taken a position on the issue; to support or oppose any political candidate; or for personal or charitable purposes.

REGULATIONS 4. CONFLICT OF INTEREST.

A. In General. A Member who has or has had a lawyer/client relationship or financial relationship with, or who is an immediate family member of, a person or entity who is a complainant or the subject of a matter before the POL Board shall not participate in the investigation or deliberation on any matter involving that complainant, person, or entity. No WSBA employee shall participate in deliberation on any matter which is pending in, or likely to be referred to, the WSBA attorney disciplinary system or bar admission.

B. Disclosure. A Member with a past or present relationship, other than that as provided in section A above, with a person or entity who is the complainant or subject of a matter before the POL Board, shall disclose such relationship to the POL Board and, if the POL Board deems it appropriate, that Member shall not participate in any action relating to that matter.

REGULATION 5. ADVISORY OPINIONS.

A. Requests for Advisory Opinions. Any person may request an advisory opinion from the POL Board relating to the authority of a non-lawyer to perform legal and law-related services. Such requests shall be in writing in a form and in a manner prescribed by the POL Board and signed by the person requesting the opinion.

B. Board Initiated Advisory Opinions. The POL Board may render advisory opinions relating to the authority of non-lawyers to perform legal and law-related services in connection with the consideration of any complaint or in any investigation made on its own initiative relating to the unauthorized practice of law by any person or entity.

C. Notice of Request. The POL Board may give notice to any person or entity, either personally or by publication, of any pending request for an advisory opinion or pending POL Board initiated advisory opinion, and invite written comments regarding the pending advisory opinion.

D. Pending Controversy. The POL Board may not render an advisory opinion in any matter that, to its knowledge, is the subject of or might affect a case or controversy pending in any court or administrative [attorney disciplinary] proceeding.

E. Public Hearing. The POL Board may conduct a public hearing at a date and time and in a manner set by the POL Board, designed to make it accessible to interested parties as determined by the Board, on any request for an advisory opinion or a POL Board initiated advisory opinion.

F. POL Board Action. Upon receipt of a proper request for an advisory opinion, the POL Board may issue an advisory opinion or proposed advisory opinion, or may decline to issue an advisory opinion. If the POL Board issues an advisory opinion, it shall be in writing and shall be transmitted to the person making the request, or in the case of a POL Board initiated advisory opinion, it may be transmitted to any person(s) determined by the POL Board for whose benefit or detriment the advisory opinion was issued.

G. Publication of Advisory Opinions. The POL Board may arrange for the publication of advisory opinions in the Washington State Bar News. Opinions so published shall not, insofar as practicable, identify the party or parities making the inquiry, the complainant or the respondent.

H. Petitions for Review. Petitions for review of any advisory opinion issued by the POL Board shall conform with Regulation 7 below.

REGULATION 6. COMPLAINTS.

A. Filing Complaints. Complaints alleging the unauthorized or unlicensed practice of law shall be submitted to the POL Board, in writing, in a form and manner prescribed by the POL Board.

B. Investigation. The POL Board may, on its own initiative and without any complaint being made to it, investigate any condition, situation or activity involving the unauthorized or unlicensed practice of law of which it becomes aware in the same manner as if a complaint had been made under section A above.

C. Initial Review of Complaints. Upon receipt of a complaint, the Board Administrator shall conduct an initial review to determine whether it is within the jurisdiction of the POL Board or may be subject to deferral. If not within the jurisdiction of the POL Board or if it is subject to deferral, the Board administrator shall advise the complainant that the matter will

not be opened as a complaint, and the reasons. The complainant may submit additional information. All such items will be placed on the next POL Board agenda for review and any action deemed appropriate by the POL Board. If the complaint is deemed to be within the jurisdiction of the POL Board and not subject to deferral, the complaint will be opened for investigation.

D. Request for Response. If a complaint is opened for investigation, a copy shall be send to the respondent with a request to respond within 20 days, and with notice that if the respondent does not respond, the complaint shall be considered without a response.

E. Report and Written Agreement. The complainant and respondent shall be interviewed and such other and further review or investigation may be conducted as is deemed appropriate. A written report and recommendation will be submitted to the Board, by transmitting it to the Board Administrator and the Members. All Members shall have one week (5 working days) to submit comments respecting the report by transmitting them to the Board Administrator and the Members. If the report recommends dismissal of the complaint and there are no adverse comments from the Members within the comment period, the report and recommendation shall be deemed adopted by the POL Board and the chairperson shall immediately notify the complainant and the respondent, in writing, of the dismissal and the matter shall be closed. If one or more Members disagree with the recommendation for dismissal, the matter shall be placed on the agenda of the next meeting of the POL Board for action by the POL Board. If the report concludes that there has been an unauthorized or unlicensed practice of law, the matter shall be placed on the agenda of the next POL Board meeting for action.

F. POL Board Review. If upon POL Board review of a report and recommendation, the POL Board concludes that there has been no unauthorized or unlicensed practice of law, the complaint shall be dismissed and the chairperson shall so notify the complainant and the respondent, in writing, and shall close the file. If the POL Board concludes that there has been unauthorized or unlicensed practice of law, the POL Board shall proceed in the following manner:

(1) The POL Board shall attempt through the Chairperson or his or her designee to persuade the respondent to enter into a written agreement to refrain from the objectionable conduct in the future. Such written agreement shall be prepared by the Chairperson or his or her designee and may include a stipulation as to penalties in the event of continued unauthorized or unlicensed practice of law which is the subject matter of the agreement or violation of other terms of the agreement.

(2) If the respondent will not enter into a written agreement as set forth in (1) above, the POL Board may attempt to arrive at any other satisfactory disposition as determined by the POL Board. In attempting to arrive at a satisfactory disposition, the POL Board may, at a regular or special POL Board meeting, or by a designated committee, conduct an informal conference with the respondent, which conference may, in the discretion of the chairperson or designated committee chair, be recorded electronically or reported by a certified court reporter. At such informal conference, the respondent may be represented by counsel, but the informal conference shall not be public, nor shall rules of evidence apply. If the informal conference was held by a designated committee, the chair shall render a report, in writing, to the POL Board at the next POL Board meeting for action. If the POL Board determines that the respondent has engaged in the unauthorized or unlicensed practice of law, the POL Board shall endeavor to have the respondent enter into a written agreement to refrain from the objectionable conduct in the future, in the same manner as provided in (1) above. If, however, the respondent declines to enter into a written agreement, the POL Board may refer the matter to the appropriate law enforcement or other agency in accordance with GR 25(h).

G. Pending Controversy. Notwithstanding the foregoing, the POL Board may defer an investigation in any matter that, to its knowledge, is the subject of or might affect a case or controversy pending in any court or administrative [attorney disciplinary] proceeding.

H. Notice of Board Action.

(1) Notice to Parties. The chairperson shall provide notice to any complainant who has not been previously notified of dismissal and each respondent, other than a respondent who has entered into a written agreement, of POL Board action with respect to the complaint or self-initiated investigation within ten days of POL Board action. All such notices of POL Board action shall inform the recipients of the right to petition for review by the Supreme Court as prescribed in GR 25(g).

(2) Publication of Notice: The POL Board may, in its discretion, publish notice of Board action on a complaint alleging the unauthorized practice of law in the Washington State Bar News, on the WSBA website, or elsewhere as it deems appropriate. The Board Administrator has discretion in drafting notices for publication, and they should include sufficient information to adequately inform the public of the reasons for

the Board's action and conclusions.

REGULATION 7. PETITIONS FOR REVIEW.

Petitions for review from any action of the POL Board to the Supreme Court shall comply with GR 25(g).

REGULATION 8. RECOMMENDATIONS TO THE SUPREME COURT.

A. In General. On the request of the Supreme Court or any person or organization, or on its own initiative, the POL Board may recommend that non-lawyers be authorized to engage in certain defined activities that otherwise constitute the practice of law as defined in GR 24.

B. Public Hearing. The POL Board may, in its discretion, conduct a public hearing upon such notice and at a date, time and in a manner as determined by the POL Board on any self-initiated action or request for a recommendation to the Supreme Court.

C. Recommendation. Any recommendation forwarded by the POL Board to the Supreme Court that non-lawyers be authorized to engage in certain legal or law-related activities that constitute the practice of law as defined in GR 24 shall set forth the determining factors required by GR 25(c)(4), and any additional factors the POL Board deems relevant.

D. Transmittal of Recommendation to the Board of Governors. Any recommendation from the POL Board pursuant to this Regulation 8 shall be submitted to the WSBA Board of Governors for consideration and comment before transmission to the Supreme Court. The recommendation of the POL Board with comments by the WSBA Board, if any, shall be transmitted to the Supreme Court as provided in GR 25(c)(4). The WSBA Board of Governors may affirm the recommendation of the POL Board or recommend that it be modified or rejected.

[Approved by the Supreme Court December 2, 2004; Adopted amended effective September 1, 2005.]

GR 26
MANDATORY CONTINUING JUDICIAL EDUCATION

Preamble. The protection of the rights of free citizens depends upon the existence of an independent and competent judiciary. The challenge of maintaining judicial competence requires ongoing education of judges in the application of legal principles and the art of judging in order to meet the needs of a changing society. This rule establishes the minimum requirements for continuing judicial education of judicial officers.

(a) Minimum Requirement. Each judicial officer shall complete a minimum of 45 credit hours of continuing judicial education approved by the Board for Court Education (BCE) every three years, commending January 1 of the calendar year following the adoption of this rule. If a judicial officer completes more than 45 such credit hours in a three-year reporting period, up to 15 hours of the excess credit may be carried forward and applied to the judicial officer's education requirement for the following three-year reporting period. At least six credit hours for each three-year reporting period shall be earned by completing programs in judicial ethics approved by the BCE. The fifteen credit hours that may be carried forward may include two credit hours toward the judicial ethics requirement.

(b) Judicial College Attendance.

1) A judicial officer shall attend and complete the Washington Judicial College program within twelve months of the initial appointment or election to the judicial office.

2) A judicial officer who attended the Washington Judicial College during his or her term of office in a court of limited jurisdiction shall attend and complete the Washington Judicial College within twelve months of any subsequent appointment or election to the Superior Court. A judicial officer who attended the Washington Judicial College during his or her term of office in the Superior Court shall attend and complete the Washington Judicial College within twelve months of any subsequent appointment or election as a judicial officer in a court of limited jurisdiction. A judicial officer who attended the Washington Judicial College during his or her term of office in a superior court or court of limited jurisdiction and is subsequently appointed or elected to an appellate court position is not required to attend the Washington Judicial College.

3) A judicial officer of a District Court, Municipal Court, Superior Court, or an appellate court, who has been a judicial officer at the time of the adoption of this rule for less than four years but has not attended the Washington Judicial College, shall attend and complete the Washington Judicial College program within twelve months of the adoption of this rule.

(c) Accreditation. BCE shall, subject to the approval of the Supreme Court, establish and publish standards for accreditation of continuing judicial education programs and may choose to award continuing judicial education credits for self-study or teaching. Continuing judicial education credit shall be given for programs BCE determines enhance the knowledge and skills that are relevant to the judicial office.

(d) Compliance Report. Each judicial officer shall file a report with

the Administrative Office of the Courts (AOC) on or before January 31 each year in such form as the Administrative Office of the Courts shall prescribe concerning the judicial officer's progress toward the continuing judicial education requirements of sections (a) and (b) of this rule during the previous calendar year. If a judicial officer does not respond by January 31, their credits will be confirmed by default. Judicial officers who do not have the requisite number of hours at the end of their three-year reporting period will have until March 1 to make up the credits for the previous three-year reporting period. These credits will not count toward their current three-year reporting period. AOC shall publish a report with the names of all judicial officers who do not fulfill the requirements of sections (a) and (b) of this rule. The AOC report shall be disseminated by means that may include, but are not limited to, publishing on the Washington Courts Internet web site, publishing the information as part of any voter's guide produced by or under the direction of the Administrative Office of the Courts, and releasing the information in electronic or printed form to media organizations throughout the Washington State.

(e) Delinquency. Failure to comply with the requirements of this rule may be deemed a violation of the Code of Judicial Conduct that would subject a judicial officer to sanction by the Commission on Judicial Conduct.

(f) Definition. The term "judicial officer" as used in this rule shall not include judges pro tempore but shall otherwise include all full or part time appointed or elected justices, judges, court commissioners, and magistrates.

[Adopted effective July 1, 2002; December 31, 2003; amended November 7, 2002; December 31, 2007.]

26_STDS WASHINGTON STATE JUDICIAL EDUCATION MANDATORY CONTINUING JUDICIAL EDUCATION STANDARDS (IN WORD FORMAT)

The contents of this item are only available on-line.

GR 27
FAMILY LAW COURTHOUSE FACILITATORS

(a) Generally. RCW 26.12.240 provides a county may create a courthouse facilitator program to provide basic services to pro se litigants in family law cases. This Rule applies only to courthouse facilitator programs created pursuant to RCW 26.12.240.

(b) The Washington State Supreme Court shall create a Family Courthouse Facilitator Advisory Committee supported by the Administrative Office of the Courts to establish minimum qualifications and administer a curriculum of initial and ongoing training requirements for family law courthouse facilitators. The Administrative Office of the Courts shall assist counties in administering family law courthouse facilitator programs.

(c) Definitions. For the purpose of this rule the following definitions apply:

(1) A Family Law Courthouse Facilitator is an individual or individuals who has or have met or exceeded the minimum qualifications and completed the curriculum developed by the Administrative Office of the Courts and who is or are providing basic services in family law cases in a Superior Court.

(2) Family Law Cases include, but not limited to, dissolution of marriage, modification of dissolution matters such as child support, parenting plans, non-parental custody or visitation, and parentage by unmarried persons to establish paternity, child support, child custody and visitation.

(3) “Basic Service” includes but is not limited to:

a) referral to legal and social service resources, including lawyer referral and alternate dispute referral programs and resources on obtaining family law forms and instructions;

b) assistance in calculating child support using standardized computer based program based on financial information provided by the pro se litigant;

c) processing interpreter requests for facilitator assistance and court hearings ;

d) assistance in selection as well as distribution of forms and standardized instructions that have been approved by the court, clerk’s office, or the Administrative Office of the Courts;

e) assistance in completing forms that have been approved by the court, clerk’s office, or the Administrative Office of the Courts;

f) explanation of legal terms;

g) information on basic court procedures and logistics including requirements for service, filing, scheduling hearings and complying with local procedures;

h) review of completed forms to determine whether forms have been completely filled out but not as to substantive content with respect to the parties’ legal rights and obligations;

i) previewing pro se documents prior to hearings for matters

such as dissolution of marriage and show cause and temporary relief motions calendars under the direction of the Clerk or Court to determine whether procedural requirements have been complied with

j) attendance at pro se hearings to assist the Court with pro se matters.

k) assistance with preparation of court orders under the direction of the Court.

l) preparation of pro se instruction packets under the direction of the Administrative Office of the Courts.

(d) Family Law Courthouse Facilitators shall, whenever reasonably practical, obtain a written and signed disclaimer of attorney-client relationship, attorney-client confidentiality and representation from each person utilizing the services of the Family Law Courthouse Facilitator. The prescribed disclaimer shall be in the format developed by the Administrative Office of the Courts.

(e) No attorney-client relationship or privilege is created, by implication or by inference, between a Family Law Courthouse Facilitator providing basic services under this rule and the users of Family Law Courthouse Facilitator Program services.

(f) Family law courthouse facilitators providing basic services under this rule are not engaged in the unauthorized practice of law. Upon a courthouse facilitator's voluntary or involuntary termination from a courthouse facilitator program, that person is no longer a courthouse facilitator providing services pursuant to RCW 26.12.240 or this Rule.

[Adopted effective September 1, 2002.]

GR 28
Jury Service Postponement, Excusal, and Disqualification

[a] Scope of rule. This rule addresses the procedures for postponing and excusing jury service under RCW 2.36.100 and 2.36.110 and for disqualifying potential jurors under RCW 2.36.070 (basic statutory qualifications).

[b] Delegation of authority to postpone, excuse, or disqualify.

(1) The judges of a court may delegate to court staff and county clerks their authority to disqualify, postpone, or excuse a potential juror from jury service.

(2) Any delegation of authority under this rule must be written and must specify the criteria for making these decisions.

(3) Judges may not delegate decision-making authority over any grounds for peremptory challenges or challenges for cause that fall outside the scope of this rule.

[c] Grounds for postponement of service.

(1) Postponement of service for personal or work-related inconvenience should be liberally granted when requested in a timely manner.

(2) Postponement shall be to a specified period of time within the twelve-month period pursuant to RCW 2.36.100(2).

[d] Grounds for excusal from service.

(1) Excusal from jury service shall be limited and shall be allowed only when justified by the criteria established in RCW 2.36.100(1) and 2.36.110.

[e] Grounds for disqualification of potential jurors.

[Reserved. See RCW 2.36.070.]

[Adopted effective October 1, 2002]

General Rule 29
PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED JURISDICTION COURT DISTRICT

(a) Election, Term, Vacancies, Removal and Selection Criteria - Multiple Judge Courts.

(1) Election. Each superior court district and each limited jurisdiction court district (including municipalities operating municipal courts) having more than one judge shall establish a procedure, by local court rule, for election, by the judges of the district, of a Presiding Judge, who shall supervise the judicial business of the district. In the same manner, the judges shall elect an Assistant Presiding Judge of the district who shall serve as Acting Presiding Judge during the absence or upon the request of the Presiding Judge and who shall perform such further duties as the Presiding Judge, the Executive Committee, if any, or the majority of the judges shall direct. If the judges of a district fail or refuse to elect a Presiding Judge, the Supreme Court shall appoint the Presiding Judge and Assistant Presiding Judge.

(2) Term. The Presiding Judge shall be elected for a term of not less than two years, subject to reelection. The term of the Presiding Judge shall commence on January 1 of the year in which the Presiding Judge's term begins.

(3) Vacancies. Interim vacancies of the office of Presiding Judge or Acting Presiding Judge shall be filled as provided in the local court rule in (a)(1).

(4) Removal. The Presiding Judge may be removed by a majority vote of the judges of the district unless otherwise provided by local court rule.

(5) Selection Criteria. Selection of a Presiding Judge should be based on the judge's 1) management and administrative ability, 2) interest in serving in the position, 3) experience and familiarity with a variety of trial court assignments, and 4) ability to motivate and educate other judicial officers and court personnel. A Presiding Judge must have at least four years of experience as a judge, unless this requirement is waived by a majority vote of the judges of the court.

Commentary

It is the view of the committee that the selection and duties of a presiding judge should be enumerated in a court rule rather than in a statute. It is also our view that one rule should apply to all levels of court and include single judge courts. Therefore, the rule should be a GR (General Rule). The proposed rule addresses the process of selection/removal of a presiding judge and an executive committee. It was the intent of the committee to provide some flexibility to local courts wherein they could establish, by local rule, a removal process. Additionally, by delineating the selection criteria for the presiding judge, the committee intends that a rotational system of selecting a presiding judge is not advisable.

(b) Selection and Term - Single Judge Courts. In court districts or municipalities having only one judge, that judge shall serve as the Presiding Judge for the judge's term of office.

(c) Notification of Chief Justice. The Presiding Judge so elected shall send notice of the election of the Presiding Judge and Assistant Presiding Judge to the Chief Justice of the Supreme Court within 30 days of election.

(d) Caseload Adjustment. To the extent possible, the judicial caseload should be adjusted to provide the Presiding Judge with sufficient time and resources to devote to the management and administrative duties of the office.

Commentary

Whether caseload adjustments need to be made depends on the size and workload of the court. A recognition of the additional duties of the Presiding Judge by some workload adjustment should be made by larger courts. For example, the Presiding Judge could be assigned a smaller share of civil cases or a block of time every week could be set aside with no cases scheduled so the Presiding Judge could attend to administrative matters.

(e) General Responsibilities. The Presiding Judge is responsible for leading the management and administration of the court's business, recommending policies and procedures that improve the court's effectiveness, and allocating resources in a way that maximizes the court's ability to resolve disputes fairly and expeditiously.

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

(1) Supervise the business of the judicial district and judicial officers in such manner as to ensure the expeditious and efficient processing of all cases and equitable distribution of the workload among judicial officers;

(2) Assign judicial officers to hear cases pursuant to statute or rule. The court may establish general policies governing the assignment of judges;

(3) Coordinate judicial officers' vacations, attendance at education programs, and similar matters;

(4) Develop and coordinate statistical and management information;

(5) Supervise the daily operation of the court including:

(a) All personnel assigned to perform court functions; and

(b) All personnel employed under the judicial branch of government, including but not limited to working conditions, hiring, discipline, and termination decisions except wages, or benefits directly related to wages; and

(c) The court administrator, or equivalent employee, who shall report directly to the Presiding Judge.

Commentary

The trial courts must maintain control of the working conditions for their employees. For some courts this includes control over some wage-related benefits such as vacation time. While the executive branch maintains control of wage issues, the courts must assert their control in all other areas of employee relations.

With respect to the function of the court clerk, generally the courts of limited jurisdiction have direct responsibility for the administration of their clerk's office as well as the supervision of the court clerks who work in the courtroom. In the superior courts, the clerk's office may be under the direction of a separate elected official or someone appointed by the local judges or local legislative or executive authority. In those cases where the superior court is not responsible for the management of the clerk's office, the presiding judge should communicate to the county clerk any concerns regarding the performance of statutory court duties by county clerk personnel.

A model job description, including qualification and experience criteria, for the court administrator position shall be established by the Board for Judicial Administration. A model job description that generally describes the knowledge, skills, and abilities of a court administrator would provide guidance to Presiding Judges in modifying current job duties/responsibilities or for courts initially hiring a court administrator or replacing a court administrator.

(6) Supervise the court's accounts and auditing the procurement and disbursement of appropriations and preparation of the judicial district's annual budget request;

(7) Appoint standing and special committees of judicial officers necessary for the proper performance of the duties of the judicial district;

(8) Promulgate local rules as a majority of the judges may approve or as the Supreme Court shall direct;

(9) Supervise the preparation and filing of reports required by statute and court rule;

(10) Act as the official spokesperson for the court in all matters with the executive or legislative branches of state and local government and the community unless the Presiding Judge shall designate another judge to serve in this capacity;

Commentary

This provision recognizes the Presiding Judge as the official spokesperson for the court. It is not the intent of this provision to preclude other judges from speaking to community groups or executive or legislative branches of state or local government.

(11) Preside at meetings of the judicial officers of the district;

(12) Determine the qualifications of and establish a training program for pro tem judges and pro tem court commissioners; and

(13) Perform other duties as may be assigned by statute or court rule.

Commentary

The proposed rule also addresses the duties and general responsibilities of the presiding judge. The language in subsection (d), (e), (f) and (g) was intended to be broad in order that the presiding judge may carry out his/her responsibilities. There has been some comment that individual courts should have the ability to change the "duties and general responsibilities" subsections by local rule. While our committee has not had an opportunity to discuss this fully, this approach has a number of difficulties:

. It would create many "Presiding Judge Rules" all of which are different.
. It could subject some municipal and district court judges to pressure from their executive and/or legislative authority to relinquish authority over areas such as budget and personnel.

. It would impede the ability of the BJA through AOC to offer consistent training to incoming presiding judges.

The Unified Family Court subgroup of the Domestic Relations Committee suggested the presiding judge is given specific authority to appoint judges to the family court for long periods of time. Again the committee has not addressed the proposal; however, subsections (e) and (f) do give the presiding judge broad powers to manage the judicial resources of the court, including the assignment of judges to various departments.

(g) Executive Committee. The judges of a court may elect an executive committee consisting of other judicial officers in the court to advise the Presiding Judge. By local rule, the judges may provide that any or all of the responsibilities of the Presiding Judge be shared with the Executive Committee and may establish additional functions and responsibilities of the Executive Committee.

Commentary

Subsection (g) provides an option for an executive committee if the presiding judge and/or other members of the bench want an executive committee.

(h) Oversight of judicial officers. It shall be the duty of the Presiding Judge to supervise judicial officers to the extent necessary to ensure the timely and efficient processing of cases. The Presiding Judge shall have the authority to address a judicial officer's failure to perform judicial duties and to propose remedial action. If remedial action is not successful, the Presiding Judge shall notify the Commission on Judicial Conduct of a judge's substantial failure to perform judicial duties, which includes habitual neglect of duty or persistent refusal to carry out assignments or directives made by the Presiding Judge, as authorized by this rule.

(i) Multiple Court Districts. In counties that have multiple court districts, the judges may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

(j) Multiple Court Level Agreement. The judges of the superior, district, and municipal courts or any combination thereof in a superior court judicial district may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

(k) Employment Contracts. A part-time judicial officer may contract with a municipal or county authority for salary and benefits. The employment contract shall not contain provisions which conflict with this rule, the Code of Judicial Conduct or statutory judicial authority, or which would create an impropriety or the appearance of impropriety concerning the judge's activities. The employment contract should acknowledge the court is a part of an independent branch of government and that the judicial officer or court employees are bound to act in accordance with the provisions of the Code of Judicial Conduct and Washington State Court rules.

[Adopted effective April 30, 2002; amended effective May 5, 2009.]

GR 30
ELECTRONIC FILING

(a) Definitions

(1) "Digital signature" is defined in RCW 19.34.020.

(2) "Electronic Filing" is the electronic transmission of information to a court or clerk for case processing.

(3) "Electronic Document" is an electronic version of information traditionally filed in paper form, except for documents filed by facsimile which are addressed in GR 17. An electronic document has the same legal effect as a paper document.

(4) "Electronic Filing Technical Standards" are those standards, not inconsistent with this rule, adopted by the Judicial Information System committee to implement electronic filing.

(5) "Filer" is the person whose user ID and password are used to file an electronic document.

Comment

The form of "digital signature" that is acceptable is not limited to the procedure defined by chapter 19.34 RCW, but may include other equivalently reliable forms of authentication as adopted by local court rule or general.

(b) Electronic filing authorization, exception, service, and technology equipment.

(1) The clerk may accept for filing an electronic document that complies with the Court Rules and the Electronic Filing Technical Standards.

(2) A document that is required by law to be filed in non-electronic media may not be electronically filed.

Comment

Certain documents are required by law to be filed in non-electronic media. Examples are original wills, certified records of proceedings for purposes of appeal, negotiable instruments, and documents of foreign governments under official seal.

(3) Electronic Transmission from the Court. The clerk may electronically transmit notices, orders, or other documents to a party who has filed electronically, or has agreed to accept electronic documents from the court, and has provided the clerk the address of the party's electronic mailbox. It is the responsibility of the filing or agreeing party to maintain an electronic mailbox sufficient to receive electronic transmissions of notices, orders, and other documents.

(4) Electronic Service by Parties. Parties may electronically serve documents on other parties of record only by agreement.

(5) A court may adopt a local rule that mandates electronic filing by attorneys provided that the attorneys are not additionally required to file paper copies except for those documents set forth in (b)(2). The local rule shall not be inconsistent with this Rule and the Electronic Filing Technical

Standards, and the local rule shall permit paper filing upon a showing of good cause. Electronic filing should not serve as a barrier to access.

Comment

When adopting electronic filing requirements, courts should refrain from requiring counsel to provide duplicate paper pleadings as "working copies" for judicial officers.

(c) Time of Filing, Confirmation, and Rejection.

(1) An electronic document is filed when it is received by the clerk's designated computer during the clerk's business hours; otherwise the document is considered filed at the beginning of the next business day.

(2) The clerk shall issue confirmation to the filing party that an electronic document has been received.

(3) The clerk may reject a document that fails to comply with applicable electronic filing requirements. The clerk must notify the filing party of the rejection and the reason therefor.

(d) Authentication of Electronic Documents.

(1) Procedures

(A) A person filing an electronic document must have received a user ID and password from a government agency or a person delegated by such agency in order to use the applicable electronic filing service.

Comment

The committee encourages local clerks and courts to develop a protocol for uniform statewide single user ID's and passwords.

(B) All electronic documents must be filed by using the user ID and password of the filer.

(C) A filer is responsible for all documents filed with his or her user ID and password. No one shall use the filer's user ID and password without the authorization of the filer.

(2) Signatures

(A) Attorney Signatures - An electronic document which requires an attorney's signature may be signed with a digital signature or signed in the following manner:

s/ John Attorney
State Bar Number 12345
ABC Law Firm
123 South Fifth Avenue
Seattle, WA 98104
Telephone: (206) 123-4567
Fax: (206) 123-4567
E-mail: John.Attorney@lawfirm.com

(B) Non-attorney signatures - An electronic document which requires a non-attorney's signature and is not signed under penalty of perjury may be signed with a digital signature or signed in the following manner:

s/ John Citizen
123 South Fifth Avenue
Seattle, WA 98104
Telephone: (206) 123-4567
Fax: (206) 123-4567
E-mail: John.Citizen@email.com

(C) Non-attorney signatures on documents signed under penalty of perjury - Except as set forth in (d)(2)(D) of this rule, if the original document requires the signature of a non-attorney signed under penalty of perjury, the filer must either:

(i) Scan and electronically file the entire document, including the signature page with the signature, and maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter; or

(ii) Ensure the electronic document has the digital signature of the signer.

(D) Law enforcement officer signatures on documents signed under penalty of perjury.

(i) A citation or notice of infraction initiated by an arresting or citing officer as defined in IRLJ 1.2(j) and in accordance with CrRLJ 2.1 or IRLJ 2.1 and 2.2 is presumed to have been signed when the arresting or citing officer uses his or her user id and password to electronically file the citation or notice of infraction.

(ii) Any document initiated by a law enforcement officer is presumed to have been signed when the officer uses his or her user ID and password to electronically submit the document to a court or prosecutor through the Statewide Electronic Collision & Traffic Online Records application, the Justice Information Network Data Exchange, or a local secured system that the presiding judge designates by local rule. Unless otherwise specified, the signature shall be presumed to have been made under penalty of perjury under the laws of the State of Washington and on the date and at the place set forth in the citation.

(E) Multiple signatures - If the original document requires multiple signatures, the filer shall scan and electronically file the entire document, including the signature page with the signatures, unless:

(i) The electronic document contains the digital signatures of all signers; or

(ii) For a document that is not signed under penalty of perjury, the signator has the express authority to sign for an attorney or party and represents having that authority in the document.

If any of the non-digital signatures are of non-attorneys, the filer shall maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter.

(F) Court Facilitated Electronically Captured Signatures - An electronic document that requires a signature may be signed using electronic signature pad equipment that has been authorized and facilitated by the court. This document may be electronically filed as long as the electronic document contains the electronic captured signature.

(3) An electronic document filed in accordance with this rule shall bind the signer and function as the signer's signature for any purpose, including CR 11. An electronic document shall be deemed the equivalent of an original signed document if the filer has complied with this rule. All electronic documents signed under penalty of perjury must conform to the oath language requirements set forth in RCW 9A.72.085 and GR 13.

(e) Filing fees, electronic filing fees.

(1) The clerk is not required to accept electronic documents that require a fee. If the clerk does accept electronic documents that require a fee, the local courts must develop procedures for fee collection that comply with the payment and reconciliation standards established by the Administrative Office of the Courts and the Washington State Auditor.

(2) Anyone entitled to waiver of non-electronic filing fees will not be charged electronic filing fees. The court or clerk shall establish an application and waiver process consistent with the application and waiver process used with respect to non-electronic filing and filing fees.

[Adopted effective September 1, 2003; December 4, 2007; September 1, 2011.]

GR 31
ACCESS TO COURT RECORDS

(a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by Article I, Section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, Section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.

(b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record. Administrative records are not within the scope of this rule. Court records are further governed by GR 22.

(c) Definitions.

(1) "Access" means the ability to view or obtain a copy of a court record.

(2) "Administrative record" means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.

(3) "Bulk distribution" means distribution of all, or a significant subset, of the information in court records, as is and without modification.

(4) "Court record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

(5) "Criminal justice agencies" are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

(6) "Dissemination contract" means an agreement between a court record provider and any person or entity, except a Washington State court (Supreme Court, court of

appeals, superior court, district court or municipal court), that is provided court records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.

(7) "Judicial Information System (JIS) Committee" is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.

(8) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(9) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(10) "Public purpose agency" means governmental agencies included in the definition of "agency" in RCW 42.17.020 and other non-profit organizations whose principal function is to provide services to the public.

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

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

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

(e) Personal Identifiers Omitted or Redacted from Court Records

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

(A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.

(B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

(C) Driver's License Numbers.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

COMMENT

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court record that was filed prior to the adoption of this rule.

(f) Distribution of Court Records Not Publicly Accessible

(1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:

(A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.

(B) Determine, in its discretion, that filling the request will not violate this rule.

(C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.

(D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and

conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.

(2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.

(3) Criminal justice agencies may request court records not publicly accessible.

(A) The provider of court records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a class may request access.

(B) Agencies requesting access under this section of the rule shall identify the court records requested and the proposed use for the court records.

(C) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted; (ii) specify the uses which the agency will make of the data; and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

(g) Bulk Distribution of Court Records

(1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.

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

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

(h) Appeals. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.

(i) Notice. The Administrator for the Courts shall develop a method to notify the public of access to court records and the restrictions on access.

(j) Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

(k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

[Adopted effective October 26, 2004; amended effective January 3, 2006.]

General Rule 32
Court Performance Audits

Pursuant to the provision of RCW Chapter 2.56 and to ensure that minimum service levels for the administration of justice are in place, the Administrative Office of the Courts (AOC) is directed to conduct performance audits of courts under the authority of the Supreme Court, in conformity with criteria and methods developed by

the Board for Judicial Administration which have been approved by the Supreme Court.

[Adopted Effective March 30, 2004]

GR 33
Requests for Accommodation by Persons with Disabilities

(a) Definitions. The following definitions shall apply under this rule:

(1) "Accommodation" means measures to make each court service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability, and may include but is not limited to:

(A) making reasonable modifications in policies, practices, and procedures;

(B) furnishing, at no charge, auxiliary aids and services, including but not limited to equipment, devices, materials in alternative formats, qualified interpreters, or readers; and

(C) as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability.

(2) "Person with a disability" means a person with a sensory, mental or physical disability as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101-12213), the Washington Law Against Discrimination (RCW 49.60 et seq.), or other similar local, state, or federal laws.

(3) "Proceedings Applicant" means any lawyer, party, witness, juror, or any other individual who is participating in any proceeding before any court.

(4) "Public Applicant" means any other person seeking accommodation.

(b) Process for Requesting Accommodation.

(1) Persons seeking accommodation may proceed under this rule. Local procedures not inconsistent with this rule may be adopted by courts to supplement the requirements of this rule. A disputed or denied request for accommodation is automatically subject to review under the procedures set out in subsections (d) and (e) of this rule.

(2) An application requesting accommodation may be presented ex parte in writing, or orally and reduced to writing, on a form approved by the Administrative Office of the Courts, to the presiding judge or officer of the court or his or her designee.

(3) An application for accommodation shall include a description of the accommodation sought, along with a statement of the disability necessitating the accommodation. The court may require the applicant to provide additional information about the qualifying disability to help assess the appropriate accommodation. Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated "SEALED MEDICAL AND HEALTH INFORMATION" and such information shall be sealed automatically. The court may order that such information be sealed if it has not previously automatically been sealed.

(4) An application for accommodation should be made as far in advance as practical.

(c) Consideration. A request for accommodation shall be considered and acted upon as follows:

(1) In determining whether to grant an accommodation and what accommodation to grant, the court shall:

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990 (§ 42 U.S.C. 12101 et seq.), RCW 49.60 et seq., and other similar local, state, and federal laws;

(B) give primary consideration to the accommodation requested by the applicant; and

(C) make its decision on an individual- and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation.

(2) If an application for accommodation by a proceedings applicant is submitted five (5) or more court days prior to the scheduled date of the proceeding for which the accommodation is sought, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impossible for the court to provide the requested accommodation on the date of the proceeding; and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(3) If an application for accommodation by a proceedings applicant is submitted fewer than five (5) court days prior to the scheduled date of the proceeding for which the accommodation is requested, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impractical for the court to provide the requested accommodation on the date of the proceeding; and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(4) If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court must offer the applicant an alternative accommodation.

(d) Denial: Proceedings Applicants. Except as otherwise set forth in subsection (c)(2) or (c)(3) of this rule, an application for accommodation by a proceedings applicant may be denied only if the court finds that:

(1) the applicant has failed to satisfy the substantive requirements of this rule;

(2) the requested accommodation would create an undue financial or administrative burden;

(3) the requested accommodation would fundamentally alter the nature of the court service, program, or activity; or

(4) permitting the applicant to participate in the proceeding with the requested accommodation would create a direct threat to the health or safety or well being of the applicant or others.

(e) Decision: Proceedings Applicants. The court shall, in writing or on the record, inform the applicant and the court personnel responsible for implementing accommodations that the request for accommodation has been granted or denied, in whole or in part, and the nature and scope of the accommodation to be provided, if any. The decision shall be entered in the proceedings file, if any, or in the court's administrative files. If the court denies a requested accommodation pursuant to subsection (d) of this rule, the decision shall specify the reasons for the denial. If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court shall state:

(1) the facts and/or circumstances that make the accommodation impossible under subsection (c)(2) or impractical under subsection (c)(3); and

(2) the reasons why the proceeding cannot be continued without prejudicing a party to the proceeding.

(f) Decision: Public Applicants. A public applicant should be accommodated consistent with the Americans with Disabilities Act of 1990 (42 USC §§12101-12213) and the Washington Law Against Discrimination (RCW 49.60 et seq). The applicant shall, orally or in writing, be informed that the request for accommodation has been granted or denied. If requested, a written statement of reasons for denial shall be provided.

Comment

[1] Access to justice for all persons is a fundamental right. It is the policy of the courts of this state to assure that persons with disabilities have equal and meaningful access to the judicial system. Nothing in this rule shall be construed to limit or invalidate the remedies, rights, and procedures accorded to any person with a disability under local, state, or federal law.

[2] Supplemental informal procedures for handling accommodation requests may be less onerous for both applicants and court administration. Courts are strongly encouraged to adopt an informal grievance process for public applicants whose requested accommodation is denied.

[Adopted effective September 1, 2007; amended effective December 28, 2010.]

GR 34
Waiver of Court and Clerk's Fees and Charges in Civil Matters on the Basis of Indigency

(a) Any individual, on the basis of indigent status as defined herein, may seek a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief from a judicial officer in the applicable trial court.

(1) The application for such a waiver may be made ex parte in writing or orally, accompanied by a mandatory pattern form created by the Administrative Office of the Courts (AOC) whereby the applicant attests to his or her financial status or, in the case of an individual represented by a qualified legal services provider ("QLSP") or an attorney working in conjunction with a QLSP, a declaration of counsel stating that the individual was screened and found eligible by the QLSP.

(2) The court shall accept an application submitted in person, by mail and where authorized by local court rule not inconsistent with GR 30, electronic filing. The process for presentation of the application shall conform to local court rules and clerk processes not inconsistent with the rules of this court for presenting ex parte orders to the court directly or via the clerk. All applications shall be presented to a judicial officer for consideration in a timely manner and in conformity with the local court's established procedures. There shall be no locally imposed fee for making an application. The applicant or applicant's attorney filing by mail, shall provide the court with a self-addressed stamped envelope for timely return of a conformed copy of the order.

COMMENT

This rule establishes the process by which judicial officers may waive civil filing fees and surcharges for which judicial officers have authority to grant a waiver. This rule applies to mandatory

fees and surcharges that have been lawfully established, the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief. These include but are not limited to legislatively established filing fees and surcharges (e.g., RCW 36.18.020(5)); other initial filing charges required by statute (e.g., family court facilitator surcharges established pursuant to RCW 26.12.240; family court service charges established pursuant to RCW 26.12.260; domestic violence prevention surcharges established pursuant to RCW 36.18.016(2)(b)); and other lawfully established fees and surcharges which must be paid as a condition of securing access to judicial relief.

(3) An individual who is not represented by a qualified legal services provider (as that term is defined below) or an attorney working in conjunction with a qualified legal services provider shall be determined to be indigent within the meaning of this rule if such person, on the basis of the information presented, establishes that:

(A) he or she is currently receiving assistance under a needs-based, means-tested assistance program such as the following:

(i) Federal Temporary Assistance for Needy Families (TANF);

(ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);

(iii) Federal Supplemental Security Income (SSI);

(iv) Federal poverty-related veteran's benefits; or

(v) Food Stamp Program (FSP); or

(B) his or her household income is at or below 125 percent of the federal poverty guideline; or

(C) his or her household income is above 125 percent of the federal poverty guideline and the applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that render him or her without the financial ability to pay the filing fees and other fees or surcharges for which a request for waiver is made; or

(D) other compelling circumstances exist that demonstrate an applicant's inability to pay fees and/or surcharges.

(4) An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services.

(5) As used in this rule, "qualified legal services provider" means those legal services providers that meet the definition of APR 8(e).

COMMENT

The adoption of this rule is rooted in the constitutional premise that every level of court has the inherent authority to waive payment of filing fees and surcharges on a case by case basis. Each court is responsible for the proper and impartial administration of justice which includes ensuring that meaningful access to judicial review is available to the poor as well as to those who can afford to pay.

(b) Nothing in this rule shall prohibit or delay action on the underlying petition upon the court's approval of a waiver and presentation of an original petition may accompany the initial fee waiver.

[Adopted effective December 28, 2010.]

CODE OF JUDICIAL CONDUCT (CJC)
PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Washington State Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through the Commission on Judicial Conduct.

[Adopted September 9, 2010; effective January 1, 2011]

CODE OF JUDICIAL CONDUCT (CJC)
SCOPE

[1] The Washington State Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. They provide important guidance in interpreting the Rules. A judge may be disciplined only for violating a Rule.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Washington State Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. It is recognized, for example, that it would be unrealistic to sanction judges for minor traffic or civil infractions. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules. The relevant factors for consideration should include the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, including the willfulness or knowledge of the impropriety of the action, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

[Adopted September 9, 2010; effective January 1, 2011]

CODE OF JUDICIAL CONDUCT (CJC)
APPLICATION

The Application section establishes when the various Rules apply to a judge, court commissioner, judge pro tempore or judicial candidate.

I. APPLICABILITY OF THIS CODE

(A) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a magistrate, court commissioner, special master, referee, part-time judge or judge pro tempore.

(B) The provisions of the Code apply to all judges except as otherwise noted for part-time judges and judges pro tempore.

(C) All judges who hold a position that is subject to election shall comply with all provisions of Rules 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office). Rules 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office) and 4.4 (Campaign Committees) apply to judicial candidates.

(D) All judges shall comply with statutory requirements applicable to their position with respect to reporting and disclosure of financial affairs.

COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised

upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] This Code and its Rules do not apply to any person who serves as an administrative law judge or in a judicial capacity within an administrative agency.

[3] The determination of whether an individual judge is exempt from specific Rules depends upon the facts of the particular judicial service.

[4] The Legislature has authorized counties to establish and operate drug courts and mental health courts. Judges presiding in these special courts are subject to these Rules, including Rule 2.9 (A)(1) on ex parte communications, and must continue to operate within the usual judicial role as an independent decision maker on issues of fact and law. But the Rules should be applied with the recognition that these courts may properly operate with less formality of demeanor and procedure than is typical of more traditional courts. Application of the rules should also be attentive to the terms and waivers in any contract to which the individual whose conduct is being monitored has agreed in exchange for being allowed to participate in the special court program.

II. PART-TIME JUDGE

(A) A part-time judge is not required to comply:

(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), and 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges).

(B) A part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(C) When a person who has been a part-time judge is no longer a part-time judge, that person may act as a lawyer in a proceeding in which he or she served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to the Rules of Professional Conduct.

COMMENT

[1] Part-time judges should be alert to the possibility of conflicts of interest and should liberally disclose on the record to litigants appearing before them the fact of any extrajudicial employment or other judicial role, even if there is no apparent reason to withdraw.

[2] In view of Rule 2.1, which provides that the judicial duties of judges should take precedence over all other activities, part-time judges should not engage in outside employment which would interfere with their ability to sit on cases that routinely come before them.

III. JUDGE PRO TEMPORE

A judge pro tempore is not required to comply:

(A) except while serving as a judge, with Rule 1.2 (Promoting Confidence in the Judiciary), Rule 2.4 (External Influences on Judicial Conduct); Rule 2.10(Judicial Statements on Pending and Impending Cases); or Rule 3.1 (Extrajudicial Activities in General); or

(B) at any time with Rules 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials), 3.3 (Acting as a Character Witness), or 3.4 (Appointments to Governmental Positions), or with Rules 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), or 3.12 (Compensation for Extrajudicial Activities).

(C) A judge pro tempore shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(D) When a person who has been a judge pro tempore is no longer a judge pro tempore, that person may act as a lawyer in a proceeding in which he or she served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to the Rules of Professional Conduct.

VI. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

COMMENT

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

[Adopted September 9, 2010; effective January 1, 2011]

CODE OF JUDICIAL CONDUCT (CJC)
TERMINOLOGY

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (*).

"Aggregate," in relation to contributions for a candidate, means not only contributions in cash or in-kind made directly to a candidate's campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent. See Rules 2.11 and 4.4.

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.

"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

See Rules 1.3 and 2.11.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

"Financial Support" shall mean the total of contributions to the judge's campaign and independent expenditures in support of the judge's campaign or against the judge's opponent as defined by RCW 42.17.020. See Rule 2.11.

"Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

"Impending matter" is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

"Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

"Invidious discrimination" is a classification which is arbitrary, irrational, and not reasonably related to a legitimate purpose. Differing treatment of individuals based upon race, sex, gender, religion, national origin, ethnicity, sexual orientation, age, or other classification protected by law, are situations where invidious discrimination may exist. See Rules 3.1 and 3.6.

"Judicial candidate" means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.

"Knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.

"Member of the candidate's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

"Member of the judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

"Part-time judge" Part-time judges are judges who serve on a continuing or periodic basis, but are permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than a full-time judge. A person who serves part-time as a judge on a regular or periodic basis in excess of eleven cases or eleven dockets annually, counted cumulatively without regard to each jurisdiction in which that person serves as a judge, is a part-time judge.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

"Personally solicit" means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate's campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.

"Pro tempore judge" Without regard to statutory or other definitions of a pro tempore judge, within the meaning of this Code a pro tempore judge is a person who serves only once or at most sporadically under a separate appointment for a case or docket. Pro tempore judges are excused from compliance with certain provisions of this Code because of their infrequent service as judges. A person who serves or expects to serve part-time as a judge on a regular or periodic basis in fewer than twelve cases or twelve dockets annually, counted cumulatively without regard to each jurisdiction in which that person serves as a judge, is a pro tempore judge.

"Public election" includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rules 4.2 and 4.4.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

[Adopted September 9, 2010; effective January 1, 2011]

Washington State Code of Judicial Conduct
Table of Canons

CANON 1
A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety.

RULE 1.1 Compliance with the Law
RULE 1.2 Promoting Confidence in the Judiciary
RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office

CANON 2
A Judge Should Perform the Duties of Judicial Office Impartially, Competently, and Diligently.

RULE 2.1 Giving Precedence to the Duties of Judicial Office
RULE 2.2 Impartiality and Fairness
RULE 2.3 Bias, Prejudice and Harassment
RULE 2.4 External Influences on Judicial Conduct
RULE 2.5 Competence, Diligence, and Cooperation
RULE 2.6 Ensuring the Right to Be Heard
RULE 2.7 Responsibility to Decide
RULE 2.8 Decorum, Demeanor, and Communication with Jurors
RULE 2.9 Ex Parte Communications
RULE 2.10 Judicial Statements on Pending and Impending Cases
RULE 2.11 Disqualification
RULE 2.12 Supervisory Duties
RULE 2.13 Administrative Appointments.

RULE 2.14 Disability and Impairment
RULE 2.15 Responding to Judicial and Lawyer Misconduct
RULE 2.16 Cooperation with Disciplinary Authorities

CANON 3
A Judge Shall Conduct the Judge's Personal and Extrajudicial Activities to Minimize the Risk of Conflict with the Obligations of Judicial Office.

RULE 3.1 Extrajudicial Activities in General
RULE 3.2 Appearances before Governmental Bodies and Consultation with Government Officials
RULE 3.3 Testifying as Character Witness
RULE 3.4 Appointments to Governmental Positions
RULE 3.5 Use of Nonpublic Information
RULE 3.6 Affiliation with Discriminatory Organizations
RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities
RULE 3.8 Appointments to Fiduciary Positions
RULE 3.9 Service as Arbitrator or Mediator
RULE 3.10 Practice of Law
RULE 3.11 Financial, Business, or Remunerative Activities
RULE 3.12 Compensation for Extrajudicial Activities
RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value
RULE 3.14 Reimbursement of Expenses and Waivers of Fees or Charges
RULE 3.15 Reporting Requirements

CANON 4
A Judge or Candidate for Judicial Office Shall not Engage in Political or Campaign Activity that is Inconsistent with the Independence, Integrity, or Impartiality of the Judiciary.

RULE 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General
RULE 4.2 Political and Campaign Activities of Judicial Candidates in Public Elections
RULE 4.3 Activities of Candidates for Appointive Judicial Office
RULE 4.4 Campaign Committees
RULE 4.5 Activities of Judges Who Become Candidates for Nonjudicial Office

[Adopted September 9, 2010; effective January 1, 2011]

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1
Compliance with the Law

A judge shall comply with the law,* including the Code of Judicial Conduct.

COMMENT

See Scope [6].

RULE 1.2
Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety.*

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

RULE 1.3
Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

[Adopted September 9, 2010; effective January 1, 2011]

CANON 2

A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.1
Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2
Impartiality and Fairness

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

RULE 2.3
Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including

administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making reference to factors that are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

[5] "Bias or prejudice" does not include references to or distinctions based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status when these factors are legitimately relevant to the advocacy or decision of the proceeding, or, with regard to administrative matters, when these factors are legitimately relevant to the issues involved.

RULE 2.4
External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor, or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or authorize others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

[1] Judges shall decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family.

RULE 2.5
Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] In accordance with GR 29, a judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.6
Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(B) Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but should not act in a manner that coerces any party into settlement.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification or recusal may be appropriate. See RULE 2.11(A)(1).

RULE 2.7
Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification or recusal is required by RULE 2.11 or other law.*

COMMENT

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification or recusal to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2.8
Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in RULE 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

RULE 2.9
Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* before that judge's court except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge affords the parties a reasonable opportunity to object and respond to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter pending or impending before that judge, and shall consider only the evidence presented and any facts that may properly be judicially noticed, unless expressly authorized by law.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10
udicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that would reasonably be expected to substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

[4] A judge should use caution in discussing the rationale for a decision and limit such discussion to what is already public record or controlling law.

RULE 2.11
Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) [Reserved]

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer or a material witness in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge disqualified by the terms of RULE 2.11(A)(2) or RULE 2.11(A)(3) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing or on the record that the judge's relationship is immaterial or that the judge's economic interest is de minimis, the judge is no longer disqualified, and may participate in the proceeding. When a party is not immediately available, the judge may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

(D) A judge may disqualify himself or herself if the judge learns by means of a timely motion by a party that an adverse party has provided financial support for any of the judge's judicial election campaigns within the last six years in an amount that causes the judge to conclude that his or her impartiality might reasonably be questioned. In making this determination the judge should consider:

(1) the total amount of financial support provided by the party relative to the total amount of the financial support for the judge's election,

(2) the timing between the financial support and the pendency of the matter, and

(3) any additional circumstances pertaining to disqualification.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions in Washington, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

[7] [Reserved]

[8] [Reserved]

RULE 2.12
Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act with fidelity and in a diligent manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13
Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially* and on the basis of merit; and

(2) shall avoid nepotism and unnecessary appointments.

(B) A judge shall not appoint a lawyer to a position under circumstances where it would be reasonably to be interpreted to be quid pro quo for campaign contributions or other favors, unless:

(1) the position is substantially uncompensated;

(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or

(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.

(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

RULE 2.14
Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See RULE 2.15.

RULE 2.15
Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects should inform the appropriate authority.*

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects should inform the appropriate authority.

(C) A judge who receives credible information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action.

(D) A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action.

COMMENT

[1] Judges are not required to report the misconduct of other judges or lawyers. Self regulation of the legal and judicial professions, however, creates an aspiration that judicial officers report misconduct to the appropriate disciplinary authority when they know of a serious violation of the Code of Judicial Conduct or the Rules of Professional Conduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary violation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] While judges are not obliged to report every violation of the Code of Judicial Conduct or the Rules of Professional Conduct, the failure to report may undermine the public confidence in legal profession and the judiciary. A measure of judgment is, therefore, required in deciding

whether to report a violation. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the judge is aware. A report should be made when a judge or lawyer's conduct raises a serious question as to the honesty, trustworthiness or fitness as a judge or lawyer.

[3] Appropriate action under sections (C) and (D) may include communicating directly with the judge or lawyer who may have violated the Code of Judicial Conduct or the Rules of Professional Conduct, communicating with a supervising judge or reporting the suspected violation to the appropriate authority or other authority or other agency or body.

[4] Information about a judge's or lawyer's conduct may be received by a judge in the course of that judge's participation in an approved lawyers or judges assistance program. In that circumstance there is no requirement or aspiration of reporting (APR 19(b) and DRJ 14(e)).

RULE 2.16
Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

[1] Cooperation with investigations and proceedings of judicial and lawyer disciplinary agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

[Adopted September 9, 2010; effective January 1, 2011]

CANON 3
A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1
Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge; except activities expressly allowed under this code. This rule does not apply to national or state military service;

(C) participate in activities that would undermine the judge's independence,* integrity,* or impartiality;*

(D) engage in conduct that would be coercive; or

(E) make extrajudicial or personal use of court premises, staff, stationery, equipment, or other resources, except for incidental use permitted by law.

COMMENT

[1] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system. To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination.

[3] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited

would feel obligated to respond favorably, or would do so to curry favor with the judge.

[4] Before speaking or writing about social or political issues, judges should consider the impact of their statements under Canon 3.

RULE 3.2
Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting in a matter involving the judge's, the judge's marital community's, or the judge's domestic partnership's legal or economic interests, or those of members of the judge's immediate family residing in the judge's household, or when the judge is acting in a fiduciary* capacity. In engaging in such activities, however, judges must exercise caution to avoid abusing the prestige of judicial office.

COMMENT

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

RULE 3.3
Acting as a Character Witness

A judge shall not act as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

COMMENT

[1] A judge who, without being subpoenaed, acts as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to act as a character witness.

[2] This rule does not prohibit judges from writing letters of recommendation in non-adjudicative proceedings pursuant to Rule 1.3, comments [2] and [3].

RULE 3.4
Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice. A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

COMMENT

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

RULE 3.5
Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

COMMENT

[1] This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this Code and/or law.

RULE 3.6
Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the bases of race, sex, gender, religion, national origin, ethnicity, sexual orientation or other classification protected by law.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] Whether an organization practices invidious discrimination is a complex question to which judges should be attentive at all times, given the prevailing state and federal law. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends on how the organization selects members, as well as other relevant factors, such as the organization's purposes or activities, and whether the organization is dedicated to the preservation or religious, ethnic, or cultural values of legitimate common interest to its members.

[3] If a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

RULE 3.7
Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(A) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds, or volunteering services or goods at fundraising events as long as the situation could not reasonably be deemed coercive;

(B) soliciting* contributions* for such an organization or entity, but only from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;

(C) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fundraising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice;

(D) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(1) will be engaged in proceedings that would ordinarily come before the judge; or

(2) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

COMMENT

[1] The activities permitted by Rule 3.7 generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fundraising purpose, does not constitute a violation of paragraph (C). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fundraising events

sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fundraising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

[6] A judge may not directly solicit funds, except as permitted under Rule 3.7(B), however a judge may assist a member of the judge's family in their charitable fundraising activities if the procedures employed are not coercive and the sum is de minimis.

[7] [Reserved.]

[8] A judge may provide leadership in identifying and addressing issues involving equal access to the justice system; developing public education programs; engaging in activities to promote the fair administration of justice; and convening, participating or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.

[9] A judge may endorse or participate in projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.

RULE 3.8
Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9
Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions in a private capacity unless authorized by law.*

COMMENT

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is authorized by law.

[2] Retired, part-time, or pro tempore judges may be exempt from this section. (See Application)

RULE 3.10
Practice of Law

(A) A judge shall not practice law. A judge may act pro se or on behalf of his or her marital community or domestic partnership and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family

member's lawyer in any adjudicative forum.

(B) This rule does not prevent the practice of law pursuant to national or state military service.

COMMENT

[1] A judge may act pro se or on behalf of his or her marital community or domestic partnership in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

RULE 3.11
Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family.*

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

(D) As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

COMMENT

[1] Judges are generally permitted to engage in financial activities, subject to the requirements of this Rule and other provisions of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] There is a limit of not more than one (1) year allowed to comply with Rule 3.11(D). (See Application Part IV)

RULE 3.12
Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law* unless such acceptance would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13
Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,* or other family member of a judge residing in the judge's household,* but that incidentally benefit the judge.

(9) gifts incident to a public testimonial;

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits. Acceptance of any gift or thing of value may require reporting pursuant to Rule 3.15 and Washington law.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

RULE 3.14
Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law,* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial

activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge.

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code and Washington law.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding source(s) is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

RULE 3.15
Reporting Requirements

A judge shall make such financial disclosures as required by law.

[Adopted September 9, 2010; effective January 1, 2011]

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

RULE 4.1
Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law,* or by Rules 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), and 4.4 (Campaign Committees), a judge or a judicial candidate* shall not:

(1) act as a leader in, or hold an office in, a political organization;*

(2) make speeches on behalf of a political organization or nonjudicial candidate;

(3) publicly endorse or oppose a nonjudicial candidate for any public office, except for participation in a precinct caucus limited to selection of delegates to a nominating convention for the office of President of the United States pursuant to (5) below.

(4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a nonjudicial candidate for public office;

(5) publicly identify himself or herself as a member or a candidate of a political organization, except

(a) as required to vote, or

(b) for participation in a precinct caucus limited to selection of delegates to a nominating convention for the office of President of the United States.

(6) [Reserved]

(7) personally solicit* or accept campaign contributions other than through a campaign committee authorized by Rule 4.4, except for members of the judge's family or individuals who have agreed to serve on the campaign committee authorized by Rule 4.4 and subject to the requirements for campaign committees in Rule 4.4(B).

(8) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others except as permitted by law;

(9) use court staff, facilities, or other court resources in a campaign for judicial office except as permitted by law;

(10) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;

(11) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or

(12) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

COMMENT

GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Therefore, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for nonjudicial public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for judicial office. See Rule 4.2(B)(2).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or judicial candidate publicly endorsing nonjudicial candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they are using the prestige of the their judicial office to endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, is not prohibited by paragraphs (A)(2) or (A)(3) and is allowed by Paragraphs (A)(2) and (A)(5). Because Washington uses a caucus system for selection of delegates to the nominating conventions of the major political parties for the office of President of the United States, precluding judges and judicial candidates from participating in these caucuses would eliminate their ability to participate in the selection process for Presidential nominations. Accordingly, Paragraph (A)(3) and (5) allows judges and judicial candidates to participate in precinct caucuses, limited to selection of delegates to a nominating convention for the office of President of the United States. This narrowly tailored exception from the general rule is provided for because of the unique system used in Washington for nomination of Presidential candidates.

If a judge or a judicial candidate participates in a precinct caucus, such person must limit participation to selection of delegates for various candidates.

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(10) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(10), (A)(11), or (A)(12), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(11), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(11) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(12) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(12) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(12), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do respond to questionnaires should post the questionnaire and their substantive answers so they are accessible to the general public. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

PERSONAL SOLICITATION OF CAMPAIGN FUNDS

[16] Judicial candidates should be particularly cautious in regard to personal solicitation of campaign funds. This can be perceived as being coercive and an abuse of judicial office. Accordingly, a general prohibition on personal solicitation is retained with a narrowly tailored exception contained in Paragraph (A)(7) for members of the judge's family and those who have agreed to serve on the judge's campaign committee. These types of individuals generally have a close personal relationship to the judicial candidate and therefore the concerns of coercion or abuse of judicial office are greatly diminished. Judicial candidates should not use

this limited exception as a basis for attempting to skirt the general prohibition against solicitation of campaign contributions.

RULE 4.2
Political and Campaign Activities of Judicial Candidates in Public Elections

(A) A judicial candidate* in a nonpartisan, public election* shall:

(1) Act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.

(B) A candidate for elective judicial office may:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) seek, accept, or use endorsements from any person or organization.

COMMENT

[1] Paragraphs (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1.

[2] Despite paragraph (B), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (10), and (12).

[3] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations on behalf of their own candidacy or that of another judicial candidate.

[4] In endorsing or opposing another candidate for judicial office, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

[5] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively.

RULE 4.3
Activities of Candidates for Appointive Judicial Office

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization.

COMMENT

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(12).

RULE 4.4
Campaign Committees

(A) A judicial candidate* subject to public election* may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.*

(B) A judicial candidate subject to public election shall direct his or her campaign committee:

(1) to solicit and accept only such campaign contributions* as are reasonable, in any event not to exceed, in the aggregate amount allowed as provided for by law;

(2) not to solicit contributions for a candidate's current campaign more than 120 days before the date when filing for that office is first permitted and may accept contributions after the election only as permitted by law; and

(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with the Public Disclosure Commission all reports as required by law.

COMMENT

[1] Judicial candidates are generally prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(7). This Rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

RULE 4.5
Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law* to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

COMMENT

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

[Adopted September 9, 2010; effective January 1, 2011]

DISCIPLINE RULES FOR JUDGES (DRJ)

TABLE OF RULES

Rule

1 Scope of Rules; Parties
2 Initiating Supreme Court Consideration
3 Contesting Recommendation
4 Record on Review
5 Briefs
6 Hearing
7 Additional Evidence or Findings--Remand
8 Motion
9 Decision and Reconsideration
10 Effect of Discipline
11 Reinstatement of Eligibility To Hold Judicial Office
12 Informal Admonishment or Reprimand by Commission
13 Substitute Panel
14 Supplemental Provisions

RULE 1
SCOPE OF RULES; PARTIES

(a) Supreme Court Consideration. A decision of the Judicial Qualifications Commission that recommends the discipline or retirement of a judge or justice (hereafter "judge") or that recommends that a judge should or should not be reinstated to eligibility to hold judicial office will be considered by the Supreme Court in the manner provided by these rules.

(b) Judicial Qualifications Commission. The proceedings of the Judicial Qualifications Commission (hereafter "commission") are governed by rules adopted by the commission.

(c) Parties. The only parties to a proceeding under these rules are the commission and the judge who is the subject of the commission

recommendation of discipline or retirement.

(d) Discipline. As used in these rules, "discipline" includes admonishment, reprimand, censure, suspension, and removal from office, but does not include admonishment or reprimand agreed to by the judge as provided in rule 12.

Comment

Section (a). The Supreme Court may only consider a Judicial Qualifications Commission recommendation of discipline or retirement. Const. art. 4, subsection 31 (amend. 71). The word "judge" will be used throughout the rules rather than the terms "judge or justice" found in the constitution.

Section (b). The commission determines its own rules for proceedings before it. Const. art. 4, subsection 31 (amend. 71).

Section (c). Only the commission and the judge will be parties to Supreme Court proceedings.

Section (d). Rule 12 authorizes the commission to informally admonish or reprimand a judge without referring the matter to the Supreme Court. The word "discipline" used throughout these rules does not include this informal admonishment or reprimand.

[Effective May 14, 1982]

RULE 2
INITIATING SUPREME COURT CONSIDERATION

(a) Generally. Decisions of the commission recommending to the Supreme Court that a judge should be disciplined or retired shall be in writing. The commission shall serve on the judge a copy of its decision recommending that the Supreme Court discipline or retire the judge. Unless a matter is disposed of under rule 12, the commission shall file a copy of its decision with the Supreme Court when the commissions decision is final under the rules of the commission. The commission shall serve notice on the judge of the date the decision has been filed with the Supreme Court.

(b) Time for Filing. The written decision of the commission shall specify the time period in which the judge may file a notice of contest under rule 3. The period may not be shorter than 7 days nor longer than 28 days after the date of service on the judge of notice that the decision has been filed with the Supreme Court.

Comment

Section (a). The commissions recommendation to the Supreme Court must be in writing. The rule does not prohibit the commission from giving the judge a proposed recommendation to determine if discipline can be imposed by agreement under rule 12. The rule also accommodates a process for reconsideration by the commission before filing a recommendation with the Supreme Court.

Section (b). This section delegates to the commission the responsibility of determining how much time should be allowed for the filing of a notice of contest. The commission is in the best position to know whether the particular case requires prompt action or may be handled in a manner closely approximating the normal time limits for an appeal to the Supreme Court.

[Effective May 14, 1982]

RULE 3
CONTESTING RECOMMENDATION

(a) Generally. A judge who seeks to contest a recommendation of discipline or retirement must file a notice of contest with the Supreme Court and the commission. The notice must be filed within the time period specified in the decision of the commission as provided in rule 2(b).

(b) Form of Notice. The notice of contest must (1) be titled a notice of contest, (2) describe the portions of the recommendation of the commission that the judge wishes to contest, and (3) name the judge seeking to contest the recommendation. The notice must be signed by the judge or by counsel. The name, address, and telephone number of the lawyer for any party represented by counsel should be placed on the notice. The residence address and telephone number of the judge seeking to contest the recommendation should also be included on the notice.

Comment

Section (a). The judge who wishes to contest a commission recommendation must file a notice of contest. The time period for filing a notice of contest is determined by the commission. See rule 2(b).

[Effective May 14, 1982]

RULE 4
RECORD ON REVIEW

(a) Transcription of Proceedings. Except as provided in section (b), upon receipt of a timely filed notice of contest, the commission shall at its own expense transcribe those portions of the record of the proceedings

involving those charges upon which the recommendation of the commission is based. The transcription of the record and copies of relevant material filed with the commission shall be forwarded by the commission to the judge within the time authorized by the Supreme Court. Any objections relating to the accuracy and content of the record must be made within 14 days after service of the record on the judge. Objections shall be decided in accordance with the rules of the commission. The commission shall forward the record to the Supreme Court after objections are determined by the commission or, in the absence of objection, after the time for objection has expired.

(b) Agreed Record in Contested Proceedings. The commission and the judge may agree to a record in contested proceedings different from that required by section (a). The agreed record shall contain sufficient material to permit the Supreme Court to consider the decision of the commission.

(c) Uncontested Proceedings. If the judge has not timely filed a notice of contest, the record shall consist of the decision of the commission and any other portions of the proceeding which the Supreme Court deems relevant for its consideration.

Comment

Section (a). The rule provides that the commission will prepare the record in a contested proceeding. The commission will only need to transcribe those portions of the proceedings which are relevant to its recommendation. Thus, if the judge was originally charged with five different violations of the Code of Judicial Conduct and the commission recommends discipline based on only one of those, it would only need to transcribe the portions of the proceedings relevant to the charge actually found. The commission will first serve the record on the judge to allow for its determination of any objections to the record before the matter is referred to the Supreme Court. If a party is not satisfied with the commission's determination of the objection, the Supreme Court will decide the matter.

Section (b). There may be circumstances when the commission and the judge disagree only over a limited part of the commission recommendation. In such circumstances, an agreed record is authorized. Cf. RAP 9.4.

Section (c). If a judge does not contest the commission recommendations, the record will only consist of the commission decision, supplemented by those portions of the record the Supreme Court deems relevant.

[Effective May 14, 1982]

RULE 5
BRIEFS

(a) Contested Proceedings. If a notice of contest is timely filed, the Supreme Court will establish a schedule for filing briefs.

(b) Uncontested Proceedings. If a notice of contest is not timely filed, briefs will not be required unless requested by the Supreme Court.

(c) Content of Brief. A brief should contain under appropriate headings and in the order here indicated:

(1) Title Page. A title page, which is the cover.

(2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where cited.

(3) Statement of the Case. A fair statement of the facts and procedure relevant to the recommended discipline or retirement, without argument. Reference to the record must be included for each factual statement.

(4) Statement of the Issues. A statement of the issues presented by the commissions recommendation.

(5) Argument. The argument in support of the relief sought by the party filing the brief, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary.

(6) Conclusion. A short conclusion stating the precise relief sought.

(7) Appendix. An appendix to the brief if deemed appropriate by the party submitting the brief.

(d) Typing and Filing Brief. Rule of Appellate Procedure 10.4(a) is applicable to briefs filed under these rules.

(e) Preparation of Brief. Rules of Appellate Procedure 10.4(b), (c), (e), (f), and (g) are applicable to briefs filed under these rules.

(f) Service of Brief. A party shall serve a copy of the party's brief on all other parties at or before the time the brief is filed with the Supreme Court.

(g) Reproduction of Brief. Rule of Appellate Procedure 10.5(a) is applicable to a brief filed under these rules.

(h) Submission of Improper Brief. Rule of Appellate Procedure 10.7 is applicable to a brief filed under these rules.

(i) Amicus Curiae Brief. Rule of Appellate Procedure 10.6 is applicable to an amicus curiae brief filed under these rules.

Comment

Section (a). If a proceeding is contested, the court will set the schedule for filing briefs. This will allow the court flexibility to accelerate those cases which should be speedily resolved, while permitting more time for cases which do not require quick resolution.

Section (b). In an uncontested case, the court will usually decide the case based on the decision of the commission, which should include the factual basis for the commissions recommendation. The court may order a brief from the commission if it concludes additional information is necessary.

Section (c). This section is adapted from RAP 10.3. Section (i). As a general rule persons other than parties will not be aware of a discipline or retirement proceeding, but the court or a party may occasionally find the need for an amicus curiae brief. This section incorporates the relevant appellate rule.

[Effective May 14, 1982]

RULE 6
HEARING

(a) Contested Proceedings. If a notice of contest is timely filed, the Supreme Court will set the date for the hearing with oral argument. Oral argument will be governed by Title 11 of the Rules of Appellate Procedure.
(b) Uncontested Proceedings. If a notice of contest has not been filed, oral argument will not be held unless requested by the Supreme Court. The Supreme Court will nevertheless notify the parties of the date set for the hearing without oral argument.

Comment

Section (a). Normally the court will hear oral argument only in contested proceedings. The court will set the date for oral argument at the same time it sets the briefing schedule. RAP Title 11 governs oral argument.
Section (b). The court is required to hold a hearing in order to impose discipline or to retire a judge. Const. art. 4, subsection 31 (amend. 71). If a proceeding is uncontested, the court will set a date for considering the commission recommendation, but it will not ordinarily schedule time for oral argument.

[Effective May 14, 1982]

RULE 7
ADDITIONAL EVIDENCE OR FINDINGS--REMAND

If the Supreme Court on its own motion or on the motion of the commission or the judge determines that further commission proceedings, additional evidence, or additional findings will aid the Supreme Court, the Supreme Court may remand the case to the commission or accept supplementary materials without remand.

Comment

The Supreme Court may conclude, either on its own or at the instance of a party, that additional commission proceedings are desirable. The Supreme Court may decide that the commission should reconsider the recommendation or obtain additional evidence. This rule permits a remand for these purposes. The rule also authorizes the Supreme Court to receive additional evidence. The generally accepted standard of review for Supreme Court proceedings in the area of judicial misconduct or disability is an "independent evaluation of the evidence." Hence, the Supreme Court functions with a broader standard of review than is usual for an appellate court reviewing a trial court decision. This rule allows maximum flexibility for supplementing the record. Cf. ABA Standards 7.4-7.6 which are consistent with this approach.

[Effective May 14, 1982]

RULE 8
MOTION

(a) Relief Available. A party may seek relief, other than a decision of the case on the merits, by a motion. Rules of Appellate Procedure 17.3(a) and 17.4 are applicable to the motion filed under these rules.
(b) No Oral Argument. Motions will ordinarily be decided without oral argument.
(c) Motions Decided by Department or Full Court. A motion will be decided by a department of the Supreme Court or by the full Supreme Court.

[Effective May 14, 1982]

RULE 9
DECISION AND RECONSIDERATION

(a) Decision by Full Court. Hearings on the merits under these rules will ordinarily be heard by nine justices. A reference to Supreme Court Justice or Justices in these rules includes regular and pro tempore justices. A reference to the Supreme Court includes the Supreme Court as regularly constituted, and the Supreme Court with one or more justices pro tempore.
(b) Postponement of Decision. The Supreme Court may postpone Supreme Court proceedings involving a judge if there are other proceedings pending before the commission involving that same judge.
(c) Decision Imposing Discipline or Retirement. Discipline may be imposed or retirement ordered only upon the affirmative vote of at least five Supreme Court Justices. The decision of the court shall be in the form of a written opinion. The Supreme Court may impose the sanction recommended by the commission, or any other sanction that the Supreme Court deems proper.

(d) Finality of Decision. The decision of the Supreme Court becomes final 14 days after the decision is filed, unless a motion for reconsideration of the decision is earlier filed. If a timely motion for reconsideration is filed, the decision of the Supreme Court becomes final when the motion for reconsideration is denied. If the motion for reconsideration is granted, the reconsidered decision is final when filed. The Supreme Court decision is effective when final, unless otherwise provided by the Supreme Court in its decision.

(e) Motion for Reconsideration. A party seeking reconsideration of a decision must file a motion for reconsideration within 14 days after the decision of the Supreme Court has been filed. Rules of Appellate Procedure 12.4(c) through (h) are applicable to proceedings under these rules.

Comment

Section (a). The Supreme Court will ordinarily decide a judicial discipline case with a full panel of nine justices, drawing from justices pro tempore if necessary, to create a full panel. The rule does provide, however, that a decision by less than nine justices will be effective if the decision is supported by at least five justices.

Section (b). The ABA Standards recommend that the court dispose of all matters regarding the discipline of a particular judge at one time. ABA Standards Relating to Judicial Discipline and Retirement, Std. 7.6.

Section (c). The Supreme Court must approve the discipline of a judge with at least five votes. The court may impose the discipline it determines is proper.

Section (d). A party has 14 days in which to file a motion for reconsideration. If no motion is filed, the decision is final at the end of the 14-day period. If a motion is filed, the decision is final when the motion is denied or when the reconsidered decision is filed. This parallels RAP 12.4 which permits only one motion for reconsideration. This paragraph supersedes RCW 2.04.170 to the extent the statute is in conflict with this rule.

[Effective May 14, 1982]

RULE 10
EFFECT OF DISCIPLINE

(a) Removal or Retirement. The office of a judge removed or retired by the Supreme Court becomes vacant when the Supreme Court decision is final. A judge may not perform any judicial duties thereafter. A judge who is removed or retired by the Supreme Court is no longer eligible for judicial office unless the eligibility of the person removed or retired is reinstated by the Supreme Court.

(b) Suspension. The office of a judge suspended by the Supreme Court does not become vacant, but the judge may not perform any judicial duties during the period of suspension, except to the extent the decision of the Supreme Court provides otherwise.

(c) Effect of Discipline on Salary. A decision imposing discipline other than removal or retirement will state the effect of the discipline upon the salary of the judge. Subject to the limitation in rule 9(c), the Supreme Court may diminish the salary of the judge based only on the prospective future decrease in the judges workload brought about by the discipline imposed by the Supreme Court.

Comment

Section (a). The constitution provides that a judicial office becomes vacant if a judge is removed or retired. Const. art. 4, subsection 31 (amend. 71).

Section (b). If a judge is suspended from office, the implication is that the office is not vacant. This section makes this clear. The rule does not allow a judge to perform judicial duties while suspended, except as may be otherwise authorized by the Supreme Court.

Section (c). The constitution requires the Supreme Court to specify the effect on the judges salary of discipline other than removal or retirement. The Supreme Court will not use its power to affect salary as a means of imposing a fine on the judge, which is not specifically authorized by the constitution. Statutes control the collateral effect on retirement benefits of a Supreme Court decision affecting payment of a judge's salary.

[Effective May 14, 1982]

RULE 11
REINSTATEMENT OF ELIGIBILITY TO HOLD JUDICIAL OFFICE

(a) Petition Filed With Commission. A former judge who has been removed from office or retired by the Supreme Court may apply to the commission for reinstatement of eligibility to hold judicial office.

(b) Commission Recommendation. The commission shall determine whether the applicant has made an affirmative showing that reinstatement will not be detrimental to the integrity and standing of the judiciary and the administration of justice, or be contrary to the public interest. The commission recommendation on the application shall be in writing.

(c) Supreme Court Procedure. A decision recommending that a former judge should or should not be reinstated to eligibility to hold judicial office shall be processed under these rules in the same manner as a decision of the commission recommending the discipline or retirement of a judge.

Comment

Section (a). The constitution gives to the Supreme Court the authority

to reinstate the eligibility of a removed or retired judge to hold judicial office. The constitution does not establish standards for reinstatement. This section provides that the commission will initially consider an application for reinstatement.

Section (b). This section is modeled after rule 8.6(a) of the Discipline Rules for Attorneys. The Supreme Court has considered the question of attorney reinstatement several times. The standard set forth in the rule along with the developed case law will provide the commission and the Supreme Court with a basis for determining whether to reinstate a former judges eligibility.

Section (c). Once a commission recommendation is filed with the Supreme Court, the procedure will be the same as in cases involving the discipline or retirement of a judge.

[Effective May 14, 1982]

RULE 12
INFORMAL ADMONISHMENT OR REPRIMAND BY COMMISSION

(a) Generally. The commission may informally admonish or reprimand a judge, but only with the agreement of that judge. The agreement shall provide whether the agreement of the judge to the admonishment or reprimand may be considered as an admission of misconduct by the judge. In any event, the conduct causing the admonishment or reprimand may be considered in the event of a future complaint against the same judge. The agreed admonishment or reprimand may include an agreement by the judge to desist from certain prescribed conduct.

(b) Effect of Informal Admonishment or Reprimand. An agreement to informally admonish or reprimand a judge terminates the complaint or complaints which gave rise to the admonishment or reprimand, without the necessity of referring the matter to the Supreme Court.

Comment

Const. art. 4, subsection 31 (amend. 71) gives the Supreme Court the authority to impose discipline on judges. Arguably, the commission may not engage in informal dispositions without authority from the Supreme Court. This rule delegates a small, but important, part of the Supreme Courts discipline power to the commission. The commission is only empowered to informally admonish or reprimand a judge. If more serious discipline is called for, the Supreme Court must impose the discipline. The rule requires the consent of the judge. The judge will, thereby, be waiving any right to have discipline imposed only by the Supreme Court. Cf. ABA Standard 6.6.

[Effective May 14, 1982]

RULE 13
SUBSTITUTE PANEL

(a) Generally. If a justice of the Supreme Court is the subject of a recommendation for discipline or retirement, a substitute panel of nine judges shall be selected as provided in this rule to serve as justices pro tempore to consider the commission recommendation.

(b) Selection of Justices Pro Tempore. The presiding chief judge of the Court of Appeals shall be one member of the substitute panel and shall be the chief justice pro tempore unless the judge disqualifies himself or herself or is otherwise disqualified by section (c). The clerk of the Supreme Court shall select the balance of the justices pro tempore by lot from all remaining active Court of Appeals judges. If there are fewer than nine judges of the Court of Appeals who are not disqualified, the panel shall be completed by the clerk by selecting by lot from the active superior court judges until a full panel of nine justices pro tempore has been selected.

(c) Disqualification. A judge may disqualify himself or herself without cause. No judge who has served as a master or a member of the commission in the particular proceeding or who is otherwise disqualified may serve on the substitute panel. No judge against whom a formal charge is pending before the commission shall serve on the panel.

(d) Chief Justice Pro Tempore. If the presiding chief judge of the Court of Appeals is not a member of the substitute panel, the substitute panel shall select one of its members to serve as chief justice pro tempore.

[Effective May 14, 1982]

RULE DRJ 14
SUPPLEMENTAL PROVISIONS

(a) Service and Filing With the Court. Rule of Appellate Procedure 18.5 governs service, proof of service, and filing of papers under these rules.

(b) Computation of Time. Rule of Appellate Procedure 18.6 applies to the computation of time under these rules.

(c) Waiver of Rules and Sanctions for Violation of Rules. Rules of Appellate Procedure 18.8(a) and (d) and 18.9(a) are

applicable to proceedings under these rules.

(d) Applicability of RAP. Upon order of the Supreme Court, the Rules of Appellate Procedure may be made applicable to any part of the proceeding involving the discipline or retirement of a judge not governed by these rules.

(e) Confidential and Privileged Communications. Confidential communication between a judicial officer and peer Counselors of the Judicial Assistance Committee of the Superior Court Judges' Association or the district and Municipal Court Judges' Association or the LAP (Lawyers Assistance Program of the Washington State Bar Association) shall be privileged against disclosure without the consent of the judicial officer to the same extent and subject to the same conditions as confidential communication between a client and psychologist.

[Adopted effective May 14, 1982; November 25, 2003.]

BOARD FOR JUDICIAL ADMINISTRATION RULES (BJAR)

TABLE OF RULES

Rule

Preamble

1 Board for Judicial Administration
2 Composition
3 Operation
4 Duties
5 Staff

BJAR
PREAMBLE

The power of the judiciary to make administrative policy governing its operations is an essential element of its constitutional status as an equal branch of government. The Board for Judicial Administration is established to adopt policies and provide strategic leadership for the courts at large, enabling the judiciary to speak with one voice.

[Adopted effective January 25, 2000.]

BJAR 1
BOARD FOR JUDICIAL ADMINISTRATION

The Board for Judicial Administration is created to provide effective leadership to the state courts and to develop policy to enhance the administration of the court system in Washington State. Judges serving on the Board for Judicial Administration shall pursue the best interests of the judiciary at large.

[Amended effective October 29, 1993; January 25, 2000.]

BJAR 2
COMPOSITION

(a) Membership. The Board for Judicial Administration shall consist of judges from all levels of court selected for their demonstrated interest in and commitment to judicial administration and court improvement. The Board shall consist of five members from the appellate courts (two from the Supreme Court, one of whom shall be the Chief Justice, and one from each division of the Court of Appeals), five members from the superior courts, one of whom shall be the President of the Superior Court Judges' Association, five members of the courts of limited jurisdiction, one of whom shall be the President of the District and Municipal Court Judges' Association, two members of the Washington State Bar Association (non-voting) and the Administrator for the Courts (non-voting).

(b) Selection. Members shall be selected based upon a process established by their respective associations or court level which considers demonstrated commitment to improving the courts, racial and gender diversity as well as geographic and caseload differences.

(c) Terms of Office.

(1) Of the members first appointed, one justice of the Supreme Court shall be appointed for a two-year term; one judge from each of the other levels of court for a four-year term; one judge from each of the other levels of court and one Washington State Bar Association member for a three-year term; one judge from the other levels of court and one Washington State Bar Association member for a two-year term; and one judge from each level of trial court for a one-year term. Provided that the terms of the District and Municipal Court Judges' Association members whose terms begin on July 1, 2010 and July 1, 2011 shall be for two years and the terms of the Superior Court Judges' Association members whose terms begin on July 1, 2010 and July 1, 2013 shall be for two years each. Thereafter, voting members shall serve four-year terms and the Washington State Bar Association members for three-year terms commencing annually on June 1. The Chief Justice, the President Judges and the Administrator for the Courts shall serve during tenure.

(2) Members serving on the BJA shall be granted equivalent pro tempore time.

[Amended effective October 29, 1993; February 16, 1995; January 25, 2000; June 30, 2010.]

BJAR 3
OPERATION

(a) Leadership. The Board for Judicial Administration shall be chaired by the Chief Justice of the Washington Supreme Court in conjunction with a Member Chair who shall be elected by the Board. The duties of the Chief Justice Chair and the Member Chair shall be clearly articulated in the by-laws. The Member Chair shall serve as chair of the Long-range Planning Committee. Meetings of the Board may be convened by either chair and held at least bimonthly. Any Board member may submit issues for the meeting agenda.

(b) Committees. Ad hoc and standing committees may be appointed for the purpose of facilitating the work of the Board. Non-judicial committee members shall participate in non-voting advisory capacity only.

(1) The Board shall appoint at least three standing committees: Long-range Planning, Core Missions/Best Practices and Legislative. Other committees may be convened as determined by the Board.

(2) The Chief Justice and the Member Chair shall nominate for the Board's approval the chairs and members of the committees. Committee membership may include citizens, experts from the private sector, members of the legal community, legislators, clerks and court administrators.

(c) Voting. All decisions of the Board shall be made by majority vote of those present and voting provided there is one affirmative vote from each level of court. Eight voting members will constitute a quorum provided at least one judge from each level of court is present. Telephonic or electronic attendance shall be permitted but no member shall be allowed to cast a vote by proxy.

[Adopted effective January 25, 2000.]

BJAR 4
DUTIES

(a) The Board shall establish a long-range plan for the judiciary;

(b) The Board shall continually review the core missions and best practices of the courts;

(c) The Board shall develop a funding strategy for the judiciary consistent with the long-range plan and RCW 43.135.060;

(d) The Board shall assess the adequacy of resources necessary for the operation of an independent judiciary;

(e) The Board shall speak on behalf of the judicial branch of government and develop statewide policy to enhance the operation of the state court system; and

(f) The Board shall have the authority to conduct research or create study groups for the purpose of improving the courts.

[Adopted effective January 25, 2000.]

BJAR 5
STAFF

Staff for the Board for Judicial Administration shall be

provided by the Administrator for the Courts.

[Adopted effective January 25, 2000.]

RULES OF PROFESSIONAL CONDUCT (RPC)

Table of Rules

Fundamental Principles of Professional Conduct

PREAMBLE AND SCOPE
Preamble: A Lawyer's Responsibilities
Scope

Rule
1.0 Terminology

TITLE 1 CLIENT-LAWYER RELATIONSHIP

1.1 Competence
1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer
1.3 Diligence
1.4 Communication
1.5 Fees
1.6 Confidentiality of Information
1.7 Conflict of Interest: Current Clients
1.8 Conflict of Interest: Current Clients: Specific Rules
1.9 Duties to Former Client
1.10 Imputation of Conflicts of Interest: General Rule
1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees
1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral
1.13 Organization as Client
1.14 Client with Diminished Capacity
1.15A Safeguarding Property
1.15B Required Trust Account Records
1.16 Declining or Terminating Representation
1.17 Sale of Law Practice
1.18 Duties of Prospective Client

TITLE 2 COUNSELOR

2.1 Advisor
2.2 (Deleted)
2.3 Evaluation for Use by Third Persons
2.4 Lawyer Serving as Third-Party Neutral

TITLE 3 ADVOCATE

3.1 Meritorious Claims and Contentions
3.2 Expediting Litigation
3.3 Candor Toward the Tribunal
3.4 Fairness to Opposing Party and Counsel
3.5 Impartiality and Decorum of the Tribunal
3.6 Trial Publicity
3.7 Lawyer as Witness
3.8 Special Responsibilities of a Prosecutor
3.9 Advocate in Nonadjudicative Proceedings

TITLE 4 TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

4.1 Truthfulness in Statements to Others
4.2 Communication With Person Represented by Counsel
4.3 Dealing With Unrepresented Person
4.4 Respect for Rights of Third Person

TITLE 5 LAW FIRMS AND ASSOCIATIONS

5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers
5.2 Responsibilities of a Subordinate Lawyer
5.3 Responsibilities Regarding Nonlawyer Assistants
5.4 Professional Independence of a Lawyer
5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law
5.6 Restrictions on Right to Practice
5.7 Responsibilities Regarding Law-Related Services
5.8 Misconduct Involving Disbarred, Suspended, Resigned, and Inactive Lawyers

TITLE 6 PUBLIC SERVICE

6.1 Pro Bono Publico Service
6.2 Accepting Appointments
6.3 Membership in Legal Services Organization
6.4 Law Reform Activities Affecting Client Interests
6.5 Nonprofit and Court-Annexed Limited Legal Service Programs

TITLE 7 INFORMATION ABOUT LEGAL SERVICES

7.1 Communications Concerning a Lawyers Services
7.2 Advertising
7.3 Direct Contact with Prospective Clients
7.4 Communication of Fields of Practice and Specialization
7.5 Firm Names and Letterheads
7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges

TITLE 8 MAINTAINING THE INTEGRITY OF THE PROFESSION

8.1 Bar Admission and Disciplinary Matters
8.2 Judicial and Legal Officials
8.3 Reporting Professional Misconduct
8.4 Misconduct
8.5 Disciplinary Authority; Choice of Law

Appendix: Guidelines for Applying Rule of 3.6

Fundamental Principles Of Professional Conduct[1]

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles are always present as guidelines. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Rules of Professional Conduct point the way to the aspiring lawyer and provide standards by which to judge the transgressor. Each lawyer must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession and the society which the lawyer serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

[Amended effective September 1, 2006.]

---

1 These Fundamental Principles of the Rules of Professional Conduct are taken from the former Preamble to the Rules of Professional Conduct as approved and adopted by the Supreme Court in 1985. Washington lawyers and judges have looked to the 1985 Preamble as a statement of our overarching aspiration to faithfully serve the best interests of the public, the legal system, and the efficient administration of justice. The former Preamble is preserved here to inspire lawyers to strive for the highest possible degree of ethical conduct, and these Fundamental Principles should inform many of our decisions as lawyers. The Fundamental Principles do not, however, alter any of the obligations expressly set forth in the Rules of Professional Conduct, nor are they intended to affect in any way the manner in which the Rules are to be interpreted or applied.

PREAMBLE AND SCOPE

PREAMBLE:
A LAWYER'S RESPONSIBILITIES

[1] [Washington revision] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the court and a public citizen having special responsibility for the quality of justice.

[2] [Washington revision] As a representative of clients, a lawyer performs various functions. As advisory, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer conscientiously and ardently asserts the clients position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] [Washington revision] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] [Washington revision] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a conscientious and ardent advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] [Washington revision] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation conscientiously and ardently to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may" are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] [Washington revision] For purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client-lawyer relationship is formed. But there are some duties, such as that of confidentiality under Rule 1.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18 and Washington Comment [11] thereto. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and is a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the

meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Additional Washington Comments (22 - 23)

[22] Nothing in these Rules is intended to change existing Washington law on the use of the Rules of Professional Conduct in a civil action. See Hizey v. Carpenter, 119 Wn.2d 251, 830 P.2d 646 (1992).

[23] The structure of these Rules generally parallels the structure of the American Bar Association's Model Rules of Professional Conduct. The exceptions to this approach are Rule 1.15A, which varies substantially from Model Rule 1.15, and Rules 1.15B and 5.8, neither of which is found in the Model Rules. In other cases, when a provision has been wholly deleted from the counterpart Model Rule, the deletion is signaled by the phrase "Reserved." When a provision has been added, it is generally appended at the end of the Rule or the paragraph in which the variation appears. Whenever the text of a Comment varies materially from the text of its counterpart Comment in the Model Rules, the alteration is signaled by the phrase "Washington revision." Comments that have no counterpart in the Model Rules are compiled at the end of each Comment section under the heading "Additional Washington Comment(s)" and are consecutively numbered. As used herein, the term "former Washington RPC" refers to Washington's Rules of Professional Conduct (adopted effective September 1, 1985, with amendments through September 1, 2003). The term "Model Rule(s)" refers to the 2004 Edition of the American Bar Association's Model Rules of Professional Conduct.

[Amended effective September 1, 2006.]

RULE 1.0
TERMINOLOGY

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that has a purpose to deceive and is fraudulent under the substantive or procedural law of the applicable jurisdiction, except that it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyers is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

See also Washington Comment [11].

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

[3] [Washington revision] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[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 Comment [12].

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].

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(c), 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[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 person 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].

Screened

[8] [Washington revision] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12, 1.18, or 6.5.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

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

See also Washington Comment [15].

Additional Washington Comments (11 - 16)

Confirmed in Writing

[11] Informed consent requires that the writing be articulated in a manner that can be easily understood by the client.

Firm

[12] Although the definition of "firm" or "law firm" in Rule 1.0(c) differs from the definition set forth in the Terminology section of Washington's former Rules of Professional Conduct, there is no intent to change the scope of the definition or to alter existing Washington law on the application of the Rules of Professional Conduct to lawyers in a government office.

Fraud

[13] Model Rule 1.0(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] 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] See Rules 1.10 and 6.5 for specific screening requirements under the circumstances covered by those Rules.

Other

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

[Amended effective September 1, 2006.]

RPC RULE 1.1
COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether I it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

[Amended effective September 1, 2006.]

RULE 1.2
SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) [Reserved.]

(f) A lawyer shall not purport to act as a lawyer for any person or organization if the lawyer knows or reasonably should know that the lawyer is acting without the authority of that person or organization, unless the lawyer is authorized or required to so act by law or a court order.

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

See also Washington Comment [14].

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

Additional Washington Comments (14-17)

Agreements Limiting Scope of Representation

[14] An agreement limiting the scope of a representation shall consider the applicability of Rule 4.2 to the representation. (The provisions of this Comment were taken from former Washington RPC 1.2(c).) See also Comment [11] to Rule 4.2 for specific considerations pertaining to contact with an otherwise represented person to whom limited representation is being or has been provided.

Acting as a Lawyer Without Authority

[15] Paragraph (f) was taken from former Washington RPC 1.2(f), which was deleted from the RPC by amendment effective September 1, 2006. The mental state has been changed from "willfully" to one of knowledge or constructive knowledge. See Rule 1.0(f) & (j). Although the language and structure of paragraph (f) differ from the former version in a number of other respects, paragraph (f) does not otherwise represent a change in Washington law interpreting former RPC 1.2(f).

[16] If a lawyer is unsure of the extent of his or her authority to represent a person because of that person's diminished capacity, paragraph (f) of this Rule does not prohibit the lawyer from taking action in accordance with Rule 1.14 to protect the person's interests. Protective action taken in conformity with Rule 1.14 does not constitute a violation of this Rule.

[17] Paragraph (f) does not prohibit a lawyer from taking any action permitted or required by these Rules, court rules, or other law when withdrawing from a representation, when terminated by a client, or when ordered to continue representation by a tribunal. See Rule 1.16(c).

[Amended effective September 1, 2006; September 1, 2011.]

RULE 1.3
DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

[1] [Washington revision] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with diligence in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a

continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer, is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1q.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] [Reserved.]

[Amended effective September 1, 2006.]

RPC RULE 1.4
COMMUNICATION

(a) A lawyer shall;

(1) promptly inform the client of any decision of circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless that client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations - depending on both the importance of the action under consideration and the feasibility of consulting with the client - this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer

should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

[Amended effective September 1, 2006.]

RPC RULE 1.5
FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent; and

(9) the terms of the fee agreement between the lawyer and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. Upon the request of the client in any matter, the lawyer shall communicate to the client in writing the basis or rate of the fee.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. If a fee is contingent on the outcome of a matter, a lawyer shall comply with the following

(1) A contingent fee agreement shall be in a writing and signed by the client;

(2) A contingent fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable, whether or not the client is the prevailing party;

(3) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination; and

(4) A contingent fee consisting of a percentage of the monetary amount recovered for a claimant, in which all or part of the recovery is to be paid in the future, shall be paid only

(i) by applying the percentage to the amounts recovered as they are received by the client; or

(ii) by applying the percentage to the actual cost of the settlement or award to the defendant.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution or annulment of marriage or upon the amount of maintenance or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) (i) the division is in proportion to the services provided by each lawyer or each lawyer assumes joint responsibility for the representation;

(ii) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(iii) the total fee is reasonable; or

(2) the division is between the lawyer and a duly authorized lawyer referral service of either the Washington State Bar Association or of one of the county bar associations of this state.

(f) Fees and expenses paid in advance of performance of services shall comply with Rule 1.15A, subject to the following exceptions:

(1) A lawyer may charge a retainer, which is a fee that a client pays to a lawyer to be available to the client during a specified period or on a specified matter, in addition to and apart from any compensation for legal services performed. A retainer must be agreed to in a writing signed by the client. Unless otherwise agreed, a retainer is the lawyer's property on receipt and shall not be placed in the lawyer's trust account.

(2) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and is paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a writing signed by the client, a flat fee is the lawyer's property on receipt, in which case the fee shall not be deposited into a trust account under Rule 1.15A. The written fee agreement shall, in a manner that can easily be understood by the client, include the following: (i) the scope of the services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the fee is the lawyer's property immediately on receipt and will not be placed into a trust account; (iv) that the fee agreement does not alter the client's right to terminate the client-lawyer relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed. A statement in substantially the following form satisfies this requirement:

> [Lawyer/law firm] agrees to provide, for a flat fee of $_____, the following services: _____. The flat fee shall be paid as follows: _____. Upon [lawyer's/law firm's] receipt of all or any portion of the flat fee, the funds are the property of [lawyer/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-lawyer relationship. In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee.

(3) In the event of a dispute relating to a fee under paragraph (f)(1) or (f)(2) of this Rule, the lawyer shall take reasonable and prompt action to resolve the dispute.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (9) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

See also Washington Comments [10] and [11].

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the

representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] [Reserved in part.] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[6] [Washington revision] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a dissolution or annulment of marriage or upon the amount of maintenance or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, maintenance or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Additional Washington Comments (10 - 18)

Reasonableness of Fee and Expenses

[10] Every fee agreed to, charged, or collected, including a fee that is a lawyer's property on receipt under paragraph (f)(1) or (f)(2), is subject to Rule 1.5(a) and may not be unreasonable.

[11] Under paragraph (a)(9), one factor in determining whether a fee is reasonable is whether the fee agreement or confirming writing demonstrates that the client received a reasonable and fair disclosure of material elements of the fee agreement. Lawyers are encouraged to use written fee agreements that fully and fairly disclose all material terms in a manner easily understood by the client.

Payment of Fees in Advance of Services

[12] In the absence of a written agreement between the lawyer and the client to the contrary that complies with paragraph (f)(1) or (f)(2), all

advance payments are presumed to be deposits against future services or costs and must, until the fee is earned or the cost incurred, be held in a trust account pursuant to Rule 1.15A. See Rule 1.15A(c)(2). This fee structure is known as an "advance fee deposit." Such a fee may only be withdrawn when earned. See Rule 1.15A(h)(3). For example, when an advance fee deposit is placed in trust, a lawyer may withdraw amounts based on the actual hours worked. In the case of a flat fee that constitutes an advance fee deposit because it does not meet the requirements of paragraph (f)(2), the lawyer and client may mutually agree, preferably in writing, on a reasonable basis for determining when portions of the fee have been earned, such as specific "milestones" reached during the representation or specified time intervals that reasonably reflect the actual performance of the legal services.

[13] Paragraphs (f)(1) and (f)(2) provide exceptions to the general rule that fees received in advance must be placed in trust. Paragraph (f)(1) describes a fee structure sometimes known as an "availability retainer," "engagement retainer," "true retainer," "general retainer," or "classic retainer." Under these rules, this arrangement is called a "retainer." A retainer secures availability alone, i.e., it presumes that the lawyer is to be additionally compensated for any actual work performed. Therefore, a payment purportedly made to secure a lawyer's availability, but that will be applied to the client's account as the lawyer renders services, is not a retainer under paragraph (f)(1). A written retainer agreement should clearly specify the time period or purpose of the lawyer's availability, that the client will be separately charged for any services provided, and that the lawyer will treat the payment as the lawyer's property immediately on receipt and will not deposit the fee into a trust account.

[14] Paragraph (f)(2) describes a "flat fee," sometimes also known as a "fixed fee." A flat fee constitutes complete payment for specified legal services, and does not vary with the amount of time or effort expended by the lawyer to perform or complete the specified services. If the requirements of paragraph (f)(2) are not met, a flat fee received in advance must be deposited initially in the lawyer's trust account. See Washington Comment [12].

[15] If a lawyer and a client agree to a retainer under paragraph (f)(1) or a flat fee under paragraph (f)(2) and the lawyer complies with the applicable requirements, including obtaining agreement in a writing signed by the client, the fee is considered the lawyer's property on receipt and must not be deposited into a trust account containing client or third-party funds. See Rule 1.15A(c) (lawyer must hold property of clients separate from lawyer's own property). For definitions of the terms "writing" and "signed," see Rule 1.0(n).

[16] In fee arrangements involving more than one type of fee, the requirements of paragraphs (f)(1) and (f)(2) apply only to the parts of the arrangement that are retainers or flat fees. For example, a client might agree to make an advance payment to a lawyer, a portion of which is a flat fee for specified legal services with the remainder to be applied on an hourly basis as services are rendered. The latter portion is an advance fee deposit that must be placed in trust under Rule 1.15A(c)(2). If the requirements of paragraph (f)(2) are met regarding the flat fee portion, those funds are the lawyer's property on receipt and must not be kept in a trust account. If the payment is in one check or negotiable instrument, it must be deposited intact in the trust account, and the flat fee portion belonging to the lawyer must be withdrawn at the earliest reasonable time. See Rule 1.15A(h)(1)(ii) & (h)(4). See also Comment [10] to Rule 1.15A (explaining prohibition on split deposits). Although a signed writing is required under paragraphs (f)(1) and (f)(2) only for the retainer or flat fee portion of the fee (and only if the lawyer and client agree that the fee will be the lawyer's property on receipt), the lawyer should consider putting the entire arrangement in writing to facilitate communication with the client and prevent future misunderstanding. See Washington Comment [11].

[Amended effective September 1, 2006, November 18, 2008.]

RULE 1.6
CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer to the extent the lawyer reasonably believes necessary:

(1) shall reveal information relating to the representation of a client to prevent reasonably certain death or substantial bodily harm;

(2) may reveal information relating to the representation of a client to prevent the client from committing a crime;

(3) may reveal information relating to the representation of a client to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) may reveal information relating to the representation of a client to secure legal advice about the lawyer's compliance with these Rules;

(5) may reveal information relating to the representation of a client to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved,

or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) may reveal information relating to the representation of a client to comply with a court order; or

(7) may reveal information relating to the representation of a client to inform a tribunal about any breach of fiduciary responsibility when the client is serving as a court appointed fiduciary such as a guardian, personal representative, or receiver.

Comment

See also Washington Comment [19].

[1] [Washington revision] This Rule governs the disclosure by a lawyer of information relating to the representation of a client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] [Washington revision] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and requires disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply must reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] [Reserved.]

[8] [Reserved.]

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that chargesuch complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the Rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] [Reserved.]

[13] [Washington revision] A lawyer may be ordered to reveal information relating to the representation of a client by a court. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

See also Washington Comment [24].

[14] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[15] [Washington revision] Paragraphs (b)(2) through (b)(7) permit but do not require the disclosure of information relating to a client's representation to accomplish the purposes specified in those paragraphs. In exercising the discretion conferred by those paragraphs, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 3.3, 4.1(b), and 8.1. See also Rule 1.13(c), which permits disclosure in some circumstances whether or not Rule 1.6 permits the disclosure.

See also Washington Comment [23].

Acting Competently to Preserve Confidentiality

[16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client

[18] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

Additional Washington Comments (19 - 26)

[19] The phrase "information relating to the representation" should be interpreted broadly. The "information" protected by this Rule includes, but is not necessarily limited to, confidences and secrets. "Confidence" refers to information protected by the attorney client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

Disclosure Adverse to Client

[20] Washington's Rule 1.6(b)(2), which authorizes disclosure to prevent a client from committing a crime, is significantly broader than the corresponding exception in the Model Rule. While the Model Rule permits a lawyer to reveal information relating to the representation to prevent the client from "committing a crime . . . that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used the lawyer's services," Washington's Rule permits the lawyer to reveal such information to prevent the commission of any crime.

[21] [Reserved.]

[22] [Reserved.]

[23] The exceptions to the general rule prohibiting unauthorized disclosure of information relating to the representation "should not be carelessly invoked." In re Boelter, 139 Wn.2d 81, 91, 985 P.2d 328 (1999). A lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of avoidable disclosure.

[24] Washington has not adopted that portion of Model Rule 1.6(b)(6) permitting a lawyer to reveal information related to the representation to comply with "other law." Washington's omission of this phrase arises from a concern that it would authorize the lawyer to decide whether a disclosure is required by "other law," even though the right to confidentiality and the right to waive confidentiality belong to the client. The decision to waive confidentiality should only be made by a fully informed client after consultation with the client's lawyer or by a court of competent jurisdiction. Limiting the exception to compliance with a court order protects the client's interest in maintaining confidentiality while insuring that any determination about the legal necessity of revealing confidential information will be made by a court. It is the need for a judicial resolution of such issues that necessitates the omission of "other law" from this Rule.

Withdrawal

[25] After withdrawal the lawyer is required to refrain from disclosing the client's confidences, except as otherwise permitted by Rules 1.6 or 1.9. A lawyer is not prohibited from giving notice of the fact of withdrawal by this Rule, Rule 1.8(b), or Rule 1.9(c). If the lawyer's services will be used by the client in furthering a course of criminal or fraudulent conduct, the lawyer must withdraw. See Rule 1.16(a)(1). Upon withdrawal from the representation in such circumstances, the lawyer may also disaffirm or withdraw any opinion, document, affirmation, or the like. If the client is an organization, the lawyer may be in doubt about whether contemplated conduct will actually be carried out by the organization. When a lawyer requires guidance about compliance with this Rule in connection with an organizational client, the lawyer may proceed under the provisions of Rule 1.13(b).

Other

[26] This Rule does not relieve a lawyer of his or her obligations under Rule 5.4(b) of the Rules for Enforcement of Lawyer Conduct.

[Amended effective September 1, 2006; September 1, 2011.]

RPC RULE 1.7
CONFLICT OF INTEREST; CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the

lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

See also Washington Comment [36].

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

See also Washington Comment [37].

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] [Washington revision] When lawyers representing different clients in the same matter or in substantially related matters are related as parent, child, sibling, or spouse, or if the lawyers have some other close familial relationship or if the lawyers are in a personal intimate relationship with one another, there may be a significant risk that client confidences will be revealed and that the lawyer's family or other familial or intimate relationship will interfere with both loyalty and independent professional judgment. See Rule 1.8(l). As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer so related to another lawyer ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from such relationships is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rules 1.8(k) and 1.10.

[12] [Reserved.]

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation.

See Rule 1.1 (Competence) and Rule 1.3 (Diligence).

[16] [Washington revision] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states other than Washington limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.
See Washington Comment [38].

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

See also Washington Comment [38].

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

See also Washington Comment [39].

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] [Reserved.]

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer

seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them. See also Washington Comment [40].

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16. See also Washington Comment [41].

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Additional Washington Comments (36 - 41)

General Principles

[36] Notwithstanding Comment [3], lawyers providing short-term limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or court are not normally required to systematically screen for conflicts of interest before undertaking a representation. See Comment [1] to Rule 6.5. See Rule 1.2(c) for requirements applicable to the provision of limited legal services.

Identifying Conflicts of Interest: Material Limitation

[37] Use of the term "significant risk" in paragraph (a)(2) is not intended to be a substantive change or diminishment in the standard required under former Washington RPC 1.7(b), i.e., that "the representation of the client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests."

Prohibited Representations

[38] In Washington, a governmental client is not prohibited from properly consenting to a representational conflict of interest.

Informed Consent

[39] Paragraph (b)(4) of the Rule differs slightly from the Model Rule in that it expressly requires authorization from the other client before any required disclosure of information relating to that client can be made. Authorization to make a disclosure of information relating to the representation requires the client's informed consent. See Rule 1.6(a).

Nonlitigation Conflicts

[40] Under Washington case law, in estate administration matters the client is the personal representative of the estate.

Special Considerations in Common Representation

[41] Various legal provisions, including constitutional, statutory and common law, may define the duties of government lawyers in representing public officers, employees, and agencies and should be considered in evaluating the nature and propriety of common representation.

[Amended effective September 1, 2006.]

RULE 1.8
CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, expect as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of the client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include spouse, child, grandchild, parent, grandparent or other relative or individual with who the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

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

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

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

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, confirmed in writing. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not:

(1) have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them at the time the client-lawyer relationship commenced; or

(2) have sexual relations with a representative of a current client if the sexual relations would, or would likely, damage or prejudice the client in the representation.

(3) For purposes of Rule 1.8(j), "lawyer" means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to anyone of them shall apply to all of them.

(l) A lawyer who is related to another lawyer as parent, child, sibling, or spouse, or who has any other close familial or intimate relationship with another lawyer, shall not represent a client in a matter directly adverse to a person who the lawyer knows is represented by the related lawyer unless:

(1) the client gives informed consent to the representation; and

(2) the representation is not otherwise prohibited by Rule 1.7

(m) A lawyer shall not:

(1) make or participate in making an agreement with a governmental entity for the

delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm:

(i) to bear the cost of providing conflict counsel; or

(ii) to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel; or

(2) knowingly accept compensation for the delivery of indigent defense services from a lawyer who has entered into a current agreement in violation of paragraph (m)(1).

Comment

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] [Washington revision] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), and 8.1.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the

lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] [Washington Revision] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. See Washington Comment [21].

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule. 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[14] [Washington revision] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless permitted by law and the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] [Washington revision] When the client is an organization, paragraph (j) of this Rule applies to a lawyer for the organization (whether inside or outside counsel). For purposes of this Rule, "representative of a current client" will generally be a constituent of the organization who supervises, directs or regularly consults with that lawyer on the organization's legal matters. See Comment [1] to Rule 1.13 (identifying the constituents of an organizational client).

See also Washington Comments [22] and [23].

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

Additional Washington Comments (21-29)

Financial Assistance

[21] Paragraph (e) of Washington's Rule differs form the Model Rule. Paragraph (e) is based on former Washington RPC 1.8(e). The minor structural modifications to the general prohibition on providing financial assistance to a client do not represent a change in Washington law, and paragraph (e) is intended to preserve prior interpretations of the Rule and prior Washington practice.

Client-Lawyer Sexual Relationships

[22] Paragraph (j)(2) of Washington's Rule, which prohibits sexual relationships with a representative of an organizational client, differs from the Model Rule. Comment [19] to Model Rule 1.8 was revised to be consistent with the Washington Rule.

[23] Paragraph (j)(3) of the Rule specifies that the prohibition applies with equal force to any lawyer who assists in the representation of the client, but the prohibition expressly does not apply to other members of a firm who have not assisted in the representation.

Personal Relationships

[24] Model Rule 1.8 does not contain a provision equivalent to paragraph (l) of Washington's Rule. Paragraph (l) prohibits representations based on a lawyer's personal conflict arising from his or her relationship with another lawyer. Paragraph (l) is a revised version of former Washington RPC 1.8(i). See also Comment [11] to Rule 1.7.

Indigent Defense Contracts

[25] Model Rule 1.8 does not contain a provision equivalent to paragraph (m) of Washington's Rule. Paragraph (m) specifies that it is a conflict of interest for a lawyer to enter into or accept compensation under an indigent defense contract that does not provide for the payment of funds, outside of the contract, to compensate conflict counsel for fees and expenses.

[26] Where there is a right to a lawyer in court proceedings, the right extends to those who are financially unable to obtain one. This right is affected in some Washington counties and municipalities through indigent defense contracts, i.e., contracts entered into between lawyers or law firms willing to provide defense services to those financially unable to obtain them and the governmental entities obliged to pay for those services. When a lawyer or law firm providing indigent defense services determines that a disqualifying conflict of interest precludes representation of a particular client, the lawyer or law firm must withdraw and substitute counsel must be obtained for the client. See Rule 1.16. In these circumstances, substitute counsel is typically known as "conflict counsel."

[27] An indigent defense contract by which the contracting lawyer or law firm assumes the obligation to pay conflict counsel from the proceeds of the contract, without further payment from the governmental entity, creates an acute financial disincentive for the lawyer either to investigate or declare the existence of actual or potential conflicts of interest requiring the employment of conflict counsel. For this reason, such contracts involve an inherent conflict between the interests of the client and the personal interests of the lawyer. These dangers warrant a prohibition on making such an agreement or accepting compensation for the delivery of indigent defense services from a lawyer that has done so. See ABA Standards for Criminal Justice, Std. 5-3.3(b)(vii) (3d ed. 1992) (elements of a contract for defense services should include "a policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses"); People v. Barboza, 29 Cal.3d 375, 173 Cal. Rptr. 458, 627 P.2d 188 (Cal. 1981) (structuring public defense contract so that more money is available for operation of office if fewer outside attorneys are engaged creates "inherent and irreconcilable conflicts of interest").

[28] Similar conflict-of-interest considerations apply when indigent defense contracts require the contracting lawyer or law firm to pay for the costs and expenses of investigation and expert services from the general proceeds of the contract. Paragraph (m)(l)(ii) prohibits agreements that do not provide that such services are to be funded separately from the amounts designated as compensation to the contracting lawyer or law firm.

[29] Because indigent defense contracts involve accepting compensation for legal services from a third-party payer, the lawyer must also conform to the requirements of paragraph (f). See also Comments [11][12].

[Amended effective September 1, 2006; April 24, 2007; September 1, 2008; September 1, 2011.]

RULE 1.9
DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer

formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom that lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] [Washington revision] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(e) and (b) for the restrictions on a firm when a lawyer initiates an association with the firm or has terminated an association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] [Washington revision] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(e). With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

[Amended effective September 1, 2006.]

RULE 1.10
IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) Except as provided in paragraph (e), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

(e) When the prohibition on representation under paragraph (a) is based on Rule 1.9(a) or (b), and arises out of the disqualified lawyer's association with a prior firm, no other lawyer in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified unless:

(1) the personally disqualified lawyer is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;

(2) the former client of the personally disqualified lawyer receives notice of the conflict and the screening mechanism used to prohibit dissemination of information relating to the former representation;

(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified lawyer serves on his or her former law firm and former client an affidavit attesting that the personally disqualified lawyer will not participate in the matter and will not discuss the matter or the representation with any other lawyer or employee of his or her current law firm, and attesting that during the period

of the lawyer's personal disqualification those lawyers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified lawyer. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The law firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.

Comment

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification

[2] [Washington revision] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b) and (e).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] [Reserved. See Washington Comment [11].]

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] [Washington revision] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a definition of informed consent, see Rule 1.0(e).

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

Additional Washington Comments (9 - 13)

Principles of Imputed Disqualification

[9] The screening provisions in Washington RPC 1.10 differ from those in the Model Rule. Washington's adoption of a nonconsensual screening provision in 1993 preceded the ABA's 2009 adoption of a similar approach in the Model Rules. Washington's rule was amended and the screening provision recodified as paragraph (e) in 2006, and paragraphs (a) and (e) were further amended in 2011 to conform more closely to the Model Rules version. None of the amendments to this Rule, however, represents a change in Washington law. The Rule preserves Washington practice established in 1993 with respect to screening by allowing a lawyer personally disqualified from representing a client based on the lawyer's prior association with a firm to be screened from a representation to be undertaken by other members of the lawyer's new firm under the circumstances set forth in paragraph (e). See Washington Comment [10].

[10] Washington's RPC 1.10 was amended in 1993 to permit representation with screening under certain circumstances. Rule 1.10(e) retains the screening mechanism adopted as Washington RPC 1.10(b) in 1993, thus allowing a firm to

represent a client with whom a lawyer in the firm has a conflict based on his or her association with a prior firm if the lawyer is effectively screened from participation in the representation, is apportioned no part of the fee earned from the representation and the client of the former firm receives notice of the conflict and the screening mechanism. However, prior to undertaking the representation, non-disqualified firm members must evaluate the firm's ability to provide competent representation even if the disqualified member can be screened in accordance with this Rule. While Rule 1.10 does not specify the screening mechanism to be used, the law firm must be able to demonstrate that it is adequate to prevent the personally disqualified lawyer from receiving or transmitting any confidential information or from participating in the representation in any way. The screening mechanism must be in place over the life of the representation at issue and is subject to judicial review at the request of any of the affected clients, law firms, or lawyers. However, a lawyer or law firm may rebut the presumption that information relating to the representation has been transmitted by serving an affidavit describing the screening mechanism and affirming that the requirements of the Rule have been met.

[11] Under Rule 5.3, this Rule also applies to nonlawyer assistants and lawyers who previously worked as nonlawyers at a law firm. See Daines v. Alcatel, 194 F.R.D. 678 (E.D. Wash. 2000); Richard v. Jain, 168 F. Supp. 2d 1195 (W.D. Wash. 2001).

[12] In serving an affidavit permitted by paragraph (e), a lawyer may serve the affidavit on the former law firm alone (without simultaneously serving the former client directly) if the former law firm continues to represent the former client and the lawyer contemporaneously requests in writing that the former law firm provide a copy of the affidavit to the former client. If the former client is no longer represented by the former law firm or if the lawyer has reason to believe the former law firm will not promptly provide the former client with a copy of the affidavit, then the affidavit must be served directly on the former client also. Serving the affidavit on a represented former client does not violate Rule 4.2 because the communication with the former client is not about the "subject of the representation" and the notice is "authorized . . . by law," i.e., the Rules of Professional Conduct.

[13] Rule 1.8(l) conflicts are not imputed to other members of a firm under paragraph (a) of this Rule unless the relationship creates a conflict of interest for the individual lawyer under Rule 1.7 and also presents a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

[Amended effective September 1, 2006; September 1, 2011.]

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

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employees of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Comment

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13, Comment [9].

[6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue

in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

[Amended effective September 1, 2006.]

RPC RULE 1.12
FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge, other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment

[1] [Washington revision] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial officer to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. There are corresponding provisions in the Code of Judicial Conduct. See CJC paragraphs (A)(1)(b) and (2)(b) (application of the Code of Judicial Conduct to part-time and pro tempore judges).

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0(e) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are state in Rule 1.0(k). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after that need for screening becomes apparent.

[Amended effective September 1, 2006.]

RPC RULE 1.13
ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) and (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(h) For purposes of this Rule, when a lawyer who is not a public officer or employee represents a discrete governmental agency or unit that is part of a broader governmental entity, the lawyer's client is the particular governmental agency or unit represented, and not the broader governmental entity of which the agency or unit is a part, unless:

(1) otherwise provided in a written agreement between the lawyer and the governmental agency or unit; or

(2) the broader governmental entity gives the lawyer timely written notice to the contrary, in which case the client shall be designated by such entity. Notice under this subsection shall be given by the person designated by law as the chief legal officer of the broader governmental entity, or in the absence of such designation, by the chief executive officer of the entity.

Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's

province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to a higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1)-(7). Under paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6(b)(2) and 1.6(b)(3) may permit the lawyer to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers

employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Additional Washington Comment (15)

[15] Paragraph (h) was taken from former Washington RPC 1.7(c); it addresses the obligations of a lawyer who is not a public officer or employee but is representing a discrete governmental agency or unit.

[Amended effective September 1, 2006.]

RPC RULE 1.14
CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as

possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must to look to the client, and not family members, to make decisions on the client's behalf.

[4] [Washington revision] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rules 1.2(d) and 1.6(b)(7).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if

dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

[Amended effective October 1, 2002; September 1, 2006.]

RULE 1.15A
SAFEGUARDING PROPERTY

(a) This Rule applies to (1) property of clients or third persons in a lawyer's possession in connection with a representation and (2) escrow and other funds held by a lawyer incident to the closing of any real estate or personal property transaction. Additionally, for all transactions in which a lawyer has selected, prepared, or completed legal documents for use in the closing of any real estate or personal property transaction, the lawyer must ensure that all funds received or held by the Closing Firm incidental to the closing of the transaction, including advances for costs and expenses, are held and maintained as set forth in this rule or LPORPC 1.12A. The lawyer's duty to ensure that all funds received or held by the Closing Firm incidental to the closing of the transaction are held and maintained as set forth in this rule or LPORPC 1.12A shall not apply to a lawyer when that lawyer's participation in the matter is incidental to the closing and (i) the lawyer or lawyer's law firm has a preexisting client-lawyer relationship with a buyer or seller in the transaction, and (ii) neither the lawyer nor the lawyer's law firm has an existing client-lawyer relationship with the Closing Firm or an LPO participating in the closing.

(b) A lawyer must not use, convert, borrow or pledge client or third person property for the lawyer's own use.

(c) A lawyer must hold property of clients and third persons separate from the lawyer's own property.

(1) A lawyer must deposit and hold in a trust account funds subject to this Rule pursuant to paragraph (h) of this Rule.

(2) Except as provided in Rule 1.5(f), and subject to the requirements of paragraph (h) of this Rule, a lawyer shall deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(3) A lawyer must identify, label and appropriately safeguard any property of clients or third persons other than funds. The lawyer must keep records of such property that identify the property, the client or third person, the date of receipt and the location of safekeeping. The lawyer must preserve the records for seven years after return of the property.

(d) A lawyer must promptly notify a client or third person of receipt of the client or third person's property.

(e) A lawyer must promptly provide a written accounting to a client or third person after distribution of property or upon request. A lawyer must provide at least annually a written accounting to a client or third person for whom the lawyer is holding funds.

(f) Except as stated in this Rule, a lawyer must promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive.

(g) If a lawyer possesses property in which two or more persons (one of which may be the lawyer) claim interests, the lawyer must maintain the property in trust until the dispute is resolved. The lawyer must promptly distribute all undisputed portions of the property. The lawyer must take reasonable action to resolve the dispute, including, when appropriate, interpleading the disputed funds.

(h) A lawyer must comply with the following for all trust accounts:

(1) No funds belonging to the lawyer may be deposited or retained in a trust account except as follows:

(i) funds to pay bank charges, but only in an amount reasonably sufficient for that purpose;

(ii) funds belonging in part to a client or third person and in part presently or potentially to the lawyer must be deposited and retained in a trust account, but any portion belonging to the lawyer must be withdrawn at the earliest reasonable time; or

(iii) funds necessary to restore appropriate balances.

(2) A lawyer must keep complete records as required by Rule 1.15B.

(3) A lawyer may withdraw funds when necessary to pay client costs. The lawyer may withdraw earned fees only after giving reasonable notice to the client of the intent to do so, through a billing statement or other document.

(4) Receipts must be deposited intact.

(5) All withdrawals must be made only to a named payee and not to cash. Withdrawals must be made by check or by bank transfer.

(6) Trust account records must be reconciled as often as bank statements are generated or at least quarterly. The lawyer must reconcile the check register balance to the bank statement balance and reconcile the check register

balance to the combined total of all client ledger records required by Rule 1.15B(a)(2).

(7) A lawyer must not disburse funds from a trust account until deposits have cleared the banking process and been collected, unless the lawyer and the bank have a written agreement by which the lawyer personally guarantees all deposits to the account without recourse to the trust account.

(8) Disbursements on behalf of a client or third person may not exceed the funds of that person on deposit. The funds of a client or third person must not be used on behalf of anyone else.

(9) Only a lawyer admitted to practice law may be an authorized signatory on the account.

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ELC 15.7(d) and ELC 15.7(e). In the exercise of ordinary prudence, a lawyer may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ELC 15.7(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, a lawyer shall apply the following criteria:

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ELC 15.4 and ELC 15.7(e).

(2) Client or third-person funds that will produce a positive net return to the client or third person must be placed in one of the following two types of non-IOLTA trust accounts unless the client or third person requests that the funds be deposited in an IOLTA account:

(i) a separate interest-bearing trust account for the particular client or third person with earned interest paid to the client or third person; or

(ii) a pooled interest-bearing trust account with sub-accounting that allows for computation of interest earned by each client or third person's funds with the interest paid to the appropriate client or third person.

(3) In determining whether to use the account specified in paragraph (i)(1) or an account specified in paragraph (i)(2), a lawyer must consider only whether the funds will produce a positive net return to the client or third person, as determined by the following factors:

(i) the amount of interest the funds would earn based on the current rate of interest and the expected period of deposit;

(ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client or third person's benefit; and

(iii) the capability of financial institutions to calculate and pay interest to individual clients or third persons if the account in paragraph (i)(2)(ii) is used.

The provisions of paragraph (i) do not relieve a lawyer or law firm from any obligation imposed by these Rules.

Washington Comments

[1] A lawyer must also comply with the recordkeeping rule for trust accounts, Rule 1.15B.

[2] Client funds include, but are not limited to, the following: legal fees and costs that have been paid in advance other than retainers and flat fees complying with the requirements of Rule 1.5(f), funds received on behalf of a client, funds to be paid by a client to a third party through the lawyer, other funds subject to attorney and other liens, and payments received in excess of amounts billed for fees.

[3] This Rule applies to property held in any fiduciary capacity in connection with a representation, whether as trustee, agent, escrow agent, guardian, personal representative, executor, or otherwise.

[4] The inclusion of ethical obligations to third persons in the handling of trust funds and property is not intended to expand or otherwise affect existing law regarding a Washington lawyer's liability to third parties other than clients. See, e.g., Trask v. Butler, 123 Wn.2d 835, 872 P.2d 1080 (1994); Hetzel v. Parks, 93 Wn. App. 929, 971 P.2d 115 (1999).

[5] Property covered by this Rule includes original documents affecting legal rights such as wills or deeds.

[6] A lawyer has a duty to take reasonable steps to locate a client or third person for whom the lawyer is holding funds or property. If after taking reasonable steps, the lawyer is still unable to locate the client or third person, the lawyer should treat the funds as unclaimed property under the Uniform Unclaimed Property Act, RCW 63.29.

[7] A lawyer may not use as a trust account an account in which funds are periodically transferred by the financial institution between a trust account and an uninsured account or other account that would not qualify as a trust account under this Rule or ELC 15.7.

[8] If a lawyer accepts payment of an advanced fee deposit by credit card, the payment must be deposited directly into the trust account. It cannot be deposited into a general account and then transferred to the trust account. Similarly, credit card payments of earned fees, of retainers meeting the requirements of Rule 1.5(f)(1), and of flat fees meeting the requirements

of Rule 1.5(f)(2) cannot be deposited into the trust account and then transferred to another account.

[9] Under paragraph (g), the extent of the efforts that a lawyer is obligated to take to resolve a dispute depend on the amount in dispute, the availability of methods for alternative dispute resolution, and the likelihood of informal resolution.

[10] The requirement in paragraph (h)(4) that receipts must be deposited intact means that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, commonly known as a split deposit.

[11] Paragraph (h)(7) permits Washington lawyers to enter into written agreements with the trust account financial institution to provide for disbursement of trust deposits prior to formal notice of dishonor or collection. In essence the trust account bank is agreeing to or has guaranteed a loan to the lawyer and the client for the amount of the trust deposit pending collection of that deposit from the institution upon which the instrument was written. A Washington lawyer may only enter into such an arrangement if 1) there is a formal written agreement between the attorney and the trust account institution, and 2) the trust account financial institution provides the lawyer with written assurance that in the event of dishonor of the deposited instrument or other difficulty in collecting the deposited funds, the financial institution will not have recourse to the trust account to obtain the funds to reimburse the financial institution. A lawyer must never use one client's money to pay for withdrawals from the trust account on behalf of another client who is paid subject to the lawyer's guarantee. The trust account financial institution must agree that the institution will not seek to fund the guaranteed withdrawal from the trust account, but will instead look to the lawyer for payment of uncollectible funds. Any such agreement must ensure that the trust account funds or deposits of any other client's or third person's money into the trust account would not be affected by the guarantee.

[12] The Legal Foundation of Washington was established by Order of the Supreme Court of Washington.

[13] A lawyer may, but is not required to, notify the client of the intended use of funds paid to the Foundation.

[14] If the client or third person requests that funds that would be deposited in a non-IOLTA trust account under paragraph (i)(2) instead be held in the IOLTA account, the lawyer should document this request in the lawyer's trust account records and preferably should confirm the request in writing to the client or third person.

[15] A lawyer may not receive from financial institutions earnings credits or any other benefit from the financial institution based on the balance maintained in a trust account.

[16] The term "Closing Firm" as used in this rule has the same definition as in ELPOC 1.3(g).

[17] The lawyer may satisfy the requirement of paragraph (a), that the lawyer must ensure that all funds received or held by the Closing Firm incidental to the closing of the transaction including advances for costs and expenses, are held and maintained as set forth in this rule or LPORPC 1.12A, by obtaining a certification or other reasonable assurance from the Closing Firm that the funds are being held in accordance with RPC 1.15A and/or LPORPC 1.12A. The lawyer is not required to personally inspect the books and records of the Closing Firm.

The last sentence of Paragraph (a) is intended to relieve a lawyer from the duties of paragraph (a) only if the lawyer or the lawyer's law firm has a previous client-lawyer relationship with one of the parties to the transaction and that party is a buyer or seller. Lawyers may be called on by clients to review deeds prepared during the escrow process, or may be asked to prepare special deeds such as personal representative's deeds for use in the closing. A lawyer may also be asked by a client to review documents such as settlement statements or tax affidavits that have been prepared for the closing. Such activities are limited in scope and are only incidental to the closing. The exception stated in the last sentence of paragraph (a) does not apply if the lawyer or the lawyer's law firm has an existing client-lawyer relationship with the Closing Firm or with a limited practice officer who is participating in the closing.

[18] When selecting a financial institution for purposes of depositing and holding funds in a trust account, a lawyer is obligated to exercise ordinary prudence under paragraph (i). All trust accounts must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments. See ELC 15.7(d).

[19] Only those financial institutions authorized by the Legal Foundation of Washington (Legal Foundation) are eligible to offer trust accounts to Washington lawyers. To become authorized, the financial institution must satisfy the Legal Foundation that it qualifies as an authorized financial institution under ELC 15.7(c) and must have on file with the Legal Foundation a current Overdraft Notification Agreement under ELC 15.4. A list of all authorized financial institutions is maintained and published by the Legal Foundation and is available to any person on request.

[20] Upon receipt of a notification of a trust account overdraft, a lawyer must comply with the duties set forth in ELC 15.4(d) (lawyer must promptly notify the Office of Disciplinary Counsel of the Washington State Bar Association and include a full explanation of the cause of the overdraft).

[21] A unilateral deposit of funds belonging in part to a client or third party into a lawyer's non-trust account does not constitute a violation of paragraph (c) of this Rule if the lawyer promptly identifies the portion of the funds belonging to the client or third party, deposits those funds into a trust account, and notifies the client or third party of the deposit. A unilateral

deposit of funds belonging in part to a lawyer into a trust account does not constitute a violation of paragraph (h) of this Rule if the lawyer promptly identifies the lawyer-owned funds and withdraws them from the trust account. For purposes of this provision, a unilateral deposit refers to funds deposited directly by a client or third party by means of electronic funds transfer where the lawyer has not directed, invited, or encouraged a deposit that would constitute a violation of this Rule and has taken reasonable precautions to prevent such a deposit.

[Amended effective September 1, 2006. amended effective November 18, 2008; January 1, 2009; December 1, 2009; September 1, 2011; September 1, 2012]

RPC RULE 1.15B
REQUIRED TRUST ACCOUNT RECORDS

(a) A lawyer must maintain current trust account records. They may be in electronic or manual form and must be retained for at least seven years after the events they record. At minimum, the records must include the following:

(1) Checkbook register or equivalent for each trust account, including entries for all receipts, disbursements, and transfers, and containing at least:

(i) identification of the client matter for which trust funds were received, disbursed, or transferred;

(ii) the date on which trust funds were received, disbursed, or transferred;

(iii) the check number for each disbursement;

(iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and

(v) the new trust account balance after each receipt, disbursement, or transfer;

(2) Individual client ledger records containing either a separate page for each client or an equivalent electronic record showing all individual receipts, disbursements, or transfers, and also containing:

(i) identification of the purpose for which trust funds were received, disbursed, or transferred;

(ii) the date on which trust funds were received, disbursed or transferred;

(iii) the check number for each disbursement;

(iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and

(v) the new client fund balance after each receipt, disbursement, or transfer;

(3) Copies of any agreements pertaining to fees and costs;

(4) Copies of any statements or accountings to clients or third parties showing the disbursement of funds to them or on their behalf;

(5) Copies of bills for legal fees and expenses rendered to clients;

(6) Copies of invoices, bills or other documents supporting all disbursements or transfers from the trust account;

(7) Bank statements, copies of deposit slips, and cancelled checks or their equivalent;

(8) Copies of all trust account client ledger reconciliations; and

(9) Copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them.

(b) Upon any change in the lawyer's practice affecting the trust account, including dissolution or sale of a law firm or suspension or other change in membership status, the lawyer must make appropriate arrangements for the maintenance of the records specified in this Rule.

Washington Comments

[1] Paragraph (a)(3) is not intended to require that fee agreements be in writing. That issue is governed by Rule 1.5.

[2] If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential.

[3] Paragraph (a)(9) does not require a lawyer to retain the entire client file for a period of seven years, although many lawyers will choose to do so for other reasons. Rather, under this paragraph, the lawyer must retain only those portions of the file necessary for a complete understanding of the financial transactions. For example, if a lawyer received proceeds of a settlement on a client's behalf, the lawyer would need to retain a copy of the settlement agreement. In many cases, there will be nothing in the client file that needs to be retained other than the specific documents listed in paragraphs (a)(2)-(8).

[Amended effective September 1, 2006.]

RULE 1.16
DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall, notwithstanding RCW 2.44.040, withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack

the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15A.

[Amended effective September 1, 2006.]

RPC RULE 1.17
SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) [Reserved.]

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller

[2] [Reserved.]

[3] [Reserved.]

[4] [Reserved.]

[5] [Reserved.]

Sale of Entire Practice or Entire Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] [Washington revision] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

Additional Washington Comment (16)

[16] If, at the time the notice under paragraph (c) is given, the buyer or seller knows of a conflict that would preclude the buyer from representing a client of the seller, the notice to that client should inform the client of the conflict and the need for the client to obtain substitute counsel or retrieve the file. When such a conflict exists, the notice described in paragraph (c)(3) cannot be given because there can be no presumption that the client's file will be transferred to the buyer.

[Adopted effective September 1, 2006.]

RPC RULE 1.18
DUTIES TO PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information

learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client or except as provided in paragraph (e).

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraphs (d) or (e). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

(e) A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. The prospective client may also expressly consent to the lawyer's subsequent use of information received from the prospective client.

Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] [Washington revision] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a). See also Washington Comment [10].

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] [Reserved. Comment [5] to Model Rule 1.18 is codified, with minor modifications, as paragraph (e). See Rule 1.0(e) for the definition of informed consent.]

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the

lawyer's care, see Rule 1.15A.

Additional Washington Comments (10 - 13)

[10] Unilateral communications from individuals seeking legal services do not generally create a relationship covered by this Rule, unless the lawyer invites unilateral confidential communications. The public dissemination of general information concerning a lawyer's name or firm name, practice area and types of clients served, and contact information, is not in itself, an invitation to convey unilateral confidential communications nor does it create a reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship.

[11] This Rule is not intended to modify existing case law defining when a client-lawyer relationship is formed. See Bohn v. Cody, 119 Wn.2d 357, 363, 832 P.2d 71 (1992); In re McGlothen, 99 Wn.2d 515, 522, 663 P.2d 1330 (1983). See also Scope [17].

[12] For purposes of this Rule, "significantly harmful" means more than de minimis harm.

[13] Pursuant to statute or other law, government officers and employees may be entitled to defense and indemnification by the government. In these circumstances, a government lawyer may find it necessary to obtain information from a government officer or employee to determine if he or she meets the criteria for representation and indemnification. In this situation, the government lawyer is acting on behalf of the government entity as the client, and this Rule would not apply. The government lawyer shall comply with Rule 4.3 in obtaining such information.

[Adopted effective September 1, 2006.]

RPC RULE 2.1
ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

[Amended effective September 1, 2006.]

RPC RULE 2.2
(Deleted)

Washington Comment

[1] Former Washington RPC 2.2 governed lawyers acting as intermediaries between clients. When representing multiple clients in the same matter, a lawyer must comply with Rule 1.7. A number of special considerations apply when a lawyer acts as an intermediary and represents multiple clients in the same matter. See Comments [29] - [33] to Rule 1.7.

[Amended effective September 1, 2006.]

RPC RULE 2.3
EVALUATION FOR USE BY THIRD PERSONS

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonable should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives in formed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Comment

Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client

[3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be

described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1.

Obtaining Client's Informed Consent

[5] Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 1.6(a) and 1.0(e).

Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

[Amended effective September 1, 2006.]

RPC RULE 2.4
LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Comment

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

[Amended effective September 1, 2006.]

RPC RULE 3.1
MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

[Amended effective September 1, 2006.]

RPC RULE 3.2
EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not legitimate interest of the client.

[Amended effective September 1, 2006.]

RULE 3.3
CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by Rule 1.6;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding.

(c) If the lawyer has offered material evidence and comes to know of its falsity, the lawyer shall promptly disclose this fact to the tribunal unless such disclosure is prohibited by Rule 1.6.

(d) If the lawyer has offered material evidence and comes to know of its falsity, and disclosure of this fact is prohibited by Rule 1.6, the lawyer shall promptly make reasonable efforts to convince the client to consent to disclosure. If the client refuses to consent to disclosure, the lawyer may seek to withdraw from the representation in accordance with Rule 1.16.

(e) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(f) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment

[1] [Washington revision] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] [Washington revision] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also Comment [4] to Rule 8.4.

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] [Reserved.]

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] [Washington revision] The duties stated in paragraphs (a) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions other than Washington, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See State v. Berrysmith, 87 Wn. App. 268, 944 P.2d 397 (1997), review denied, 134 Wn.2d 1008, 954 P.2d 277 (1998).

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that

evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] [Reserved.]

Remedial Measures

[10] [Reserved.]

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] [Washington revision] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] [Washington revision] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. See also Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation as permitted by Rule 1.6.

[Amended effective September 1, 2006.]

RULE 3.4:
FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; or

(e) in trial, allude to any matter that the lawyer does not reasonably

believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.

(f) [Reserved.]

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] [Reserved.]

Additional Washington Comment (5)

[5] Washington did not adopt Model Rule 3.4(f), which delineates circumstances in which a lawyer may request that a person other than a client refrain from voluntarily giving information to another party, because the Model Rule is inconsistent with Washington law. See Wright v. Group Health Hospital, 103 Wn.2d 192, 691 P.2d 564 (1984). Advising or requesting that a person other than a client refrain from voluntarily giving information to another party may violate other Rules. See, e.g., Rule 8.4(d).

[Amended effective September 1, 2006; September 1, 2011.]

RPC RULE 3.5
IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

Comment

[1] [Washington revision] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Washington Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

[Amended effective September 1, 2006.]

RPC RULE 3.6
TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of the person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Comment

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial;

or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

Additional Washington Comment (9)

[9] For additional guidance in applying this Rule, see the Guidelines for Applying Rule 3.6, reproduced in the Appendix to the Rules of Professional Conduct.

[Amended effective September 1, 2006.]

RPC RULE 3.7
LAWYER AS WITNESS

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case;

(3) disqualification of the lawyer would work substantial hardship on the client; or

(4) the lawyer has been called by the opposing party and the court rules that the lawyer may continue to act as an advocate; or

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Comment

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] [Washington revision] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(4). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] [Washington revision] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) or (a)(4) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(e) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

Additional Washington Comment (8)

[8] When a lawyer is called to testify as a witness by the adverse party, there is a risk that Rule 3.7 is being inappropriately used as a tactic to obtain disqualification of the lawyer. Paragraph (a)(4) is intended to confer discretion on the tribunal in determining whether disqualification is truly warranted in such circumstances. The provisions of paragraph (a)(4) were taken from former Washington RPC 3.7(c).

[Amended effective September 1, 2006.]

RULE 3.8
SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense and, in connection with sentencing, disclose to the defense and to the tribunal all mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor believes:

(1) the information sought is not protected from disclosure by an applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor?s action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant is innocent of the offense of which the defendant was convicted the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor?s jurisdiction,

(A) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(B) make reasonable efforts to inquire into the matter, or make reasonable efforts to cause the appropriate law enforcement agency to undertake an investigation into the matter.

(h)[Reserved.]

(i) A prosecutor?s independent judgment, made in good faith, that the evidence is not of such nature as to trigger the obligations of paragraph (g) of this Rule, though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Comment

[1] [Washington Revision.] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. The extent of mandated remedial action is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Competent representation of the government may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor?s extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer?s office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[7] [Washington revision.] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor?s jurisdiction was convicted of a crime that the person is innocent of committing, paragraph (g) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor?s jurisdiction, paragraph (g) requires the prosecutor to make reasonable efforts to inquire into the matter to determine whether the defendant is in fact innocent, or make reasonable efforts to cause the appropriate law enforcement agency to undertake an investigation into the matter.

[8] [Reserved.]

[9] [Reserved. Comment [9] to Model Rule 3.8 is codified, with minor revisions, as paragraph (i).]

[Amended effective September 1, 2006, December 13, 2011.]

RULE 3.9
ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of rules 3.3(a) through (e), 3.4(a) through (c), and 3.5.

Comment

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See Rules 3.3(a) through (e), 3.4(a) through (c), and 3.5.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1 through 4.4.

[Amended effective September 1, 2006.]

RPC RULE 4.1
TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Comment

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the

lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

[Amended effective September 1, 2006.]

RPC RULE 4.2
COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Comment

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible

under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] [Washington revision] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] The prohibition on communication with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

Additional Washington Comments (10 - 11)

[10] Comment [7] to Model Rule 4.2 was revised to conform to Washington law. The phrase "or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability" and the reference to Model Rule 3.4(f) was deleted. Whether and how lawyers may communicate with employees of an adverse party is governed by Wright v. Group Health Hospital, 103 Wn.2d 192, 691 P.2d 564 (1984). See also Washington Comment [5] to Rule 3.4.

[11] An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.2(b)).

[Amended effective September 1, 2006.]

RPC RULE 4.3
DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Comment

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(f).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the

lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

Additional Washington Comments (3 - 4)

[3] An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.3(b)).

[4] Government lawyers are frequently called upon by unrepresented persons, and in some instances by the courts, to provide general information on laws and procedures relating to claims against the government. The provision of such general information by government lawyers is not a violation of this Rule.

[Amended effective September 1, 2006.]

RPC RULE 4.4
RESPECT FOR RIGHTS OF THIRD PERSON

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Comment

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

[3] Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

[Amended effective September 1, 2006.]

RULE 5.1
RESPONSIBILITIES OF PARTNERS, MANAGERS, OR SUPERVISORY LAWYERS

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] [Washington revision] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate lawyer. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

[Amended effective September 1, 1006.]

RPC RULE 5.2
RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Comment

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a

subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

[Amended effective September 1, 2006.]

RPC RULE 5.3
RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the persons conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the persons conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

[Amended effective September 1, 2006.]

RULE 5.4
PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or

in part on a profit-sharing arrangement; and

(4) [Reserved.]

(5) a lawyer authorized to complete unfinished legal business of a deceased lawyer may pay to the estate or other representative of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer (other than as secretary or treasurer) thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

Additional Washington Comment (3)

[3] Paragraph (a)(5) was taken from former Washington RPC 5.4(a)(2).

[Amended effective September 1, 2006.]

RULE 5.5
UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A lawyer authorized to provide legal services under paragraph (d)(1) of this Rule may provide legal services in this jurisdiction for no fee through a qualified legal services provider, as that term is defined in APR 8(e)(2). If such services involve representation before a court or tribunal, the lawyer shall seek admission under APR 8(b) and any fees for such admission shall be waived. The prohibition against compensation in this paragraph shall not prevent a qualified legal services provider from reimbursing a lawyer authorized to practice under paragraph (d)(1) for actual expenses incurred while rendering legal services under this pro bono exception. In addition, a qualified legal services provider shall be entitled to receive all court awarded attorney's fees for pro bono representation rendered by the lawyer.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably

expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro bono legal services on a temporary basis in Washington following determination by the Supreme Court that an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred, who are not otherwise authorized to practice law in Washington, as well as lawyers from another affected jurisdiction who seek to practice law temporarily in Washington, but who are not otherwise authorized to practice law in Washington, should consult Admission to Practice Rule 27 on Provision of Legal Services Following Determination of Major Disaster.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

[22] Model Rule 5.5 does not contain a provision equivalent to paragraph (e) of Washington's Rule. Paragraph (e) provides that in-house lawyers, government lawyers, and others authorized to practice under paragraph (d)

of this Rule may provide legal services for no fee through a qualified legal services provider, but it does not authorize any other form of law practice, whether for a fee or not, other than that authorized by Paragraph (d). For purposes of paragraph (e) of this Rule, the term "qualified legal services provider" is defined in Admission to Practice Rule 8(e)(2) as "a not for profit legal services organization whose primary purpose is to provide legal services to low income clients."

[Amended effective October 1, 2002; September 1, 2006; July 1, 2008; September 1, 2008; September 1, 2011]

RPC RULE 5.6
RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Comment

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] [Washington revision] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17, a lawyer's plea agreement in a criminal matter, or a stipulation under the Rules for Enforcement of Lawyer Conduct.

[Amended effective September 1, 2006.]

RPC RULE 5.7
RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal

services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers' engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also Rule 8.4 (Misconduct).

[Adopted effective September 1, 2006.]

RPC RULE 5.8
MISCONDUCT INVOLVING DISBARRED, SUSPENDED, RESIGNED, AND INACTIVE LAWYERS

(a) A lawyer shall not engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.

(b) A lawyer shall not engage in any of the following with an individual who is a disbarred or suspended lawyer or who has resigned in lieu of disbarment:

(1) practice law with or in cooperation with such an individual;

(2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;

(3) permit such an individual to use the lawyer's name for the practice of law;

(4) practice law for or on behalf of such an individual; or

(5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

Washington Comment

[1] The provisions of this Rule were taken from former Washington RPC 5.5(d) and (e) (as amended in 2002).

[Adopted effective September 1, 2006.]

RPC RULE 6.1
PRO BONO PUBLICO SERVICE

Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of pro bono publico service per year. In fulfilling this responsibility, the lawyers should:

(a) provide legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide pro bono publico service through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civil, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate:

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

Pro bono publico service may be reported annually on a form provided by the WSBA. A lawyer rendering a minimum of fifty (50) hours of pro bono publico service shall receive commendation for such service from the WSBA.

Comment

[1] [Washington revision] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, at a minimum, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] [Washington revision] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means or organizations primarily representing such persons. The variety of these activities should facilitate participation by government lawyers, even when restrictions may exist on their engaging in the outside practice of law.

[3] [Washington revision] Persons eligible for legal services under paragraphs (a)(1) are those who qualify for services provided by a qualified legal services provider (see Washington Comment [14]) and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services under paragraphs (a)(1) and (2) include those rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] [Washington revision] A lawyer's responsibility under this Rule can be fulfilled either through the activities described in paragraph (a)(1) and (2) or in a variety of ways as set forth in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] [Washington revision] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving in a volunteer capacity on bar association committees or on boards of pro bono or legal services programs, taking part in Law Week activities, acting as an uncompensated continuing legal education instructor, an uncompensated mediator or arbitrator and engaging in uncompensated legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] [Reserved.]

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Additional Washington Comments (13 - 16)

[13] Washington's version of this Rule differs from the Model Rule. Washington's Rule 6.1 specifies an aspirational minimum of thirty hours of pro bono publico legal services per year rather than fifty, but provides for presentation of a service recognition award to those lawyers reporting to the WSBA a minimum of fifty hours. Unlike the Model Rule, paragraph (a) of Washington's Rule does not specify that the majority of the pro bono publico legal service hours should be provided without fee or expectation of fee. And Washington's Rule does not include the final paragraph of the Model Rule relating to voluntary contributions of financial support to legal services organizations. The provisions of Rule 6.1 were taken from former Washington RPC 6.1 (as amended in 2003).

[14] For purposes of this Rule, a "qualified legal services provider" is a not-for-profit legal services organization whose primary purpose is to provide legal services to low-income clients.

[15] Pro bono publico service does not include services rendered for wages or other compensation by lawyers employed by qualified legal services providers (as that term is defined in Washington Comment [14]), government agencies, or other organizations as part of their employment.

[16] The amount of time spent rendering pro bono publico services should be calculated on the same basis that lawyers calculate their time on billable matters. For example, if time spent traveling to a client meeting or to a court hearing is considered to be part of the time for which a paying client would be billed, it is appropriate to include such time in calculating the number of pro bono publico service hours rendered under this Rule.

[Amended effective September 1, 2003; September 1, 2006.]

RPC RULE 6.2
ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Comment

[1] [Washington revision] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. A lawyer may be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

[Amended effective September 1, 2006.]

RPC RULE 6.3
MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Comment

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

[Amended effective September 1, 2006.]

RPC RULE 6.4
LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Comment

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefited.

[Amended effective September 1, 2006.]

RPC RULE 6.5
NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICE PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter and without expectation that the lawyer will receive a fee from the client for the services provided:

(1) is subject to Rules 1.7, 1.9(a), and 1.18(c) only if the lawyer knows that the representation of the client involves a conflict of interest, except that those Rules shall not prohibit a lawyer from providing limited legal services sufficient only to determine eligibility of the client for assistance by the program and to make an appropriate referral of the client to another program;

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter; and

(3) notwithstanding paragraphs (1) and (2), is not subject to Rules 1.7, 1.9(a), 1.10, or 1.18(c) in providing limited legal services to a client if:

(i) the program lawyers representing the opposing clients are screened by effective means from information relating to the representation of the opposing client;

(ii) each client is notified of the conflict and the screening mechanism used to prohibit dissemination of information relating to the representation; and

(iii) the program is able to demonstrate by convincing evidence that no material information relating to the representation of the opposing client was transmitted by the personally disqualified lawyers to the lawyer representing the conflicting client before implementation of the screening mechanism and notice to the opposing client.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Comment

[1] [Washington revision] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9, 1.10, and 1.18.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] [Washington revision] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a), or 1.18(c) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by

Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

Additional Washington Comments (6 - 7)

[6] Washington's version of this Rule differs from the Model Rule. The differences accommodate the unique civil legal services delivery system, which uses a statewide centralized telephone intake and referral system for low-income persons to access free civil legal services. The Rule recognizes that lawyers who provide intake and referral services such as these will necessarily at times receive confidential information from adverse parties. The risk that such information will be used against the material interests of either party is relatively low in comparison to the need for services, and when such a risk exists, protections of lawyer screening and notice to the client are required by the Rule.

[7] Paragraph (a)(3) was taken from former Washington RPC 6.5(a)(3) as enacted in 2002. The replacement of "confidences and secrets" in paragraph (a)(3) with "information relating to the representation" was necessary to conform the language of the Rule to a terminology change in Rule 1.6. No substantive change is intended. See Comment [19] to Rule 1.6.

[Adopted effective September 1, 2006.]

RPC RULE 7.1
COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[Amended effective September 1, 2006.]

RPC RULE 7.2
ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable cost of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Comment

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Lawyers are not permitted to pay others for channeling professional work. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[6] [Washington revision] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] [Washington revision] A lawyer also may agree to refer clients to another lawyer in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements

must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Additional Washington Comment (9)

[9] That portion of Model Rule 7.2(b)(4) that allows lawyers to enter into reciprocal referral agreements with nonlawyer professionals was not adopted.

[Amended effective September 1, 2006.]

RPC RULE 7.3
DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not directly or through a third person, by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer;

(2) has a family, close personal, or prior professional relationship with the lawyer; or

(3) has consented to the contact by requesting a referral from a not-for-profit lawyer referral service.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if;

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) [Reserved.]

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] [Washington revision] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) is not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[7] [Reserved.]

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

Additional Washington Comments (9 - 12)

[9] A lawyer who receives a referral from a third party should exercise caution in contacting the prospective client directly by in-person, live telephone, or real-time electronic contact. Such contact is generally prohibited by this Rule unless the prospective client has asked to be contacted by the lawyer. A prospective client may request such contact through a third party. Prior to initiating contact with the prospective client, however, the lawyer should confirm with the source of the referral that the prospective client has indeed made such a request. Similarly, when making referrals to other lawyers, the referring lawyer should discuss with the prospective client whether he or she wishes to be contacted directly.

[10] Those in need of legal representation often seek assistance in finding a lawyer through a lawyer referral service. Washington adopted paragraph (a)(3) in order to facilitate communication between lawyers and potential clients who have specifically requested a referral from a not-for-profit lawyer referral service. Under this paragraph, a lawyer receiving such a referral may contact the potential client directly by in-person, live telephone, or real-time electronic contact to discuss possible representation.

[11] Washington did not adopt paragraph (c) of the Model Rule relating to labeling of communications with prospective clients. A specific labeling requirement is unnecessary in light of the prohibition in Rule 7.1 against false or misleading communications.

[12] The phrase "directly or through a third person" in paragraph (a) was retained from former Washington RPC 7.3(a).

[Amended effective September 1, 2006.]

RULE 7.4
COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is a specialist in a particular field of law, except upon issuance of an identifying certificate, award, or recognition by a group, organization, or association, a lawyer may use the terms "certified", "specialist", "expert", or any other similar term to describe his or her qualifications as a lawyer or his or her qualifications in any subspecialty of the law. If the terms are used to identify any certificate, award, or recognition by any group, organization, or association, the reference must:

(1) be truthful and verifiable and otherwise comply with Rule 7.1;

(2) identify the certifying group, organization, or association; and

(3) state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the certificate, award, or recognition is not a requirement to practice law in the state of Washington.

Comment

[1] [Washington revision] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] [Reserved.]

Additional Washington Comment (4)

[4] Statements indicating that the lawyer is a "specialist," practices a "specialty," "specializes in" particular fields, and the like, are subject to the limitations set forth in paragraph (d). The provisions of paragraph (d) were taken from former Washington RPC 7.4(b).

[Amended effective September 1, 2006.]

RPC RULE 7.5
FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.

Comment

[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not

denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

Additional Washington Comment (3)

[3] Lawyers practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers who are not 1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or 2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or 3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers. (The provisions of this Comment were taken from former Washington RPC 7.5(d).)

[Amended effective July 2, 1996; September 1, 2006.]

RPC RULE 7.6
POLITICAL CONTRIBUTIONS TO OBTAIN GOVERNMENT LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

Comment

[1] Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for judicial and other public office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency, or to obtain appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office. Political contributions in initiative and referendum elections are not included. For purposes of this Rule, the term "political contribution" does not include uncompensated services.

[3] Subject to the exceptions below, (i) the term "government legal engagement" denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term "appointment by a judge" denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.

[4] The term "lawyer or law firm" includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occur. For example, one or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer's firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4(b) is implicated.

[Adopted effective September 1, 2006.]

RPC RULE 8.1
BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the Bar, or a lawyer in connection with a bar admission or reinstatement application, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Comment

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

Additional Washington Comment (4)

[4] A lawyer's obligations under this Rule are in addition to the lawyer's obligations under the Rules for Enforcement of Lawyer Conduct.

[Amended effective October 1, 2002; September 1, 2006.]

RPC RULE 8.2
JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications, integrity, or record of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Comment

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

[Amended effective September 1, 2006.]

RPC RULE 8.3
REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, should inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judges fitness for office should inform the appropriate authority.

(c) This Rule does not permit a lawyer to report the professional misconduct of another lawyer or a judge to the appropriate authority if doing so would require the lawyer to disclose information otherwise protected by Rule 1.6.

Comment

[1] [Washington revision] Lawyers are not required to report the misconduct of other lawyers or judges. Self-regulation of the legal profession, however, creates an aspiration that members of the profession report misconduct to the appropriate disciplinary authority when they know of a serious violation of the Rules of Professional Conduct. Lawyers have a similar aspiration with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] [Reserved.]

[3] [Washington revision] While lawyers are not obliged to report every violation of the Rules, the failure to report a serious violation may undermine the belief that lawyers should be a self-regulating profession. A measure of judgment is, therefore, required in deciding whether to report a violation. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made whenever a lawyer's conduct raises a serious question as to the honesty, trustworthiness or fitness to practice. Similar considerations apply to the reporting of judicial misconduct.

[4] [Washington revision] This Rule does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] [Washington revision] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, there is no requirement or aspiration of reporting. Admission to Practice Rule 19(b) makes confidential communications between lawyer-clients and staff or peer counselors of the Lawyers' Assistance Program (LAP) of the WSBA privileged. Likewise, Discipline Rule for Judges 14(e) makes confidential communications between judges and peer counselors and the Judicial Assistance Committees of the various judges associations or the LAP of the WSBA privileged. Lawyers and judges should not hesitate to seek assistance from these programs and to help prevent additional harm to their professional careers and additional injury to the welfare of clients and the public.

[Amended effective September 1, 2006.]

RULE 8.4
MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or

officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;

(j) willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(k) violate his or her oath as an attorney;

(l) violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;

(m) violate the Code of Judicial Conduct; or

(n) engage in conduct demonstrating unfitness to practice law.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] [Reserved.]

[3] [Washington revision] Legitimate advocacy respecting the factors set forth in paragraph (h) does not violate paragraphs (d) or (h). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Additional Washington Comment (6)

[6] Paragraphs (g) - (n) were taken from former Washington RPC 8.4 (as amended in 2002).

[Amended effective October 1, 2002; September 1, 2006.]

RULE 8.5
DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

(c) Disciplinary Authority over Judges. Notwithstanding the provisions of Rule 8.4(m), a lawyer, while serving as a judge or justice as defined in RCW 2.64.010, shall not be subject to the disciplinary authority provided for in these Rules or the Rules for Enforcement of Lawyer Conduct for acts performed in his or her judicial capacity or as a candidate for judicial office unless judicial discipline is imposed for that conduct by the Commission on Judicial

Conduct or the Supreme Court. Disciplinary authority should not be exercised for the identical conduct if the violation of the Code of Judicial Conduct pertains to the role of the judiciary and does not relate to the judge's or justice's fitness to practice law.

Comment

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rules 6 and 22, ABA Model Rules for Lawyer Disciplinary Enforcement. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

[8] The Commission on Judicial Conduct is an independent agency of the judicial branch of state government. Wash. Const. Art. IV, § 31; RCW 2.64.120. The Commission has authority to receive and investigate complaints of, and conduct proceedings as to, alleged violations of rules of judicial conduct by a "judge or justice". Wash. Const. Art. IV, § 31; RCW 2.64.057. The terms "judge" and "justice" are defined to include justices of the supreme court, judges of the court of appeals, judges of the superior courts, judges of any court organized under RCW Titles 3 or 35, judges pro tempore, court commissioners, and magistrates, and the Commission's authority applies regardless of whether the judge or justice serves full time or part time. RCW 2.64.010(4).

[9] Whether an act is performed in the judge's "judicial capacity" depends on the facts and circumstances of the conduct. In general, acts are performed in the judicial capacity if they involve the making of judicial decisions, the performance of judicial duties, or the discharge of administrative responsibilities in connection with judicial office. Other factors include whether the act was performed or purported to be performed in the individual's official capacity as a judge and whether the conduct is expressly governed by the Code of Judicial Conduct. With the exception of conduct committed during a judicial campaign, see Comment [12], paragraph (c) does not apply to conduct occurring prior to service as a judge, nor does it apply to conduct wholly outside of the judicial capacity.

[10] Paragraph (c) does not prevent the exercise of disciplinary authority over (1) a judge or justice after he or she has been disciplined for judicial misconduct by the Commission on Judicial Conduct or the Supreme Court, (2) a

former judge or justice, or (3) a lawyer who serves as a pro tem or part time judge for acts performed by him or her as a lawyer and otherwise outside of his or her judicial capacity.

[11] [Reserved.]

[12] Acts performed as a candidate for judicial office are governed by paragraph (c) if performed by a judge or a justice or a successful lawyer candidate for judicial office. This rule has no application to acts performed by an unsuccessful lawyer candidate for judicial office.

[13] Paragraph (c) applies to judges and justices defined to be within the jurisdiction of the Commission on Judicial Conduct under Wash. Const. Art. IV, § 31 and RCW Title 2.64 and is not intended to apply to other lawyers in this state designated as judges, including but not limited to federal judges, administrative law judges, and tribal judges.

[Amended effective October 1, 2002; September 1, 2006; September 1, 2010.]

GUIDELINES FOR APPLYING RULE OF PROFESSIONAL CONDUCT 3.6

I. Criminal

A. The kind of statement referred to in Rule 3.6 which may potentially prejudice criminal proceedings is a statement which relates to:

(1) The character, credibility, reputation or criminal record of a suspect or defendant;

(2) The possibility of a plea of guilty to the offense or the existence or contents of a confession, admission or statement given by a suspect or defendant or that persons refusal or failure to make a statement;

(3) The performance or results of any investigative examination or test such as a polygraph examination or a laboratory test or the failure of a person to submit to an examination or test;

(4) Any opinion as to the guilt or innocence of any suspect or defendant;

(5) The credibility or anticipated testimony of a prospective witness; and

(6) Information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial.

B. The public has a legitimate interest in the conduct of judicial proceedings and the administration of justice. Lawyers involved in the litigation of criminal matters may state without elaboration:

(1) The general nature of the charge or defense;

(2) The information contained in the public record; and

(3) The scheduling of any step in litigation, including a scheduled court hearing to enter a plea of guilty.

C. The public also has a right to know about threats to its safety and measures aimed at assuring its security. Toward that end a public prosecutor or other lawyer involved in the investigation of a criminal case may state:

(1) That an investigation is in progress, including the general scope of the investigation and, except when prohibited by law, the identity of the persons involved;

(2) A request for assistance in obtaining evidence and information;

(3) A warning of danger concerning the behavior of a person involved when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(4) (i) The identity, residence, occupation and family status of the accused;

(ii) information necessary to aid in apprehension of the accused;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

II. Civil

The kind of statement referred to in Rule 3.6 which may potentially prejudice civil matters triable to a jury is a statement designed to influence the jury or to detract from the impartiality of the proceedings.

[Amended September 1, 2006.]

ADMISSION TO PRACTICE RULES (APR)

TABLE OF RULES

Rules

1 In General, Supreme Court Prerequisites to The Practice of Law; Immunity
2 Board of Governors
3 Applicants To Take the Bar Examination
4 Bar Examinations; Certification of Results
5 Recommendation for Admission; Order Admitting to Practice; Payment of Membership Fee; Oath of Attorney; Resident Agent
6 Law Clerk Program
7 Investigations; Duty of Applicant
8 Special Admissions
9 Legal Interns
10 Reserved
11 Continuing Legal Education
11.1 Purpose
11.2 Educational Requirement
11.3 Board of Mandatory Continuing Legal Education
11.4 Powers of the MCLE Board
11.5 Expenses of the MCLE Board
11.6 Reports and Enforcement
11.7 Confidentiality
Regs Regulations of the Washington State Continuing Legal Education Board
Regs Regulations of the Washington State Continuing Legal Education Board
12 Limited Practice Rule for Limited Practice Officers
LPO Continuing Education Regulations of the Limited Practice Board
LPO Regulations of the APR 12 Limited Practice Board
LPO Limited Practice Officer Rules of Professional Conduct (LPORPC)
LPO Disciplinary Regulations Applicable to ELPOC Title 15
LPO Rules for Enforcement of Limited Practice Officer Conduct (ELPOC)
13 Signing of Pleadings and Other Papers; Address of Record; Electronic Mail Address; Notice of Change of Address, Telephone Number, or Name
14 Limited Practice Rule for Foreign Law Consultants
15 Lawyers' Fund for Client Protection
15 Lawyers' Fund for Client Protection - Procedural Rules
16 Mediation Program
17 Suspension from Practice
18 Admission of Lawyers Licensed in Other States or Territories of the United States or the District of Columbia to Practice Law in Washington
19 Lawyer Services
20 Character and Fitness Board
20.1 Authority of Board
20.2 Meetings
20.3 Bar Counsel
20.4 Clerk
20.5 Service
21 Character Defined
22 Fitness Defined; Independent Fitness Examination
23 Character and Fitness Board - Prehearing Procedure - Applications for Admission
24 Applications for Admission
24.1 Duty of Applicant
24.2 Factors Considered when Determining Character and Fitness
24.3 Hearings
24.4 Decision and Recommendation
24.5 Action on Supreme Court's Determination
25 Petitions for Reinstatement after Disbarment
25.1 Restrictions on Reinstatement
25.2 Reversal of Conviction
25.3 Petitions and Investigations
25.4 Hearing Before Character and Fitness Board
25.5 Action by Character and Fitness Board
25.6 Action on Supreme Court's Determination
26 Insurance Disclosure
27 Provision of Legal Services Following Determination of Major Disaster
28 Limited Practice Rule for Limited License Legal Technicians

---

APR 1
IN GENERAL; SUPREME COURT; PREREQUISITES TO THE PRACTICE OF LAW; IMMUNITY

(a) Supreme Court. The Supreme Court of Washington has the exclusive responsibility and the inherent power to establish the qualifications for admission to practice law, and to admit persons to practice law in this state. Any person carrying out the functions set forth in these rules is acting under the authority and at the direction of the Supreme Court.

(b) Prerequisites to the Practice of Law. Except as may be otherwise provided in these rules, a person shall not appear as an attorney or counsel in any of the courts of the State of Washington, or practice law in this state, unless that person has passed the Washington State bar examination, has complied with the other requirements of these rules, and is an active member of the Washington State Bar Association (referred to in these rules as the Bar Association). A person shall be admitted to the practice of law and become an active member of the Bar Association only by order of the Supreme Court.

(c) Communications to the Association. Communications to the

Association, the Board of Governors, the Board of Bar Examiners, the Character and Fitness Board, the Law Clerk Board, mediators, mediation staff, or any other individual person, board, committee or other entity acting under authority of these rules, are absolutely privileged, and no lawsuit may be predicated thereon.

[Amended effective September 1, 1984; September 1, 1999; September 1, 2005; September 1, 2006; January 2, 2008; January 13, 2009]

APR 2
BOARD OF GOVERNORS

(a) Powers. In addition to any other power or authority in other rules, the Board of Governors of the Bar Association (referred to in these rules as the Board of Governors) shall have the power and authority to:

(1) Appoint a Board of Bar Examiners from among the active members of the Bar Association for the purposes of assisting the Board of Governors in conducting the bar examination;

(2) Appoint a Law Clerk Board from among the active members of the Bar Association for the purposes of assisting the Board of Governors in supervising the Law Clerk Program;

(3) Appoint a Character and Fitness Board pursuant to rule 20;

(4) Approve or deny applications for permission to take the bar examination, to enroll in the law clerk program, to be admitted to practice pursuant to rule 18, or to engage in the limited practice of law under pertinent provisions of rules 8, 9, and 14;

(5) Investigate all aspects of an applicant's qualifications to take the bar examination, to be admitted to the practice of law, to engage in the limited practice of law under pertinent provisions of rules 8, 9, and 14, or to enroll in the law clerk program;

(6) Recommend to the Supreme Court the admission or rejection of each applicant who has passed the bar examination or who is applying to engage in the limited practice of law under pertinent provisions of rules 8 and 9;

(7) Approve law schools for the purposes of these rules and maintain a list of such approved law schools on file with the Clerk of the Supreme Court;

(8) Prescribe, with the approval of the Supreme Court, the amount of any fees required by these rules;

(9) Prescribe the form and content of any application, certificate, or other document referred to in these rules; and

(10) Perform any other functions and take any other actions provided for in these rules, or as may be delegated by the Supreme Court, or as may be necessary and proper to carry out its duties.

(b) Written Request. Any request to the Board of Governors for action on any subject under these rules shall be in writing and shall be properly filed. For the purpose of these rules, filing shall occur at the headquarters office of the Bar Association.

[Amended effective July 9, 1965; May 9, 1967; August 1, 1968; September 27, 1968; March 10, 1971; January 1, 1974; May 1, 1978; November 2, 1978; September 1, 1984; June 2, 1998; September 1, 2005; September 1, 2006; January 13, 2009.]

RULE 3
APPLICANTS TO TAKE THE BAR EXAMINATION

(a) Prerequisite for Admission. Every person desiring to be admitted to the Bar of the State of Washington must be of good moral character and must qualify for and pass a bar examination.

(b) Qualification for Bar Examination. To qualify to sit for the bar examination, a person must present satisfactory proof of either (i) graduation from a law school approved by the Board of Governors, or (ii) completion of the law clerk program prescribed by these rules, or (iii) admission to the practice of law by examination, together

with current good standing, in any state or territory of the United States or the District of Columbia or any jurisdiction where the common law of England is the basis of its jurisprudence, and active legal experience for at least 3 of the 5 years immediately preceding the filing of the application. "Active legal experience" shall mean experience either in the active practice of law, or as a teacher at an approved law school, or as a judge of a court of general or appellate jurisdiction, or any combination thereof, in a state or territory of the United States or in the District of Columbia or in any jurisdiction where the common law of England is the basis of its jurisprudence.

(c) Exceptions. The Board of Governors may, in its discretion, withhold permission for an otherwise qualified person to sit for the bar examination, until completion of an inquiry into the applicants character and fitness, if the applicant (i) has ever been convicted of a "serious crime" as defined in ELC 7.1(a)(2), or (ii) has ever been disbarred or is presently suspended from the practice of law for disciplinary reasons in any jurisdiction, or (iii) has previously been denied admission to the Bar in this or any other jurisdiction for reasons other than failure to pass a bar examination. The Board of Governors may also withhold permission to sit for the bar examination where for any other reason there are serious and substantial questions regarding the present moral character or fitness of the applicant. The Board of Governors may refer such matters to the Character and Fitness Board for investigation and hearing pursuant to these rules.

(d) Forms; Fees; Filing. Every applicant to take the bar examination shall:

(1) Execute and file an application, in the form and manner and within the time limits that may be prescribed by the Board of Governors;

(2) Pay upon the filing of the application such fees as may be set by the Board of Governors with the approval of the Supreme Court; and

(3) Furnish whatever additional information or proof may be required in the course of investigating the applicant.

(e) Disclosure of Records. Unless expressly authorized by the Supreme Court or by the bar applicant, bar application forms and related records, documents, and proceedings shall not be disclosed, except as necessary to conduct an investigation and hearing pursuant to rule 7.

[Amended effective August 1, 1968; September 27, 1968; March 10, 1971; July 1, 1976; September 1, 1984; May 10, 1990; September 1, 1992; October 1, 2002; September 1, 2005; September 1, 2006.]

RULE 4
BAR EXAMINATIONS; CERTIFICATION OF RESULTS

(a) Bar Examination. The examination for admission to the bar shall be conducted by and under the direction of the Board of Governors with the assistance of the Board of Bar Examiners. The bar examination shall be held in February and in July of each year, or at such other times as the Board of Governors may designate, commencing at the times and in the locations selected by the Board of Governors.

(b) Certification of Results; Notice. As soon as practicable after the completion of the bar examination, the Board of Bar Examiners shall certify to the Board of Governors the grades of all applicants who have taken the bar examination. The Board of Governors shall cause each applicant to be notified of the results of the bar examination. No information will be divulged concerning the applicants who failed the bar examination.

(c) Repeating Bar Examination. Any applicant failing a bar examination may apply to take another bar examination.

[Amended effective July 1, 1974; September 1, 1984; December 5, 2002; January 13, 2009]

RULE 5
RECOMMENDATION FOR ADMISSION; ORDER ADMITTING TO PRACTICE; PAYMENT OF MEMBERSHIP FEE; OATH OF ATTORNEY; RESIDENT AGENT

(a) Recommendation for Admission. The Board of Governors shall recommend to the Supreme Court the admission or rejection of each applicant who has passed the bar examination and who has complied with the preadmission education requirement set forth in this rule. A recommendation for admission shall be based upon the Board of Governors determination after investigation that the applicant appears to be of good moral character and in all respects qualified to engage in the practice of law. All recommendations of the Board of Governors shall be accompanied by the applicant's application for examination and any other documents deemed pertinent by the Board of Governors or requested by the Supreme Court. The recommendation and all accompanying documents and papers shall be kept by the Clerk of the Supreme Court in a separate file which shall not be a public record.

(b) Preadmission Education Requirement. Before an applicant who has passed the bar examination or who qualifies for admission without passing the bar examination may be admitted, the applicant must complete a

minimum of 4 hours education in a curriculum and under circumstances approved by the Board of Governors. These courses will be offered at no cost to the applicant.

(c) Order Admitting to Practice. After examining the recommendation and accompanying papers transmitted by the Board of Governors, the Supreme Court may enter such order in each case as it deems advisable. For those applicants it deems qualified, the Supreme Court shall enter an order admitting them to the practice of law, conditioned upon such applicants:

(1) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney within 1 year from the date the bar examination results are made public, except for good cause shown; and

(2) Paying to the Bar Association its membership fee for the current year; and

(3) Designating a resident agent if required to do so by section (f).

(d) Oath of Attorney. The Oath of Attorney must be taken before an elected or appointed judge, excluding judges pro tempore, sitting in open court in the state of Washington. In the event a successful applicant is outside the state of Washington and the Chief Justice is satisfied that it is impossible or impractical for the applicant to take the oath before an elected or appointed judge in this state, the Chief Justice may, upon proper application setting forth all the circumstances, designate a person authorized by law to administer oaths, before whom the applicant may appear and take said oath.

(e) Contents of Oath. The oath which all applicants shall take is as follows:

OATH OF ATTORNEY

State of Washington, County of _____ ss.
I, _____, do solemnly declare:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.

2. I will support the Constitution of the State of Washington and the Constitution of the United States.

3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.

4. I will maintain the respect due to the courts of justice and judicial officers.

5. I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ, for the purpose of maintaining the causes confided to me, only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.

6. I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with the business of my client, unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.

7. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.

8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

_____
(Signature)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20__.

_____
Judge

(f) Nonresident Lawyers; Resident Agent. There shall be no requirement that an applicant or a member of the Bar Association be a resident or a bona fide resident in the state of Washington. Every active member of the Bar Association who does not live or maintain an office in the state of Washington shall file with the Bar Association the name and address of an agent within this state for the purpose of receiving service of process or of any other document required or permitted by statute or court rule to be served or delivered to a resident lawyer. Service or delivery to such agent shall be deemed service upon or delivery to the lawyer.

[Amended effective July 9, 1965; March 10, 1971; April 26, 1974; May 14, 1982; September 1, 1984; October 11, 1985; June 25, 2002; June 1, 2006; January 8, 2013.]

APR RULE 6
LAW CLERK PROGRAM

(a) Applicants. Every applicant for enrollment in the law clerk program shall:

(1) Be of good moral character;

(2) Present satisfactory proof of having been granted a bachelors degree, other than a bachelor of laws, by a college or university offering such a degree on the basis of a 4-year course of study;

(3) Obtain regular, full-time employment in the State of Washington as a law clerk with (i) a judge of a court of general, limited, or appellate jurisdiction, or (ii) a lawyer or firm of lawyers licensed to practice in this state and actively engaged in the practice of law;

(4) Submit on forms provided by the Bar Association (i) an application for admission to the law clerk program,

(ii) the tutors statement required by subsection (b)(3) of this rule, and (iii) an application fee; and

(5) Appear for an interview, provide any additional information or proof, and cooperate in any investigation, as may be deemed relevant by the Board of Governors; and

(6) Pay such fees as may be set by the Board of Governors with the approval of the Supreme Court.

(b) Tutors. A lawyer or judge may act as a tutor for only one law clerk at a time. To be eligible to act as a tutor in the law clerk program, a lawyer or judge shall:

(1) Be an active member in good standing of the Bar Association, or be a judicial member who is currently elected or appointed to an elected position, provided that if a disciplinary sanction has been imposed upon the lawyer or judge within the 5 years immediately preceding approval of the law clerk's application for enrollment, the Board of Governors shall have the discretion to accept or reject the lawyer or judge as tutor;

(2) Have been actively and continuously engaged in the practice of law or have held the required judicial position for at least 10 years immediately preceding the filing of the law clerks application for enrollment; this may be a combination of active practice and judicial experience; and

(3) Provide a tutors statement certifying to the law clerk's employment and to the tutors eligibility, and agreeing to instruct and examine the law clerk in the curriculum prescribed by the Law Clerk Board with the approval of the Board of Governors.

(c) Length of Study. A law clerk, whose application for enrollment has been accepted by the Board of Governors, shall study for 4 calendar years. Each calendar year shall consist of 12 months, with a minimum of 120 hours of study each month, including the time spent in performing the duties of a law clerk. The tutor shall give personal supervision to the law clerk averaging at least 3 hours each week. "Personal supervision" is 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.

(d) Course of Study. The subjects to be studied, the sequence in which they are to be studied, and any other matters pertaining thereto shall be as prescribed by the Law Clerk Board with the approval of the Board of Governors.

(e) Examinations. All law clerks shall:

(1) Each month, complete a written examination prepared, administered, and graded by the tutor. The examination shall be answered without research, assistance, or reference to source materials during the examination;

(2) Annually, or at such other intervals as may be established by the Law Clerk Board, appear with the tutor before the Law Clerk Board for an oral evaluation of the law clerks progress.

(f) Certificates. In addition to the tutor's statement required by section (b)(3) of this rule, the tutor shall submit, on forms provided by the Bar Association:

(1) A monthly certificate, accompanying the written examination, stating the number of hours the law clerk studied each week, the number of hours spent by the tutor in personal supervision each week, that the written examination was administered as required, and that, in the opinion of the tutor, the law clerk is progressing satisfactorily; and

(2) At the conclusion of the law clerk's course of study, a certificate stating that the law clerk has completed the prescribed length and course of study, and, in the tutor's opinion, is qualified to take the bar examination and is competent to practice law.

(g) Termination. The Board of Governors may direct a law clerk to change tutors, and may terminate the enrollment of law clerks or remove tutors from the program. The Law Clerk Board may recommend to the Board of Governors that the enrollment of the law clerk in the program be terminated for:

(1) Failure to complete the prescribed length and course of study within 6 years from the date the law clerk's application for admission was accepted;

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

(3) Failure to comply with any of the requirements of the law clerk program; and

(4) Any other grounds deemed pertinent by the Law Clerk Board.

(h) Advanced Standing. The Board of Governors may grant advanced standing to an enrolled law clerk who has attended either an approved or a nonapproved law school.

(i) Effective Date. The revision of this rule shall not apply retroactively to any law clerk whose enrollment has been approved and accepted by the Board of Governors prior to the effective date of this revision. Each law clerk may complete the course of study under the version of the rule in effect on the date the application for enrollment to the law clerk program was accepted.

[Amended effective September 1, 1984; March 6, 1992; September 1, 1994; June 2, 1998; April 1, 2003; January 13, 2009.]

RULE 7
INVESTIGATIONS; DUTY OF APPLICANT

(a) Investigations. The Board of Governors may refer any application for permission to take the bar examination, to be admitted to the practice of law or to be admitted to the limited practice of law under pertinent provisions of rules 8 and 9, or to enroll in the law clerk program to state bar counsel or to the Character and Fitness Board for investigation pursuant to these rules.

(b) Duty of Applicant. It shall be the duty of every applicant to cooperate with any investigation required by the Board of Governors, by promptly furnishing written or oral explanations, documents, releases, authorizations, or anything else reasonably required by the investigator. Failure to appear as directed or to furnish additional proof or answers as required or to cooperate fully shall be sufficient reason for the Board of Governors to reject or to recommend the rejection of an application.

(c) Subpoenas. The chairperson of the Character and Fitness Board or Bar Counsel may issue subpoenas to compel attendance of an applicant or witness, or the production of books, documents, or other evidence, at a deposition or hearing. Subpoenas shall be served in the same manner as in civil cases in the superior court.

[Amended effective January 1, 1974; July 1, 1975; July 1, 1977; September 1, 1984; September 1, 2006.]

APR 8
SPECIAL ADMISSIONS

(a) In General. Lawyers admitted to the practice of law in any state or territory of the United States or the District of Columbia or in any foreign jurisdiction, who do not meet therequirements of rule 1(b), may engage in the practice of law in this state as provided in this rule.

(b) Exception for Particular Action or Proceeding. A member in good standing of the Bar of any other state or territory of the United States or of the District of Columbia, who is a resident of and maintains a practice in such other state, territory, or District, or a lawyer who is providing legal services for no fee through a qualified legal services provider pursuant to RPC 5.5(e), may appear as a lawyer in any action or proceeding only (i) with the permission of the court or tribunal in which the action or proceeding is pending, and (ii) in association with an active member of the Washington State Bar Association, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal.

(1) An application to appear as such a lawyer shall be made by written motion to the court or tribunal before whom the action or proceeding is pending, in a form approved by the Board of Governors, which shall include certification by the lawyer seeking admission under this rule and the associated Washington lawyer that the requirements of this rule have been complied with, and shall include an indication on which date the fee required in part (2) was paid, or indicating that the fee was waived pursuant to part (2). The motion shall be heard by the court or tribunal after such notice to the Washington State Bar Association as is required in part (2) below unless waived pursuant to part (2), together with the required fee, and to adverse parties as the court or tribunal shall direct. Payment of the required fee shall only be necessary upon a lawyer's first application to any court or tribunal in the same case. The court or tribunal shall enter an order granting or refusing the motion, and, if the motion is refused, the court or tribunal shall state its reasons.

(2) The lawyer making the motion shall submit a copy of the motion to the Washington State Bar Association, accompanied by a fee in each case in an amount set by the Board of Governors with the approval of the Supreme Court. Payment of the fee shall only be necessary upon a lawyer's first motion to any court or tribunal in the same case. The associated Washington counsel shall be jointly responsible for payment of the fee. The fee shall be waived for a lawyer providing legal services for no fee through a qualified legal services

provider pursuant to RPC 5.5(e). The Washington State Bar Association shall maintain a public record of all motions for admission pursuant to this rule.

(3) No member of the Bar Association shall lend his or her name for the purpose of, or in any way assist in, avoiding the effect of this rule.

(c) Exception for Indigent Representation. A member in good standing of the Bar of another state or territory of the United States or of the District of Columbia, who is eligible to take the bar examination in this state, while rendering service in either a bar association or governmentally sponsored legal services organization or in a public defender's office or similar program providing legal services to indigents and only in that capacity, may, upon application and approval, practice law and appear as a lawyer before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations:

(1) Application to practice under this rule shall be made to the Board of Governors, and the applicant shall be subject to the Rules for Enforcement of Lawyer Conduct and to the Rules of Professional Conduct.

(2) In any such matter, litigation, or administrative proceeding, the applicant shall be associated with an active member of the Bar Association, who shall be the lawyer of record and responsible for the conduct of the matter, litigation, or administrative proceeding.

(3) The applicant shall apply for and take the first bar examination that is given more than 90 days after the date of the applicant's admission to practice under this rule.

(4) The applicant's right to practice under this rule (i) may be terminated by the Supreme Court at any time with or without cause, or (ii) shall be terminated automatically for failure to take or pass the required bar examination, or (iii) shall be terminated for failure to become an active member of the Bar Association within 60 days of the date the bar examination results are made public, or (iv) in any event, shall be terminated within 1 year from the original date of the applicants admission to practice law in this state under this rule.

(d) Exception for Educational Purposes. A lawyer who is enrolled and in good standing as a postgraduate student or as a faculty member in a program of an approved law school in this state, involving clinical work in the courts or in the practice of law, may apply to the Board of Governors for admission to the limited practice of law by paying an investigation fee and by presenting satisfactory proof of (i) admission to the practice of law and current good standing in any state or territory of the United States or the District of Columbia, and (ii) compliance with the requirements of rule 3(b)(i), and (iii) good moral character.

(1) Upon approval of the application by the Board of Governors, the applicant shall take the Oath of Attorney, and the Board of Governors shall transmit its recommendation to the Supreme Court which shall enter an order admitting the applicant to the limited practice of law under this section.

(2) The practice of an applicant admitted under this section shall be (i) limited to the period of time the applicant actively participates in the program, (ii) limited to the clinical work of the particular course of study in which the applicant is enrolled or teaching, (iii) free of charge for the services so rendered, and (iv) subject to the Rules of Professional Conduct and the Rules for Enforcement of Lawyer Conduct.

(3) An applicant admitted under this section shall be deemed an active member of the Bar Association only for the purpose of serving as a supervising lawyer under rule 9, and for no other purpose.

(4) When the applicant ceases actively to participate in the program, the law school dean shall immediately notify the Bar Association and the Clerk of the Supreme Court so that the applicant's right to practice may be terminated of record.

(e) Exception for Emeritus Membership. A lawyer admitted to the practice of law in a state or territory of the United States or the District of Columbia, including Washington State, may apply to the Board of Governors for a limited license to practice law as an emeritus member in this state when the lawyer is otherwise fully retired from the practice of law. An emeritus member shall provide legal services for a qualified legal services provider as defined in part (2) below. The lawyer shall apply by (I) filing an application in the form and manner that may be prescribed by the Board of Governors; (ii) presenting satisfactory proof of admission by examination to the practice of law and current good standing in any state or territory of the United States or the District of Columbia, provided that if a disciplinary sanction has been imposed upon the lawyer within 15 years immediately preceding the filing of the application for emeritus status, the Board of Governors shall have the discretion to accept or reject the application; (iii) presenting satisfactory proof of active legal experience as defined in APR 3(b) for at least 5 of the 10 years immediately preceding the filing of the application for lawyers admitted in Washington and for at least 10 of the 15 years immediately preceding the filing of the application for lawyers only admitted to practice in jurisdictions other than Washington; (iv) filing certification from a qualified legal services provider as defined in part (2) below that the applicant's practice of law will comply with the terms of this rule; (v) paying such fee as may be set by the Board of Governors with approval of the Supreme Court; (vi) complying with training requirements as may be prescribed by the Board of Governors; and (vii) furnishing whatever additional information or proof that may be required in the course of investigating the applicant.

(1) Upon approval of the application by the Board of Governors, the lawyer shall take the Oath of Attorney, pay the current year's annual membership fee in the amount required of inactive members, and the Board of Governors shall transmit its recommendation to the Supreme Court which may enter an order admitting the lawyer to the limited practice of law under this section. Emeritus status shall be for one year subject to annual renewal as provided by the Board of Governors.

(2) The practice of a lawyer admitted under this section shall be limited to providing legal service for no fee through a qualified legal services provider; or serving as an unpaid governing or advisory board member or trustee of or

providing legal counsel or service for no fee to a qualified legal services provider. A qualified legal services provider is a not-for-profit legal services organization whose primary purpose is to provide legal services to low income clients. The prohibition against compensation for emeritus members shall not prevent a qualified legal services provider from reimbursing an emeritus member for actual expenses incurred while rendering legal services under this rule. A qualified legal services provider shall be entitled to receive all court awarded attorney's fees for any representation rendered by the emeritus member.

(3) A lawyer admitted under this section shall pay to the Washington State Bar Association an annual license fee in the amount required of inactive members.

(4) The practice of a lawyer admitted under this section shall be subject to the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, and to all other laws and rules governing lawyers admitted to the bar of this state. Jurisdiction shall continue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(5) Emeritus members shall be exempt from compliance with rule 11 concerning Continuing Legal Education. However, prior to engaging in practice as an emeritus member, the lawyer must complete a training course or courses as approved by the Board of Governors.

(6) An emeritus member shall promptly report to the Washington State Bar Association a change in membership status in a state or territory of the United States or District of Columbia where the applicant has been admitted to the practice of law or the commencement of any formal disciplinary proceeding in any jurisdiction where the lawyerhas been admitted to the practice of law.

(7) The limited license granted under this section shall be automatically terminated when the lawyer's practice fails to comply with part (2) above, the lawyer fails to comply with the terms of this rule, or on suspension or disbarment in a state or territory of the United States or District of Columbia where the applicant has been admitted to the practice of law. If the lawyer whose limited license is terminated was previously admitted to practice in Washington, the lawyer shall be transferred to inactive membership status upon termination.

(f) Exception for Foreign House Counsel. A lawyer admitted to the practice of law in a jurisdiction other than a United States jurisdiction may apply to the Board of Governors for a limited license to practice law as in-house counsel in this state when the lawyer is employed in Washington as a lawyer exclusively for a profit or not for profit corporation, including its subsidiaries and affiliates, association, or other business entity, that is not a government entity, and whose lawful business consists of activities other than the practice of law or the provision of legal services. The lawyer shall apply by (i) filing an application in the form and manner that may be prescribed by the Board of Governors, (ii) presenting satisfactory roof of (I) admission by examination to the practice of law and current good standing in a jurisdiction other than United States jurisdiction and (II) good moral character, (iii) filing an affidavit from an officer, director, or general counsel of the applicant's employer in this state attesting to the fact the applicant is employed as a lawyer for the employer, including its subsidiaries and affiliates, and the nature of the employment conforms to the requirements of this rule, (iv) paying the application fees required of foreign lawyer applicants for admission under APR 3, and (v) furnishing whatever additional information or proof that may be required in the course of investigating the applicant.

(1) Upon approval of the application by the Board of Governors, the lawyer shall take the Oath of Attorney, pay the current year's annual membership fee and the Board of Governors shall transmit its recommendation to the Supreme Court which may enter an order admitting the lawyer to the limited practice of law under this section.

(2) The practice of a lawyer admitted under this section shall be limited to practice exclusively for the employer, including its subsidiaries and affiliates, furnishing the affidavit required by this rule and shall not include (i) appearing before a court or tribunal as a person admitted to practice law in this state, (ii) offering legal services or advice to the public or (iii) holding oneself out to be so engaged or authorized.

(3) All business cards and employer letterhead used by a lawyer admitted under this section shall state clearly that the lawyer is admitted to practice in Washington as in-house counsel.

(4) A lawyer admitted under this section shall pay to the Washington State Bar Association an annual license fee in the maximum amount required of active members.

(5) The practice of a lawyer admitted under this section shall be subject to the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, and to all other laws and rules governing lawyers admitted to the active practice of law in this state. Jurisdiction shall continue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(6) The lawyer shall promptly report to the Washington State Bar Association a change in employment, a change in membership status any jurisdiction where the applicant has been admitted to the practice of law or the commencement of any formal disciplinary proceeding in any jurisdiction where the applicant has been admitted to the practice of law.

(7) The limited license granted under this section shall be automatically terminated when employment by the employer furnishing the affidavit required by this rule is terminated, the lawyer has been admitted to the practice of law pursuant to any other provision of the APR, the lawyer fails to comply with the terms of this rule, the lawyer fails to maintain current good standing in at least one other jurisdiction where the lawyer has been admitted to the practice of law, or on suspension or disbarment for discipline in any jurisdiction where the lawyer has been admitted to the practice of law. If a lawyer's employment is terminated but the lawyer, within three months from the last day of employment, is employed by an employer filing the affidavit required by (iii), the license shall be reinstated.

(g) Exception for Military Lawyers. A lawyer admitted to the practice of law in

a state or territory of the United States or of the District of Columbia, who is a full-time active duty military officer serving in the office of a Staff Judge Advocate of the United States Army, Air Force, Navy, Marines or Coast Guard, a Naval Legal Service Office or a Trial Service Office, located in the State of Washington, may, upon application and approval, appear as a lawyer and practice law before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations set forth in this rule. The applicant must be of good moral character and shall apply by (i) filing an application in the form and manner that may be prescribed by the Board of Governors; (ii) presenting satisfactory proof of admission by examination to the practice of law and current good standing as a member of the bar in any state or territory of the United States or the District of Columbia; (iii) complying with training requirements as set forth below; and (iv) furnishing whatever additional information or proof that may be required in the course of processing the application.

(1) To qualify for admission to practice under this rule, an applicant must, prior to admission, complete at least 15 credit hours of approved continuing legal education on Washington practice, procedure, and professional responsibility.

(2) Military lawyers admitted to practice pursuant to this rule are not, and shall not represent themselves to be members of the Washington State Bar Association.

(3) The applicant's right to practice under this rule: (i) may be terminated by the Supreme Court at any time with or without cause, or (ii) shall be terminated when the military lawyer ends active duty military service in this state. The lawyer admitted under this rule and his or her supervisory Staff Judge Advocate or his or her Commanding Officer are responsible to advise the Washington State Bar Association of any change in status of the lawyer that may affect his or her right to practice law under this rule.

(4) Military lawyers admitted pursuant to the rule may represent active duty military personnel in enlisted grades E-1 through E-4 and their dependents in noncriminal matters to the extent such representation is permitted by the supervisory Staff Judge Advocate or Commanding Officer, Naval Legal Service Office or Commanding Officer, Trial Service Office. Other active duty military personnel and their dependents may be represented if approved by the Service Judge Advocate General or his or her designee.

(5) Military lawyers admitted pursuant to this section may not demand or receive any compensation from clients in addition to the military pay to which they are already entitled.

(6) The practice of a lawyer admitted under this section shall be subject to the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, the Admission to Practice Rules, and to all other laws and rules governing lawyers admitted to the bar of this state. Jurisdiction shall continue whether or not the lawyer retains the right to practice in Washington and irrespective of the residence of the lawyer.

[Adopted effective May 20, 1966; amended effective March 10, 1971; July 9, 1982; September 1, 1984; October 11, 1985; September 1, 1998; March 9, 1999; March 5, 2002; October 1, 2002; June 24, 2003; November 25, 2003 September 1, 2004; September 1, 2006; January 2, 2007, May 6, 2008; January 13, 2009; September 1, 2009.]

APR 9
LEGAL INTERNS

(a) Admission to Limited Practice. Qualified law students, enrolled law clerks, and graduates of approved law schools may be admitted to the status of legal intern and be granted a limited license to engage in the practice of law only as provided in this rule. To qualify, an applicant must:

(1) Be a student duly enrolled and in good academic standing at an approved law school with legal studies completed amounting to not less than two-thirds of a prescribed 3-year course of study or five-eighths of a prescribed 4-year course of study, and have the written approval of the applicants law school dean or a person designated by such dean; or

(2) Be an enrolled law clerk in compliance with the provisions of rule 6 with not less than five-eighths of the prescribed 4-year course of study completed, and have the written approval of the tutor; or

(3) Make the application before the expiration of 9 months following graduation from an approved law school, and submit satisfactory evidence thereof for the Bar Association; and

(4) Pay such fees as may be set by the Board of Governors with the approval of the Supreme Court; and

(5) Certify in writing under oath that the applicant has read, is familiar with, and will abide by, the Rules of Professional Conduct and this rule.

(b) Procedure. The applicant shall submit an application, for which no fee shall be required, on a form provided by the Bar Association, setting forth the applicants qualifications.

(1) The application shall give the name of, and shall be signed by, the supervising lawyer who, in doing so, shall assume the responsibilities of supervising lawyer set

forth in this rule if the applicant is granted a limited license as a legal intern. The supervising lawyer shall be relieved of such responsibilities upon the termination of the limited license or at an earlier time if the supervising lawyer or the applicant gives written notice to the Bar Association and the Supreme Court requesting that the supervising lawyer be so relieved. In the latter event another active member of the Bar Association may be substituted as such supervising lawyer by giving written notice of such substitution, signed by the applicant and by such other active member, to the Bar Association and the Supreme Court.

(2) Upon receipt of the application, it shall be examined and evaluated by the Board of Governors which shall endorse thereon its approval or disapproval and forward the same to the Supreme Court.

(3) The Supreme Court shall issue or refuse the issuance of a limited license of a legal intern. The Supreme Courts decision shall be forwarded to the Bar Association, and the applicant shall be informed of the Supreme Courts decision.

(c) Scope of Practice. A legal intern shall be authorized to engage in the limited practice of law, in civil and criminal matters, only as authorized by the provisions of this rule. A legal intern shall be subject to the Rules of Professional Conduct and the Rules for Enforcement of Lawyer Conduct as adopted by the Supreme Court and to all other laws and rules governing lawyers admitted to the Bar of this state, and shall be personally responsible for all services performed as an intern. Upon recommendation of the Disciplinary Board, a legal intern may be precluded from sitting for the bar examination or from being admitted as a member of the Bar Association within the discretion of the Board of Governors. Any such intern barred from the bar examination or from recommendation for admission by the Board of Governors shall have the usual rights of appeal to the Supreme Court.

(1) A judge may exclude a legal intern from active participation in a case filed with the court in the interest of orderly administration of justice or for the protection of a litigant or witness, and shall thereupon grant a continuance to secure the attendance of the supervising lawyer.

(2) No legal intern may receive payment from a client for the interns services. However, nothing contained herein shall prevent a legal intern from being paid for services by the interns employer or to prevent the employer from making such charges for the service of the legal intern as may otherwise be proper. A legal intern and the interns supervising lawyer or a lawyer from the same office shall, before the intern undertakes to perform any services for a client, inform the client of the legal interns status.

(3) A legal intern may advise or negotiate on behalf of a person referred to the intern by the supervising lawyer. A legal intern may prepare necessary pleadings, motions, briefs or other documents. It is not necessary in such instances for the supervising lawyer to be present.

(4) A legal intern may participate in superior court and Court of Appeals proceedings, including depositions, provided the supervising lawyer or another lawyer from the same office is present. Ex parte and agreed orders may be presented to the court by a legal intern without the presence of the supervising lawyer or another lawyer from the same office. An intern may represent the State in juvenile court in misdemeanor and gross misdemeanor cases without in-court supervision after a reasonable period of in-court supervision, which shall not be less than one trial.

(5) Except as otherwise provided in subsection (c)(6), in courts of limited jurisdiction, a legal intern, only after participating with the supervising lawyer in at least one nonjury case, may try nonjury cases in such courts without the presence of a supervising lawyer and, only after participating with the supervising lawyer in at least one jury case, may try jury cases in such courts without the presence of a supervising lawyer.

(6) Either the supervising lawyer or a lawyer from the same office shall be present in the representation of a defendant in all preliminary criminal hearings.

(d) Supervising Lawyer. The supervising lawyer shall be an active member of the Bar Association in good standing, provided that if a disciplinary sanction has been imposed upon the lawyer within the 5 years immediately preceding approval of the application, the Board of Governors shall have the discretion to accept or reject the lawyer as a supervising lawyer. The supervising lawyer shall have been actively engaged in the practice of law in the State of Washington or elsewhere for at least 3 years at the time the application is filed.

(1) The supervising lawyer or another lawyer from the same office shall direct, supervise and review all of the work of the legal intern and both shall assume personal professional responsibility for any work undertaken by the legal intern while under the lawyer's supervision. All pleadings, motions, briefs, and other documents prepared

by the legal intern shall be reviewed by the supervising lawyer or a lawyer from the same office as the supervising lawyer. When a legal intern signs any correspondence or legal document, the interns signature shall be followed by the title "legal intern" and, if the document is prepared for presentation to a court or for filing with the clerk thereof, the document shall also be signed by the supervising lawyer or lawyer from the same office as the supervising lawyer. In any proceeding in which a legal intern appears before the court, the legal intern must advise the court of the interns status and the name of the interns supervising lawyer.

(2) Supervision shall not require that the supervising lawyer be present in the room while the legal intern is advising or negotiating on behalf of a person referred to the intern by the supervising lawyer, or while the legal intern is preparing the necessary pleadings, motions, briefs, or other documents.

(3) As a general rule, no supervising lawyer shall have supervision over more than 1 legal intern at any one time. However, in the case of (i) recognized institutions of legal aid, legal assistance, public defender and similar programs furnishing legal assistance to indigents, or legal departments of a state, county or municipality, the supervising lawyer may have supervision over 2 legal interns at one time, or (ii) a clinical course offered by an approved law school where such course has been approved by its dean and is directed by a member of its faculty, and conducted within institutions or legal departments described in (i) or the law school, each full-time clinical supervising lawyer may have supervision over 10 legal interns at one time provided a supervising lawyer attends all adversarial proceedings conducted by the legal interns.

(4) A lawyer currently acting as a supervising lawyer may be terminated as a supervising lawyer at the discretion of the Board of Governors. When an interns supervisor is so terminated, the intern shall cease performing any services under this rule and shall cease holding himself or herself out as a legal intern until written notice of a substitute supervising lawyer, signed by the intern and by the new and qualified supervising lawyer, is given to the Bar Association and to the Supreme Court.

(5) The failure of a supervising lawyer, or lawyer acting as a supervising lawyer, to provide adequate supervision or to comply with the duties set forth in this rule shall be grounds for disciplinary action pursuant to the Rules for Enforcement of Lawyer Conduct.

(6) For purposes of the attorney-client privilege, an intern shall be considered a subordinate of the lawyer providing supervision for the intern.

(7) For purposes of the provisions of this rule which permit a lawyer from the same office as the supervising lawyer to sign documents or be present with a legal intern during court appearances, the lawyer so acting must be one who meets all of the qualifications for becoming a supervising lawyer under this rule.

(e) Term of Limited License. A limited license as a legal intern shall be valid, unless revoked, for a period of not more than 24 consecutive months, provided that a person shall not serve as a legal intern more than 12 months after graduation from law school.

(1) The approval given to a law student by the law school dean or the dean's designee or to a law clerk by the tutor may be withdrawn at any time by mailing notice to that effect to the Clerk of the Supreme Court and to the Bar Association, and shall be withdrawn if the student ceases to be duly enrolled as a student prior to graduation or ceases to be in good academic standing or if the law clerk ceases to comply with rule 6.

(2) A limited license is granted at the sufferance of the Supreme Court and may be revoked at any time upon the courts own motion, or upon the motion of the Board of Governors, in either case with or without cause.

(3) An intern shall immediately cease performing any services under this rule and shall cease holding himself or herself out as a legal intern (i) upon termination for any reason of the interns limited license under this rule; or (ii) upon the resignation of the interns supervising lawyer; or (iii) upon the suspension or termination by the Board of Governors of the supervising lawyers status as supervising lawyer; or (iv) upon the withdrawal of approval of the intern pursuant to this rule.

[Adopted effective Jun 4, 1970; amended effective May 21, 1971; February 29, 1972; December 31, 1973; December 31, 1976; January 1, 1977; January 1, 1979; January 1, 1981; November 2, 1981; September 1, 1984; October 1, 1985; October 11, 1985; November 29, 1991; September 1, 1994; June 2, 1998; October 1, 2002.]

RULE 10

(RESERVED)

[Originally adopted effective March 10, 1971; text deleted and rule number reserved effective September 1, 1984.]

RULE 11
CONTINUING LEGAL EDUCATION

11.1 Purpose
11.2 Educational Requirement
11.3 Board of Mandatory Continuing Legal Education
11.4 Powers of the MCLE Board
11.5 Expenses of the MCLE Board
11.6 Reports and Enforcement
11.7 Confidentiality

Regulations of the Washington State Board of Continuing Legal Education (in Word Format)

RULE 11.1
PURPOSE

It is of primary importance to the members of the Washington State Bar Association (referred to in these rules as the Bar Association) and to the public that lawyers continue their legal education throughout the period of their active practice of law. These rules state the minimum requirements for continuing legal education.

[Adopted effective January 1, 1977; amended effective May 2, 2000; January 1, 2009.]

RULE 11.2
EDUCATIONAL REQUIREMENT

(a) Minimum Requirement. Each active member of the Bar Association, and other lawyers who are required by the APRs to complete continuing legal education credits, must complete a minimum of 45 credit hours of accredited legal education (as provided in APR 11.4) by December 31 of the last year of the lawyer's three-year reporting period as assigned by the Bar Association. Specific requirements are the following, and are described in Appendix APR 11 - Regulations of the Washington State Board of Mandatory Continuing Legal Education

(1) A lawyer may earn all of the required credit hours, and must earn at least half of the required credits, as live credits, as described in Regulation 103(b) of Appendix APR 11.

(2) A lawyer must earn a minimum of six of the required 45 credit hours of accredited legal education in the area of ethics, as that is defined in Regulation 101(g) of Appendix APR 11.

(3) A lawyer may earn a maximum of one-half of the required credit hours for any reporting period through self-study, as defined in Regulation 103(h) of Appendix APR 11.

(4) A lawyer may earn a maximum of six credit hours annually through pro bono training and service carried out strictly in compliance with Regulation 103(f) of Appendix APR 11.

(5) A lawyer may earn a maximum of six of the required credit hours for any reporting period for participation in law school competitions, moot court, or mock trials programs, as described in Regulation 103(g) of Appendix APR 11.

(b) New Admission. Newly admitted members must complete 45 continuing legal education credits during the four full calendar years after the member's date of admission. Following the new admission period, the member shall complete 45 credits every three years as required by APR 11.2(a).

(c) Carryover of excess earned credits. If a member completes more than the required credits for any one reporting period, up to 15 of the excess credits may be carried forward and applied to that member's education requirement for the next reporting period. Of the 15 credit hours that may be carried forward to the next reporting period, pursuant to sections (a) and (b) of this rule:

(1) A maximum of two credit hours may be applied toward the ethics requirement; and

(2) A maximum of five credit hours may be applied to self-study credits.

[Amended effective September 1, 1992; September 1, 1995; May 2, 2000; January 1, 2009.]

RULE 11.3
BOARD OF MANDATORY CONTINUING LEGAL EDUCATION

There is hereby established a Board of Mandatory Continuing Legal Education (the MCLE Board) consisting of seven members. Six of the members of the MCLE Board must be active members of the Bar Association. The seventh member shall not be a member of the Bar Association. The Supreme Court shall designate a chairperson of the MCLE Board, who shall serve at the pleasure of the Court. The members of the MCLE Board shall be nominated by the Board of Governors of the Bar Association and appointed by the Supreme Court. Appointments shall be staggered for a 3-year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year.

[Adopted effective January 1, 1977; amended effective May 2, 2000; January 1, 2009.]

RULE 11.4
POWERS OF THE MCLE BOARD

The MCLE Board shall:

(a) Accredit and determine the number of credit hours to be allowed for all or portions of individual courses that satisfy the education requirements of these rules and Appendix APR 11 Regulations;

(b) Accredit all or portions of the entire legal educational program of a given organization that satisfy the education requirements of these rules and Appendix APR 11 Regulations;

(c) Adopt regulations pertinent to these powers subject to the approval of the Board of Governors and the Supreme Court;

(d) Waive or modify individual compliance with the educational or time requirements of these rules upon a showing of undue hardship, age, or infirmity;

(e) Set and adjust fees and fines for failure to comply with these rules and to defray the reasonably necessary costs of administering these rules with the approval of the Board of Governors; and

(f) Waive or reduce fees or fines on a proper showing by the petitioner.

[Adopted effective January 1, 1977; amended effective May 2, 2000; January 1, 2009.]

RULE 11.5
EXPENSES OF THE MCLE BOARD

Members of the MCLE Board shall not be compensated for their services, but actual and necessary expenses incurred in the performance of their duties shall be reimbursed by the Bar Association in a manner consistent with the Bar Association's reimbursement of its committee members. The Bar Association shall furnish the MCLE Board with the necessary staff to carry out its duties. The MCLE Board, directly or through the staff provided, annually shall submit a budget to the Bar Association, which shall be subject to approval by the Board of Governors.

[Amended effective May 2, 2000; January 1, 2009.]

RULE 11.6
REPORTS AND ENFORCEMENT

(a) Reporting and Other Activities.

(1) Sponsor Reports. The sponsor of each approved program (or each program for which approval is sought) must make available attendance reports to be completed by those lawyers in attendance to show the actual time spent by each lawyer in attendance. The form of the reports will be determined by the MCLE Board. The sponsor must send a report, consisting of a compilation of the information contained in these forms, to the Bar Association not later than 30 days after conclusion of the program.

(2) Other Activities. Consistent with the provisions of Appendix APR 11 Regulations, in the case of some programs for which approval has not been sought or obtained by the sponsor, or for other activities which may qualify for CLE credit under these rules, individual lawyers may apply for credit by direct application to the MCLE Board, using the form or forms specified by the MCLE Board for that purpose.

(3) Member Credit Status Reports.

(A) Not later than July 1 of each year, the Bar Association shall advise each active member and other lawyers required to report in the current reporting cycle of the number of earned credit hours reflected in that lawyer's records with the Bar Association.

(i) If the lawyers do not request changes to their records within forty-five days of the mailing of the report, the reported credits will be deemed correct.

(ii) After 45 days, the records may be changed upon a showing of good cause.

(B) By not later than December 15 of each year, a similar report shall be provided to all active members and other lawyers required to report continuing education credits.

(b) Compliance Certification. Each active member or other lawyer required to complete and report continuing legal education requirements must submit an MCLE compliance certification form by February 1 following the end of the lawyer's three-year reporting period or as approved by the MCLE Board pursuant to rule 11.4. If a lawyer has not completed the minimum education requirement for that lawyer's reporting period, the lawyer may complete and return to the MCLE Board a petition, which shall be accompanied by a declaration(s) or affidavit(s) in support of the request, for an extension of time to complete the requirements. If the petition is approved, the lawyer shall make up the deficiency, file a supplemental report with the Bar Association, and pay a late filing fee by the date set forth in the agreement or order extending the time for compliance.

(c) Delinquency. Any lawyer required to do so who has not complied by the certification deadline, or by the date set forth in an agreement or order extending the time for compliance, may be ordered suspended from the practice of law by the Supreme Court.

(1) Pendency Notice. The MCLE Board shall send a written notice of the pendency of suspension proceedings by certified mail to any lawyer who has not complied with either the educational or certification requirements of APR 11 and the Appendix APR 11 Regulations by the certification deadline for that lawyer's reporting period or extended deadline granted by the MCLE Board. It will be sent to the lawyer's address of record with the Bar Association. The notice shall advise the member of the pendency of suspension proceedings and state that the MCLE Board will recommend suspension of the lawyer's license to practice law unless the lawyer becomes compliant or completes and returns to the MCLE Board a petition for extension of time, exemption from compliance, or ruling of complete compliance as set forth below. The MCLE Board shall include with the pendency notice a copy of the form of petition to be used.

(2) Petition for extension, waiver, modification or finding of compliance.

(A) Timing. Within 10 days of receipt of the pendency notice, a lawyer may complete and return to the MCLE Board a petition requesting an extension of time, a waiver of compliance, modifications to the requirements, or ruling by the MCLE Board of compliance with the standard requirements.

(B) Supporting documents. The petition may be accompanied by supporting affidavit(s) or declaration(s).

(3) No timely petition filed; suspension recommendation. Unless such petition is filed, the noncompliance is deemed agreed. The MCLE Board shall report the lawyer's noncompliance to the Supreme Court with its recommendations for appropriate action. The Supreme Court shall enter such order, as it deems appropriate. The provisions of RAP 17.4 and RAP 17.5 shall apply to any motion for reconsideration of such order.

(4) Petition Filed. If such petition is filed, in its consideration of the petition, the MCLE Board shall consider factors of undue hardship, age, or disability. One of the following shall result from consideration of a petition:

(A) Approval without hearing. The MCLE Board may, in its discretion, approve the petition without hearing, or

(B) Agreement with lawyer. The MCLE Board may enter into agreement on terms with such lawyer as to time and requirements for achieving compliance with the provisions of APR 11.2(a) and APR 11.6(b) or

(C) Hearing on petition. If the MCLE Board does not approve such petition or enter into an agreement with terms, the MCLE Board (or a subcommittee of one or more MCLE Board members) shall hold a hearing upon the petition.

(i) The Board shall give the lawyer at least 10 days notice of the time and place thereof.

(ii) Testimony taken at the hearing shall be under oath, and an audio or stenographic record will be made at the

request and expense of the lawyer. The oath shall be administered by the chairperson of the MCLE Board or the chairperson of the subcommittee.

(iii) For good cause shown the MCLE Board may rule that the lawyer has substantially complied with these rules for the reporting period in question or, if he or she has not done so, it may grant the lawyer an extension of time within which to comply upon terms deems appropriate.

(iv) For each hearing, the MCLE Board shall enter written findings of fact and an appropriate order. The MCLE Board shall mail a copy of the findings and order forthwith to the lawyer at the address on file with the Bar Association.

(v) The MCLE Board's order is final unless within 10 days from the date thereof the lawyer files a written notice of appeal with the Supreme Court and serves a copy of on the Washington State Bar Association. The lawyer shall pay to the Clerk of the Supreme Court a docket fee of $250.00.

(d) Review by the Supreme Court. Within 15 days of filing a notice with the Supreme Court for review of the MCLE Board's findings and order, after a non-compliance petition hearing, the lawyer shall cause the record or a narrative report in compliance with RAP 9.3 to be transcribed and filed with the Bar Association.

(1) The MCLE Board chairperson or chairperson of the subcommittee shall certify that any such record or narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause.

(2) The MCLE Board shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding, before the MCLE Board, which must be certified by the MCLE Board chairperson or chairperson of the subcommittee.

(3) The MCLE Board shall then file promptly with the Clerk of the Supreme Court the record or narrative report of proceedings and the transcripts pertinent to the proceedings before the MCLE Board.

(4) The matter shall be heard in the Supreme Court pursuant to procedures established by order of the Court.

(e) Time. The times set forth in this rule for filing notices of appeal are jurisdictional. The Supreme Court, as to appeals pending before it, may, for good cause shown:

(1) Extend the time for the filing or certification of said record or narrative report of proceedings and transcripts; or

(2) Dismiss the appeal for failure to prosecute the same diligently.

(f) Costs. If the lawyer prevails in his or her appeal before the Supreme Court, the lawyer shall be awarded costs against the Bar Association in an amount equal to his or her reasonable expenditures for the preparation of the record or narrative report of proceedings.

(g) Change of Status. Once a lawyer has been ordered suspended from practice for noncompliance with these rules, the lawyer affected must comply with the then applicable regulations of the MCLE Board and the WSBA Bylaws in order to return to active status.

[Amended effective May 14, 1982; September 1, 1992; January 1, 2001; January 1, 2009.]

RULE 11.7
CONFIDENTIALITY

The files and records of the Bar Association, as they may relate to or arise out of any failure of a member of the Association, or other lawyers, to satisfy these continuing legal education requirements, shall be deemed confidential and shall not be disclosed except in furtherance of its duties, or upon request of the lawyer affected, or pursuant to a proper subpoena duces tecum, or as directed by this Court. The records and information contained therein should not be available to any sponsoring organization, including the Continuing Legal Education Department of the Bar Association. In any matter referred to the Supreme Court under these rules, the file, record, briefs, and arguments shall not be subject to this confidentiality rule.

[Adopted effective January 1, 1977; amended effective May 14, 1982; May 2, 2000; January 1, 2009.]

REGS REGULATIONS OF THE WASHINGTON STATE CONTINUING LEGAL EDUCATION BOARD (IN WORD FORMAT)

The contents of this item are only available on-line.

REGS REGULATIONS OF THE WASHINGTON STATE CONTINUING LEGAL EDUCATION BOARD (IN PDF FORMAT)

The contents of this item are only available on-line.

ADMISSION TO PRACTICE RULES
RULE 12.
LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

(a) Purpose. The purpose of this rule is to authorize certain lay persons to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions and to prescribe the conditions of and limitations upon such activities.

(b) Limited Practice Board.

(1) Establishment. There is hereby established a Limited Practice Board (referred to herein as the "Board") consisting of nine members to be appointed by the Supreme Court of the State of Washington. Not less than four of the members of the Board must be admitted to the practice of law in the State of Washington. Four of the members of the Board shall be business representatives, one each of the following four industries: escrow, lending, title insurance, and real estate. Appointments shall be for 4-year terms. No member may serve more than two consecutive terms. Terms shall end on December 31 of the applicable year. The Supreme Court shall designate one of the members of the Board as chairperson.

(2) Duties and Powers.

(i) Applications. The Board shall accept and process applications for certification under this rule.

(ii) Examination. The Board shall conduct the examination for certification required by this rule. The examination shall consist of such questions as the Board may select on such subjects as may be listed by the Board and approved by the Supreme Court. The Board shall establish the number of examinations to be given each year and the dates of the examinations.

(iii) Investigation and recommendation for admission. The Board shall notify each applicant of the results of the examination and shall recommend to the Supreme Court the admission or rejection of each applicant who passes the examination. The Supreme Court shall enter an order admitting to limited practice those applicants it deems qualified, conditioned upon each applicant taking an oath that he or she will comply with this rule and paying to the Board the annual fee for the current year. Upon the entry of such order, the taking and filing of the oath, and payment of the annual fee, an applicant shall be enrolled as a limited practice officer and shall be entitled to perform those services permitted by this rule. The oath must be taken before a court of record in the State of Washington.

(iv) Education. The Board shall approve individual courses and may accredit all or portions of the entire educational program of a given organization which, in the Board's judgment, will satisfy the educational requirement of these rules. It shall determine the number of credit hours to be allowed for each such course. It shall encourage the offering of such courses and programs by established organizations, whether offered within or outside this state.

(v) Grievances and discipline. The Board shall adopt hearing and appeal procedures and shall hear complaints of persons aggrieved by the failure of limited practice officers to comply with the requirements of this rule and of the Limited Practice Officer Rules of Professional Conduct. Upon a finding by the Board that a limited practice officer has failed to comply in any material manner with the requirements of this rule, the Board shall take such action as may be appropriate to the degree of the violation, considering also the number of violations and the previous disciplinary record of the limited practice officer. Disciplinary action may include admonitions, reprimands, and recommendations to the Supreme Court for the suspension or revocation of the limited practice officer's certification.

(vi) Investigation. Upon the receipt of a complaint that a limited practice officer has violated the provisions of this rule and in other appropriate circumstances, the Board may investigate the conduct of the limited practice officer to determine whether the limited practice officer has violated the requirements, conditions or limitations imposed by this rule.

(vii) Approval of forms. The Board shall approve standard forms for use by limited practice officers in the performance of services authorized by this rule.

(viii) Fees. The Board shall establish and collect examination and annual fees in such amounts as are necessary to carry out the duties and responsibilities of the Board.

(ix) Regulations. The Board shall propose regulations to implement the provisions of this rule for adoption by the Supreme Court.

(3) Expenses of the Board. Members of the Board shall not be compensated for their services. For their actual and necessary expenses incurred in the performance of their duties, they shall be reimbursed by the Board in a manner consistent with its rules. All such expenses shall be paid pursuant to a budget submitted to and approved by the Washington State Bar Association on an annual basis. Funds accumulated from examination fees, annual fees, and other revenues shall be used to defray all expenses of the Board. The administrative support to the Board shall be provided by the Washington State Bar Association.

(c) Certification Requirements. An applicant for certification as a limited practice officer shall:

(1) Age. Be at least 18 years of age.

(2) Moral Character. Be of good moral character.

(3) Examination. Satisfy the examination requirements established by the Board.

(4) Oath. Execute under oath and file with the Board two copies of his or her application, in such form as may be required by the Board. Additional proof of

any fact stated in the application may be required by the Board. In the event of the failure or refusal of an applicant to furnish any information or proof, or to answer any interrogatories of the Board pertinent to the pending application, the Board may deny the application.

(5) Examination Fee. Pay, upon the filing of an application, the examination fee.

(d) Scope of Practice Authorized by Limited Practice Rule. Notwithstanding any provision of any other rule to the contrary, a person certified as a limited practice officer under this rule may select, prepare and complete documents in a form previously approved by the Board for use by others in, or in anticipation of, closing a loan, extension of credit, sale or other transfer of interest in real or personal property. Such documents shall be limited to deeds, promissory notes, guaranties, deeds of trust, reconveyances, mortgages, satisfactions, security agreements, releases, Uniform Commercial Code documents, assignments, contracts, real estate excise tax affidavits, bills of sale, and powers of attorney. Other documents may be from time to time approved by the Board.

(e) Conditions Under Which Limited Practice Officers May Prepare and Complete Documents. Limited practice officers may render services authorized by this rule only under the following conditions and with the following limitations:

(1) Agreement of the Clients. Prior to the performance of the services, all clients to the transaction shall have agreed in writing to the basic terms and conditions of the transaction. In the case of a power of attorney prepared in anticipation of a transaction, the principal(s) and attorney(s)-in-fact shall have provided the limited practice officer consistent written instructions for the preparation of the power of attorney.

(2) Disclosures to the Clients. The limited practice officer shall advise the clients of the limitations of the services rendered pursuant to this rule and shall further advise them in writing:

(i) that the limited practice officer is not acting as the advocate or representative of either of the clients;

(ii) that the documents prepared by the limited practice officer will affect the legal rights of the clients;

(iii) that the clients' interests in the documents may differ;

(iv) that the clients have a right to be represented by lawyers of their own selection; and

(v) that the limited practice officer cannot give legal advice as to the manner in which the documents affect the clients.

The written disclosure must particularly identify the documents selected, prepared, and/or completed by the limited practice officer and must include the name, signature and number of the limited practice officer.

(f) Continuing Certification Requirements.

(1) Continuing Education. Each limited practice officer must complete a minimum number of credit hours of approved or accredited education, as prescribed by regulation of the Board, during each calendar year in courses certified by the Board to be appropriate for study by clo limited practice officers providing services pursuant to this rule; provided, that the limited practice officer shall not be required to comply with this subsection during the calendar year in which he or she is initially certified.

(2) Financial Responsibility. Each limited practice officer or employer thereof shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rule. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe.

(3) Annual Fee. Each limited practice officer must pay the annual fee established by the Board.

(g) Existing Law Unchanged. This rule shall in no way expand, narrow or affect existing law in the following areas:

(1) The fiduciary relationship between a limited practice officer and his or her customers or clients;

(2) Conflicts of interest that may arise between the limited practice officer and a client or customer;

(3) The right to act as one's own attorney under the pro se exception to the unauthorized practice of law including but not limited to the right of a lender to prepare documents conveying or granting title to property in which it is taking a security interest;

(4) The lack of authority of a limited practice officer to give legal advice without being licensed to practice law;

(5) The standard of care which a limited practice officer must practice when carrying out the functions permitted by this rule.

(h) Treatment of Funds Received Incident to the Closing of Real or Personal Property Transactions. Persons admitted to practice under this rule shall comply with LPORPC 1.12A and B regarding the manner in which they identify, maintain and disburse funds received incidental to the closing of real and personal property transactions, unless they are acting pursuant to APR 12(g)(3).

Comment

[1] Comment Re: APR 12(d)

Powers of attorney authorizing a person to negotiate and sign documents in anticipation of, or in the closing of, a transaction are included in the documents limited practice officers are authorized to prepare. Such documents may include, but are not limited to, purchase and sale agreements for real or personal property, loan agreements, and letters of intent.

[2] Comment Re: LPO Professional Standard Of Care
The purpose of this comment is to discuss the legal standard of care to which a limited practice officer is subject, while also clarifying the limited duties of a limited practice officer compared to an attorney when selecting and preparing legal documents and to show the greater breadth of a lawyer's duties and services which a party may not expect when engaging a limited practice officer.

Generally, when a non-lawyer selects and prepares a legal document for another, the non-lawyer engages in the unauthorized practice of law. Despite this, the non-lawyer (including a licensed limited practice officer) will be held to the standard of a lawyer: "to comply with the duty of care, an attorney must exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in this jurisdiction." Hizey v. Carpenter, 119 Wn.2d 251, 261, 830 P.2d 246 (1992). However, when selecting and preparing approved forms a limited practice officer, though having a limited license to practice law as defined and limited in APR 12, will not be authorized nor charged with many of the duties of a lawyer. Except as provided otherwise in APR 12 rules and regulations, these include the duty to investigate legal matters, to form legal opinions (including but not limited to the capacity of an individual to sign for an entity or whether a legal document is effective), to give legal advice (including advice on how a legal document affects the rights or duties of a party), or to consult with a party on the advisability of a transaction. See also LPORPC 1.1, Competence, and LPORPC 1.3, Communication.

[Adopted effective January 21, 1983; amended effective October 28, 1983; September 13, 1985; December 9, 1995; July 1, 2002; January 1, 2009.]

LP_REGS REGULATIONS OF THE APR 12 LIMITED PRACTICE BOARD (IN WORD FORMAT)

The contents of this item are only available on-line.

LP_CE_REGS CONTINUING EDUCATION REGULATIONS OF THE LIMITED PRACTICE BOARD (IN WORD FORMAT)

The contents of this item are only available on-line.

LP_DIS_REGS DISCIPLINARY REGULATIONS APPLICABLE TO ELPOC TITLE 15 (IN WORD FORMAT)

The contents of this item are only available on-line.

LP_RPC LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL CONDUCT (LPORPC) (IN WORD FORMAT)

The contents of this item are only available on-line.

LP_ELPOC RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT (ELPOC) (IN WORD FORMAT)

The contents of this item are only available on-line.

APR 13
SIGNING OF PLEADINGS AND OTHER PAPERS; ADDRESS OF RECORD; ELECTRONIC MAIL ADDRESS; NOTICE OF CHANGE OF ADDRESS, TELEPHONE NUMBER, OR NAME

(a) Signing of Pleadings and Other Papers. All pleadings and other papers signed by an attorney and filed with a court shall include the attorney's Washington State Bar Association membership number in the signature block. The law department of a municipality, county, or state, public defender organization or law firm is authorized to make an application to the Administrative Office of the Courts for an office identification number. An office identification number may be assigned by the Administrative Office of the Courts upon a showing that it will facilitate the process of electronic notification. If an office identification number is granted, it shall appear with the attorney's Washington State Bar Association membership number in the signature block.

(b) Address of Record; Change of Address. An attorney must advise the Washington State Bar Association of a current mailing address and telephone number. The mailing Address shall be the attorney's address of record. An attorney whose mailing address or telephone number changes shall, within 10 days after the change, notify the Executive Director of the Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. The notice shall be in a form acceptable to the Bar Association and shall include (1) the attorney's full name, (2) the attorney's Washington State Bar Association membership number, (3) the previous address and telephone number, clearly identified as such, (4) the new address and telephone number, clearly identified as such, and (5) the effective date of the

change. The courts of this state may rely on the address information contained in the state computer system in issuing notices in pending actions.

(c) Electronic mail address: An attorney should advise the Washington State Bar Association of a current business electronic mail address if one exists. An attorney whose business electronic mail address changes should, within 10 days after the change, notify the Executive Director of the Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. Use of electronic mail addresses for court notice, service and filing must comply with GR 30.

(d) Change of Name. An attorney whose name changes shall, within 10 days after the change, notify the Executive Director of the Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. The notice shall be in a form acceptable to the Bar Association and shall contain (1) the full previous name, clearly identified as such, (2) the full new name, clearly identified as such, (3) the attorney's Washington State Bar Association membership number, and (4) the effective date of the change.

(e) Requirements of Local and Other Court Rules Not Affected. The responsibility of a party or an attorney to keep the court and other parties and attorneys informed of the party's or attorney's correct name and current address, as may be required by local or other court rule, is not affected by this rule.

[Adopted effective September 1, 1990; amended effective October 30, 2001.]

APR 14
LIMITED PRACTICE RULE FOR FOREIGN LAW CONSULTANTS

(a) Purpose. The purpose of this rule is to authorize lawyers from a foreign country to advise or consult about foreign law and to prescribe the conditions and limitations upon such limited practice.

(b) Qualifications.

(1) To qualify as a Foreign Law Consultant applicant for admission to the limited practice of law in the State of Washington as provided in these rules, a person must:

(i) Present satisfactory proof of both admission to the practice of law, together with current good standing, in a foreign jurisdiction, and active legal experience as a lawyer or counselor at law or the equivalent in a foreign jurisdiction for at least 5 of the 7 years immediately preceding the application; and

(ii) Possess the good moral character and fitness requisite for a member of the Bar of the State of Washington; and

(iii) Execute under oath and file with the Bar Association two copies of an application, in such form as may be required by the Board of Governors; and

(iv) File with the application a certificate from the authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicants admission to practice, and the date thereof, and as to the good standing of such lawyer or counselor at law or the equivalent, together with a duly authenticated English translation of such certificate, if it is not in English; and

(v) File with the application a letter of recommendation from one of the members of the executive body of such authority or from one of the judges of the highest law court or courts of original jurisdiction of such foreign country, together with a duly authenticated English translation of such letter, if it is not in English; and

(vi) Provide with the application such other evidence of the applicants educational and professional qualifications, good moral character and fitness and compliance with the requirements of this rule as the Board of Governors may require; and

(vii) Pay upon the filing of the application a fee equal to that required pursuant to rule 3(d)(2) to be paid by an attorney applicant to take the bar examination.

(2) Upon a showing that strict compliance with the provisions of subsections (b)(1)(iv) or (b)(1)(v) would cause the applicant unnecessary hardship, the Board of Governors may at its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof.

(c) Procedure. The Board of Governors shall approve or disapprove applications for admission of Foreign Law Consultants. Additional

proof of any facts stated in the application may be required by the Board. In the event of the failure or refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Board may deny the application. Upon approval of the application by the Board of Governors, the Board shall recommend to the Supreme Court the admission of the applicant for the purposes herein stated. The Supreme Court may enter an order admitting to practice those applicants it deems qualified, conditioned upon such applicants:

(1) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney pursuant to rule 5; and

(2) Paying to the Bar Association its membership fee for the current year in the maximum amount required of active members; and

(3) Filing with the Bar Association in writing his or her address in the State of Washington, or the name and address of his or her registered agent as provided in APR 5(e), together with a statement that the applicant has read the Rules of Professional Conduct and Rules for Enforcement of Lawyer Conduct, is familiar with their contents and agrees to abide by them.

(d) Scope of Practice. A Foreign Law Consultant shall be authorized to engage in the limited practice of law only as authorized by the provisions of this rule. A Foreign Law Consultant may not:

(1) Appear for a person other than the Foreign Law Consultant as lawyer in any court or before any magistrate or other judicial officer in this state (other than upon admission for a particular action or proceeding pursuant to rule 8(b)) or prepare pleadings or any other papers or issue subpoenas in any action or proceeding brought in any court or before any judicial officer of this state;

(2) Prepare any deed, mortgage, assignment, discharge, lease or any other instrument affecting title to real estate located in the United States; or

(3) Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident thereof; or any instrument related to the administration of a decedents estate in the United States; or

(4) Prepare any instrument with respect to the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of such a resident; or

(5) Render legal advice on the law of the State of Washington, of any other state or territory of the United States, of the District of Columbia or of the United States (whether rendered incident to preparation of legal instruments or otherwise) unless and to the extent that the Foreign Law Consultant is admitted to practice law before the highest court of such other jurisdiction; or

(6) In any way hold himself or herself out as a member of the Bar of the State of Washington; or

(7) Use any title other than "Foreign Law Consultant", the firm name, and/or authorized title used in the foreign country where the Foreign Law Consultant is admitted to practice. In each case, such title or name shall be used in conjunction with the name of such foreign country.

(e) Regulatory Provisions. A Foreign Law Consultant shall be subject to the Rules for Enforcement of Lawyer Conduct and the Rules of Professional Conduct as adopted by the Supreme Court and to all other laws and rules governing lawyers admitted to the Bar of this state, except for the requirements of APR 11 relating to continuing legal education. Jurisdiction shall continue whether or not the Consultant retains the authority for the limited practice of law in this state, and regardless of the residence of the Consultant.

(f) Continuing Requirements.

(1) Annual Fee. A Foreign Law Consultant shall pay to the Bar Association its membership fee for the current year in the maximum amount required of active members.

(2) Report. A Foreign Law Consultant shall promptly report to the Bar Association any change in his or her status in any jurisdiction where he or she is admitted to practice.

(g) Termination of License. A limited license is granted at the sufferance of the Supreme Court and may be revoked at any time upon the courts own motion, or upon the motion of the Board of Governors, with or without cause, including failure to comply with the terms of this rule.

(h) Reciprocity. A Foreign Law Consultant applicant shall demonstrate that the country or jurisdiction from which he or she applies does not impose, by any law, rule or regulation, any requirements, limitations, restrictions or conditions upon the admission of members of the Washington State Bar Association as Foreign Law Consultants in that foreign country or jurisdiction which are significantly more limiting or restrictive than the requirements of this rule. The Supreme Court may deny admission to a Foreign Law Consultant applicant upon that basis, or may impose similar limitations, restrictions or conditions upon foreign legal consultant applicants from that foreign country or jurisdiction.

[Adopted effective September 1, 1990; amended effective December 28, 1999; October 1, 2002; November 25, 2003; January 2, 2007.]

APR 15
LAWYERS' FUND FOR CLIENT PROTECTION

(a) Purpose. The purpose of this rule is to create a Lawyers' Fund for Client Protection, to be maintained and administered as a trust by the Washington State Bar Association (WSBA), in order to promote public confidence in the administration of justice and the integrity of the legal profession.

(b) Establishment. There is established the Lawyers' Fund for Client Protection (Fund). The Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any client by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA as a result of or directly related to the member's practice of law (as defined in GR 24) or while acting as a fiduciary in a matter directly related to the member's practice of law. The Fund may also be used to relieve or mitigate like loss sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was, at the time of the act complained of, under court ordered suspension. The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performance of services or for acts performed after a member is disbarred. Payments from the Fund shall be considered gifts to the recipients and shall not be considered entitlements.

(c) Funding. The Supreme Court may provide for funding by assessment of members of the WSBA in amounts determined by the court upon the recommendation of the Board of Governors of the WSBA.

(d) Enforcement. Failure to pay any fee assessed by the court on or before the date specified by the court shall be a cause for suspension from practice until payment has been made.

(e) Restitution. A lawyer whose conduct results in payment to an applicant shall be liable to the Fund for restitution.

(f) Administration. The Fund shall be maintained and administered by the Board of Governors acting as trustees for the Fund. The Board shall appoint the Lawyers' Fund for Client Protection Board (Client Protection Board) to administer the Fund pursuant to rules adopted by the Board of Governors and approved by the Supreme Court. The Client Protection Board shall consist of 11 lawyers and 2 nonlawyers, who will be appointed to serve staggered 3-year terms.

(g) Subpoenas. A lawyer member of the Client Protection Board, or counsel for the Washington State Bar Association assigned to the Client Protection Board, shall have the power to issue subpoenas to compel the attendance of the lawyer being investigated or of a witness, or the production of books, or documents, or other evidence, at the taking of a deposition. A subpoena issued pursuant to this rule shall indicate on its face that the subpoena is issued in connection with an investigation under this rule. Subpoenas shall be served in the same manner as in civil cases in the superior court.

(h) Reports. The Board of Governors, in consultation with the Client Protection Board, shall file with the Supreme Court a full report on the activities and finances of the Fund at least annually and may make other reports to the court as necessary.

(i) Communications to the Association: Communications to the Association, Board of Governors (Trustees), Client Protection Board, Association staff, or any other individual acting under the authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any applicant or other person providing information.

[Adopted effective September 1, 1994; amended effective October 1, 2002; January 2, 2008; January 13, 2009; December 1, 2009.]

Lawyers' Fund for Client Protection
(APR 15)
Procedural Rules

RULE 1. PURPOSE

A. The purpose of these rules is to establish procedures pursuant to Rule 15 of the Admission to Practice Rules, to maintain and administer a Lawyers' Fund for Client Protection established as a trust by the Washington State Bar Association (WSBA), in order to promote public confidence in the administration of justice and the integrity of the legal profession.

B. Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA as a result of or directly related to the member's practice of law (as defined in GR 24), or while acting as a fiduciary in a matter directly related to the member's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was at the time of the act

complained of under a court ordered suspension.

C. The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performance of services.

RULE 2. ESTABLISHMENT OF THE FUND.

A. Trustees. Pursuant to APR 15, the members of the Board of Governors of the WSBA will serve during their terms of office as Trustees (Trustees) for the Fund to hold funds assessed by the Supreme Court for the purposes of the Fund. The WSBA President will serve as President of the Trustees.

B. Funding. The Trustees may recommend to the Supreme Court that it order an annual assessment of all active members of the WSBA in an amount recommended by the Trustees to be held by them in trust for the purposes of the Fund.

C. Enforcement. Any active member failing to pay any annual assessment on or before the date set for payment by the Supreme Court shall, after 60 days written notice sent to his or her last known business address as shown in the records of the WSBA, be ordered suspended from the practice of law until the assessment is paid.

RULE 3. LAWYERS' FUND FOR CLIENT PROTECTION BOARD

A. Membership. The Lawyers Fund for Client Protection Board shall consist of 11 lawyers and 2 nonlawyers appointed by the Trustees for terms not exceeding 3 years each.

B. Vacancies. Vacancies on the Board shall be filled by appointment of the Trustees.

C. Officers. The Trustees shall appoint a chairperson of the Board for a term of one-year or until a successor is appointed. The secretary of the Board shall be a staff member of the WSBA assigned to the Board by the Executive Director of the WSBA.

D. Meetings. The Board shall meet not less than once per year upon call of the chairperson, or at the request of the staff member of the WSBA, who shall not be entitled to vote on Board matters.

E. Quorum. A majority of the Board members, excluding the secretary, shall constitute a quorum.

F. Record of Meetings. The secretary shall maintain minutes of the Board deliberations and recommendations.

G. Authority and Duties of Board. The Board shall have the power and authority to:

(1) Consider claims for reimbursement of pecuniary loss and make a report and recommendation regarding payment or nonpayment on any claim to the Trustees.

(2) Provide a full report of its activities annually to the Supreme Court and the Trustees and to make other reports and to publicize its activities as the Court or Trustees may deem advisable.

H. Conflict of Interest.

(1) A Board member who has or has had a lawyer/client relationship or financial relationship with an applicant or lawyer who is the subject of an application shall not participate in the investigation or deliberation of an application involving that applicant or lawyer.

(2) A Board member with a past or present relationship, other than that as provided in section (1), with an applicant or lawyer who is the subject of an application, shall disclose such relationship to the Board and, if the Board deems it appropriate, that member shall not participate in any action relating to that application.

RULE 4. APPLICATIONS FOR PAYMENT

A. Application Form. All applications for payment through the Lawyers Fund for Client Protection shall be made by submitting an application on a form approved by the Board, and shall include all information requested on the form.

B. Disciplinary Grievances. Before an application for payment from the Fund will be considered, the applicant must also file a disciplinary grievance with the Office of Disciplinary Counsel, unless the lawyer is disbarred or deceased, or unless the Board in its discretion finds that no disciplinary grievance is required.

C. Notice by Office of Disciplinary Counsel. Any person who has filed a disciplinary grievance with the WSBA alleging a loss occasioned by the dishonest conduct of a lawyer should be provided with a Lawyers Fund for Client Protection application form and given information about the Fund.

RULE 5. ELIGIBLE CLAIMS

A. Eligibility. To be eligible for payment from the Fund, the loss must be caused by the dishonest conduct of a lawyer or the failure to account for money or property entrusted to a lawyer as a result of or directly related to the lawyer's practice of law (as defined in GR 24). The loss must also have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship in a matter directly related to the lawyer's practice of law.

B. Time Limitations. Any application must be made within three years from the date on which discovery of the loss was made or reasonably should have been made by the applicant, and in no event more than three years from the date the lawyer dies, is disbarred, is disciplined for misappropriation of

funds, or is criminally convicted for matters relating to the applicant's loss, provided that the Board or Trustees in their discretion may waive any limitations period for excusable neglect or other good cause.

C. Dishonest Conduct. As used in these rules, "dishonest conduct" or "dishonesty" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other thing of value, including but not limited to refusal to refund unearned fees or expenses as required by the Rules of Professional Conduct.

D. Excluded Losses. Except as provided by Section E of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred by related persons, law partners and associate attorneys of the lawyer causing the loss. For purposes of these Rules, "related persons" includes a spouse, domestic partner, child, grandchild, parent, grandparent, sibling, or other Relative or individual with whom the lawyer maintains a close, familial relationship;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the lawyer or any person or entity described in Rule 5 D (1), (2) or (3);

(5) Losses incurred by an assignee, lienholder, or creditor of the applicant or lawyer, unless application has been made by the client or beneficiary or the client or beneficiary has authorized such reimbursement;

(6) Losses incurred by any governmental entity or agency;

(7) Losses arising from business or personal investments not arising in the course of or arising out of the client-lawyer relationship;

(8) Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.

E. Special and Unusual Circumstances. In cases of special and unusual circumstances, the Board may, in its discretion, consider an application which would otherwise be excluded by reason of the procedural requirements of these rules.

F. Unjust Enrichment. In cases where it appears that there will be unjust enrichment, or that the applicant contributed to the loss, the Board may, in its discretion, recommend the denial of the application. No rule should be interpreted as to provide a financial windfall to a claimant from the fund.

G. Investment Victims. When considering gifts to claimants who were victimized after investing with a lawyer, the Board may consider such factors as the sophistication of the investor, the length of the relationship with the lawyer, and whether the invester was aware that the lawyer had non-lawyer partners.

H. Exhaustion of Remedies. The Board may consider whether an applicant has made reasonable attempts to seek reimbursement of a loss before taking action on an application. This may include, but is not limited to, the following:

(1) Filing a claim with an appropriate insurance carrier;

(2) Filing a claim on a bond, when appropriate;

(3) Filing a claim with any and all banks which honored a financial instrument with a forged endorsement;

(4) As a prelude to possible suit under part (5) below, demanding payment from any business associate or employer who may be liable for the actions of the dishonest lawyer; or

(5) Commencing appropriate legal action against the lawyer or against any other party or entity who may be liable for the applicant's loss.

RULE 6. PROCEDURES

A. Ineligibility. Whenever it appears that an application is not eligible for reimbursement pursuant to Rule 5, the applicant shall be advised of the reasons why the application may not be eligible for reimbursement.

B. Investigation and Report. The WSBA staff member assigned to the Board shall conduct an investigation regarding any application. The investigation may be coordinated with any disciplinary investigation regarding the lawyer. The staff member shall report to the Board and make a recommendation to the Board.

C. Notification of Lawyer. The lawyer, or his or her representative, regarding whom an application is made shall be notified of the application and provided a copy of it, and shall be requested to respond within 20 days. If the lawyer's address of record on file with the WSBA is not current, then a copy of the application should be sent to the lawyer at any other address on file with the WSBA. A copy of these Rules shall be provided to the lawyer or representative.

D. Withdrawal of Application/Restitution. If, during the investigation of an application, the Applicant withdraws the Application or the Applicant receives full restitution of the amount stated in the Application, the Applicant and the lawyer shall be advised that the file will be closed without further action.

E. Testimony. The Board may request that testimony be presented to complete the record. Upon request, the lawyer or applicant, or their representatives, may be given an opportunity to be heard at the discretion of the Board.

F. Finding of Dishonest Conduct. The Board may make a finding of dishonest conduct for purposes of considering an application. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

G. Evidence and Burden of Proof. Consideration of an application need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs. The applicant shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.

H. Pending Disciplinary Proceedings. Unless the Trustees otherwise direct, no application shall be acted upon during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim.

I. Public Participation. Public participation at Board meetings shall be permitted only by prior permission granted by the Board chairperson.

J. Board Action.

(1) Actions of the Board Which Are Final Decisions. A decision by the Board on an application for payment of $25,000 or less -- whether such decision be to make payment, to deny payment, to defer consid eration, or for any action other than payment of more than $25,000 -- shall be final and without right of appeal to the Trustees.

(2) Actions of the Board Which Are Recommendations to the Trustees. A decision by the Board (a) on an application for more than $25,000, or (b) involving a payment of more than $25,000 (regardless of the amount stated in the application), is not final and is a recommendation to the Trustees which shall have sole authority for final decisions in such cases.

RULE 7. ADJUDICATION BY TRUSTEES

A. A recommendation by the Board (a) concerning applications for more than $25,000, or (b) that payments of more than $25,000 be made to applicants regarding any one lawyer, shall be reported to the Trustees which may, in its discretion, adopt, modify, disapprove or take any other appropriate action on the Board's recommendation.

B. A decision of the Trustees shall be final and there shall be no right of appeal from that decision.

RULE 8. NOTIFICATION OF APPLICANT AND LAWYER

Both the applicant and the lawyer who is the subject of an application shall be advised of any decision of the Board or the Trustees.

RULE 9. LIMITATIONS ON AMOUNT OF REIMBURSEMENT

The Trustees may, at their discretion, set limitations on the amount of reimbursement.

RULE 10. NO LEGAL RIGHT TO PAYMENT

Any and all payments made to applicants in connection with the Lawyers' Fund for Client Protection are gratuitous and are at the sole discretion of the Trustees.

RULE 11. RESTITUTION AND SUBROGATION

A. Restitution. A lawyer whose conduct results in payment to an applicant shall be liable to the Fund for restitution, and the Trustees may bring such action as they deem advisable to enforce restitution.

B. Subrogation. As a condition of payment, an applicant shall be required to provide the Fund with a pro tanto transfer of the applicant's rights against the lawyer, the lawyer's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the applicant's loss. Failure to return a signed subrogation agreement to the Fund within three years of approval of the application will result in revocation of that approval.

C. Action to Enforce Restitution. In the event the Trustees commence a judicial action to enforce restitution, they shall advise the applicant who may then join in the action to recover any unreimbursed losses. If the applicant commences such an action against the lawyer or another entity who may be liable for the loss, the applicant shall notify the Fund who may join in the action.

D. Duty to Cooperate. As a condition of payment, the applicant shall be required to cooperate in all efforts that the Fund undertakes to achieve restitution.

RULE 12. COMPENSATION FOR REPRESENTING APPLICANTS

No lawyer shall charge or accept any payment for prosecuting an application on behalf of an applicant, unless such charge or payment has been approved by the Trustees.

RULE 13. CONFIDENTIALITY

A. Matters Which Are Public. The facts and circumstances which generated the loss, the Board's findings of fact and recommendations to the Trustees

with respect to payment of a claim, the amount of claim, the amount of loss as determined by the Board, and the amount of payment authorized and made, shall be public. After payment is authorized, the name of the lawyer causing the loss shall be public.

B. Matters Which Are Not Public. The Board's investigation and deliberations of any application; the name of the applicant, unless the applicant consents; or the name of the lawyer, unless the lawyer consents or unless the lawyer's name is made public pursuant to these rules, shall not be public.

RULE 14. NOTICE OF ACTION

Notice of approval of an application to the Fund may be published in the Washington State Bar News and elsewhere at the direction of the Board or Trustees. Notice may also be posted electronically on any web site maintained by the WSBA. If the lawyer has made full restitution to the Fund, any notice posted electronically by the WSBA may, at the request of the lawyer, be removed.

RULE 15. AMENDMENTS

These Rules may be amended, altered or repealed on the recommendation of the Board by a vote of the Trustees, with the approval of the Supreme Court.

(Adopted by the Washington Supreme Court July 18, 1995; amended February 11, 1997; May 6, 1999; October 5, 2001; December 2, 2004; September 1, 2006; November 2, 2006, September 1, 2008; January 13, 2009; December 1, 2009; September 1, 2012.)

APR 16
Mediation Program

(a) Policy. It is the policy of the Supreme Court to encourage through a conciliatory process the informal and prompt resolution of disputes between lawyers and their clients, disputes between lawyers and other lawyers, and other disputes, including disputes between lawyers and other professionals regarding expert witness fees.

(b) Mediation Program. The Washington State Bar Association is authorized to maintain and administer a Mediation Program for the resolution of disputes voluntarily submitted by the parties, or referred by the Office of Disciplinary Counsel, when mediation appears appropriate, and to be governed by such guidelines as may be adopted by the Bar Association's Board of Governors and approved by the Supreme Court.

(c) Confidentiality. Mediation under this rule shall be confidential, and communications made or materials submitted in, or in connection with, the mediation proceeding will be privileged and confidential as provided by RCW 5.60.070, provided that no party to the mediation will be precluded from filing or pursuing a grievance under the Rules for Enforcement of Lawyer Conduct.

(d) Selection and Appointment of Mediators. Mediators may be agreed upon by the parties or shall be assigned from a list approved by the Board of Governors and maintained by the Bar Association of both lawyers and non-lawyers with the appropriate training and experience to serve effectively in a facilitative role. Lawyers assigned as mediators shall be active members of the Bar Association for at least 7 years.

(e) Communications to the Association.

Communications to the Bar Association, Board of Governors, mediator, mediation staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any party to a mediation, witness or other person providing information.

[Adopted effective September 1, 1999; amended effective October 1, 2002; January 2, 2008.]

APR 17
SUSPENSION FROM PRACTICE

(a) Suspension from Practice: The Washington State Bar Association shall request that the Supreme Court suspend a member from the practice of law upon the execution of written findings from an adjudicative process that: (1) the member is more than six months delinquent in noncompliance with a valid and enforceable order entered by a court of competent jurisdiction requiring the member to pay child support, and (2) the member has had the opportunity for an adjudicative proceeding to contest the issue of compliance with the child support order, and (3) there are currently no good faith negotiations for a repayment agreement or other modification of the order, and (4) there are no pending judicial or administrative proceedings to determine whether child support is delinquent. A member shall be considered in compliance with an order of child support if the member

is current with a payment arrangement pursuant to an order which contemplates payments for past due child support. The hearing will be held, on actual notice to the member of no less than sixty days. The hearing shall otherwise be conducted pursuant to and in accordance with the Rules for Enforcement of Lawyer Conduct but will be for an administrative suspension only so long as the conditions set forth above exist.

(b) Order of Suspension: After 60 days from the execution of the written findings the Court may enter an order suspending the member from practice, unless the member submits satisfactory proof one of the conditions set forth above does not exist.

(c) Reinstatement: A member who has been administratively suspended under this rule shall have a right to submit proof of a condition for suspension no longer exists. The Court may enter an order of reinstatement upon determination said proof is satisfactory and so long as the member meets all other requirements to practice law.

(d) Rules of Professional Conduct not Superseded: Nothing in this rule supersedes any of the Rules of Professional Conduct.

[Adopted effective September 1, 1999; October 1, 2002.]

APR 18
ADMISSION OF LAWYERS LICENSED IN OTHER STATES OR TERRITORIES OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA TO PRACTICE LAW IN WASHINGTON

(a) Purpose. This rule prescribes the procedure, conditions, and limitations for admission of lawyers from other states or territories of the United States or the District of Columbia, except as provided in rule 3. Lawyers from other states or territories or the District of Columbia will be admitted in Washington pursuant to this rule under procedures and conditions that, in the judgment of the Washington State Supreme Court, are substantially similar to the procedures and conditions under which the other licensing state or territory or the District of Columbia allows the admission of licensed Washington lawyers to their states.

(b) Qualifications. Before a lawyer licensed to practice law in another state or territory of the United States or the District of Columbia qualifies for admission to the practice of law in the State of Washington, the lawyer must:

(1) Present satisfactory proof of both admission to the practice of law, together with current good standing, in another state or territory of the United States or the District of Columbia, and active legal experience as a lawyer or counselor at law at the time of the application;

(2) Possess the good moral character and fitness requisite for a member of the Bar of the State of Washington;

(3) Execute under oath and file with the Bar Association two copies of an application in such form as may be required by the Board of Governors; and

(4) File with the application a certificate from the authority in such other state or territory or the District of Columbia having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice, and the date thereof, and as to the good standing of such lawyer or counselor at law or the equivalent; and

(5) Provide with the application such other evidence of the applicant's educational and professional qualifications, good moral character and fitness and compliance with the requirements of this rule as the Board of Governors may require; and

(6) Establish to the satisfaction of the Board of Governors that the state or territory or the District of Columbia that licensed the lawyer applicant allows the admission of licensed Washington lawyers under terms and conditions substantially similar to those set forth in these rules, provided that if the state or territory or the District of Columbia that licensed the lawyer applicant requires Washington lawyers to complete or meet other conditions or requirements, the applicant must meet a substantially similar requirement for admission in Washington; and

(7) Pay upon the filing of the application the fee established for such admission which shall be at least equal to that required pursuant to rule 3(d)(2) to be paid by a lawyer applicant to take the bar examination.

(c) Procedure.

(1) The Board of Governors shall approve or disapprove applications for admission of lawyers admitted to the practice of

law in other states or territories of the United States or the District of Columbia. The Board may require additional proof of any facts stated in the application. In the event of the failure or refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Board may deny the application. Upon approval of the application by the Board of Governors, the Board shall recommend to the Supreme Court the admission of the applicant for the purposes herein stated. The Supreme Court may enter an order admitting to practice those applicants it deems qualified, conditioned upon such applicant:

(i) Completing a minimum of 4 hours approved preadmission education pursuant to rule 5(b); and

(ii) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney pursuant to rule 5; and

(iii) Paying to the Bar Association its membership fee for the current year in the maximum amount required of active members; and

(iv) Filing with the Bar Association in writing his or her address in the State of Washington, together with a statement that the applicant has read the Rules of Professional Conduct and Rules for Enforcement of Lawyer Conduct, is familiar with their contents and agrees to abide by them.

(2) Upon the entry of an order of admission, the filing of the required materials and payment of the membership fee, the applicant shall be admitted to the practice of law in the State of Washington as specified by this rule.

[Adopted effective September 21, 1999; October 1, 2002; amended effective June 1, 2006.]

APR 19
LAWYER SERVICES

(a) Purpose. The purpose of this rule is to protect the public, to assist lawyers in the performance of their duties and responsibilities in the representation of clients, to maintain and improve the integrity of the legal profession, and to promote the interests of justice.

(b) Lawyers' Assistance Program (LAP).

(1) Authorization. The Washington State Bar Association is authorized to create a program to help prevent and alleviate problems that may detrimentally influence a lawyer's performance, including physical illnesses, emotional problems or addictions.

(2) Confidentiality. Confidential communications between a lawyer-client and staff or peer counselors of the Lawyers' Assistance Program shall be privileged against disclosure without the consent of the lawyer-client to the same extent and subject to the same conditions as confidential communications between a client and psychologist.

(3) Exoneration From Liability.

(i) Bar Association and Its Agents. No cause of action shall accrue in favor of any person, arising from any action or proceeding pursuant to these rules, against the Bar Association, or its officers or agents (including but not limited to its staff, members of the Board of Governors, or any other individual acting under the authority of these rules) provided only that the Bar Association, officer or agent shall have acted in good faith. The burden of proving bad faith in this context shall be upon the person asserting it. The Bar Association shall provide defense to any action brought against an officer or agent of the Bar Association for actions taken in good faith under these rules and shall bear the costs of that defense and shall indemnify the officer or agent against any judgment taken therein.

(ii) Other persons. Communications to the Bar Association, Board of Governors, staff, or any other individual acting under the authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against them or other person providing information.

(c) Fee Arbitration Program. [Reserved.]

(d) Law Office Management Assistance Program.

(1) Authorization. The Washington State Bar Association is authorized to create a program to help improve the quality of legal services by assisting lawyers to manage better their offices and improve the professional delivery of legal services.

(2) Confidentiality. Information obtained by staff or agents of the Law Office Management Assistance Program shall be confidential unless:

(i) the assisted lawyer consents to disclosure;

(ii) disclosure, based upon reasonable belief, is necessary to prevent the assisted lawyer from committing a crime; or

(iii) pursuant to court order.

(e) Professional Responsibility Program.

(1) Authorization. The Washington State Bar Association is authorized to maintain a program to assist lawyers in complying with their obligations under the Rules of Professional Conduct, thereby enhancing the quality of legal representation provided by Washington lawyers.

(2) Professional Responsibility Counsel. "Professional responsibility counsel" denotes a lawyer employed or appointed by the Bar Association to act as counsel on the Bar Association's behalf in performing duties under part (e) of this rule, and any other lawyer employed or appointed by the Bar Association, including but not limited to disciplinary counsel or general counsel, whenever such lawyer is temporarily performing those duties.

(3) Ethics Inquiries. Any member of the Bar Association, or any lawyer or legal intern permitted by rule to practice law in this state, may direct an ethics inquiry to professional responsibility counsel. Such inquiries should be made by telephone to the Bar Association's designated ethics inquiry telephone line. The provisions of this rule also apply to ethics inquiries initially submitted in writing, including facsimile, e-mail, or other electronic means, but do not apply to requests for written ethics opinions directed to the Bar Association's Rules of Professional Conduct Committee or its equivalent.

(4) Scope. An inquirer may request the guidance of professional responsibility counsel in identifying, interpreting or applying the Rules of Professional Conduct as they relate to his or her prospective ethical conduct. If the inquiry presents a set of facts, those facts should ordinarily be presented in hypothetical format. Professional responsibility counsel provides only informal guidance. Professional responsibility counsel provides no legal advice or opinions, and the inquirer is responsible for making his or her own decision about the ethical issue presented. The inquiry shall be declined if it (i) requires analysis or resolution of legal issues other than those arising under the Rules of Professional Conduct; (ii) seeks an opinion about the ethical conduct of a lawyer other than the inquirer; or (iii) seeks an opinion about the ethical propriety of the inquirer's past conduct.

(5) Limitations and Inadmissibility. Neither the making of an inquiry nor the providing of information by professional responsibility counsel under this rule creates a client-lawyer relationship. Any information or opinion provided during the course of an ethics inquiry is the informal, individual view of professional responsibility counsel only. No information relating to an ethics inquiry, including the fact that an inquiry has been made, its content, or the response thereto, may be asserted in response to any grievance or complaint under the Rules for Enforcement of Lawyer Conduct, nor is such information admissible in any proceeding under the Rules for Enforcement of Lawyer Conduct.

(6) Records. Professional responsibility counsel shall not make or maintain any permanent record of the identity of an inquirer or the substance of a specific inquiry or response. Professional responsibility counsel may keep records of the number of inquiries and the nature and type of inquiries and responses. Such records shall be used solely to aid the Bar Association in developing the Professional Responsibility Program and developing additional educational programs. Such records shall be exempt from public inspection and copying and shall not be subject to discovery or disclosure in any proceeding.

(7) Confidentiality. Communications between an inquirer and professional responsibility counsel are confidential and shall be privileged against disclosure except by consent of the inquirer or as authorized by the Supreme Court. Professional responsibility counsel shall not use or reveal information learned during the course of an ethics inquiry except as RPC 1.9 would permit with respect to information of a former client. The provisions of RPC 8.3 do not apply to information received by professional responsibility counsel during the course of an ethics inquiry.

(f) Communications to the Association. Communications to the Bar Association, Board of Governors, staff, or any other individual acting under the authority of this rule, are absolutely privileged, and no lawsuit predicated thereon may be instituted against them or other person providing information.

[Adopted effective September 1, 2001; amended effective April 1, 2003; December 4, 2007; January 2, 2008; December 28, 2010.]

APR 20
CHARACTER AND FITNESS BOARD

(a) Composition. The Board shall consist of not less than three nonlawyer members, appointed by the Supreme Court, and not less than one lawyer member from each congressional district, appointed by the Board of Governors.

(b) Qualifications. Lawyer members must have been active members of the Bar Association for at least 7 years.

(c) Board Chair. The Board of Governors shall annually designate one lawyer member of the Board to act as chair and another as vice-chair. The vice-chair

shall serve in the absence of or at the request of the Board chair.

(d) Vacancies. Vacancies in lawyer membership on the Board and in the office of the Board chair and the vice-chair shall be filled by the Board of Governors. Vacancies in nonlawyer membership shall be filled by the Supreme Court. A person appointed to fill a vacancy shall complete the unexpired term of the person he or she replaces, and if that unexpired term is less than 24 months he or she may be reappointed to a consecutive term.

(e) Quorum. A majority of the Board members shall constitute a quorum. Given a quorum, the concurrence of a majority of those present shall constitute action of the Board. In the even of a quorum is not present, the Applicant or Petitioner may waive the requirement of a quorum.

(f) Disqualification. In the event a grievance is made to the Bar Association alleging an act of misconduct by a lawyer member of the Board the procedures specified in ELC2.3(b)(5) shall apply.

(g) Pro Tempore Members. When a member of the Board is disqualified or unable to function on a case for good cause, the chair of the Board may, by written order, designate a member pro tempore to sit with the Board to hear and determine the cause. A member pro tempore may be appointed from among those persons who have previously served as members of the Character and Fitness Board (or its predecessor Character and Fitness Committee), or from among lawyers appointed as alternate Board members by the Board of Governors and nonlawyers appointed as alternate Board members by the Supreme Court. A lawyer shall be appointed to substitute for a lawyer member of the Board, and a nonlawyer to substitute for a nonlawyer member of the board.

(h) Voting. Each member, whether nonlawyer or lawyer, shall have one vote.

(i) Terms of Office. The term of office for a member of the Board shall be 3 years. Newly created Board positions may be filled by appointments of less than 3 years, as designated by the Supreme Court or the Board of Governors, to permit as equal a number of positions as possible to be filled each year. All terms of office begin October 1 and end September 30 or when a successor has been appointed whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members shall continue to serve until replaced.

(j) Application of Rules. These rules and any subsequent amendments will apply in their entirety, on the effective date as ordered by the Supreme Court, to any pending matter, except as would not be feasible or would work an injustice. The Chair may rule on the appropriate procedure with a view to insuring a fair and orderly proceeding.

[Adopted effective October 1, 2002; September 1, 2006.]

RULE 20.1
AUTHORITY OF BOARD

The Board shall have the power and authority to:

(a) Accept referrals from the Bar Counsel concerning matters of character and fitness bearing upon the qualification of Applicants for Admission of Petitioners for Reinstatement.

(b) Review each Application for Admission or Petition for Reinstatement to practice law in the state of Washington.

(c) Investigate matters relevant to the admission or reinstatement of any Applicant or Petitioner and conduct hearings concerning such matters.

(d) Perform such other functions and take such other actions as provided in these rules or as may be delegated to it by the Board of Governors or Supreme Court, or as may be necessary and proper to carry out its duties.

[Adopted effective October 1, 2002; September 1, 2006.]

RULE 20.2
MEETINGS

The Board shall hold meetings at such times and places as it may determine. Where the chair of the Board determines that prompt action is necessary for protection of the public, and that circumstances do not permit a full meeting of the Board, the Board may vote on a matter otherwise ready for review without meeting together, through telephone, electronic or written communication.

[Adopted effective October 1, 2002; September 1, 2006.]

RULE 20.3
BAR COUNSEL

The Bar Association shall be represented by a lawyer appointed by the Executive Director of the Bar Association, who shall act as counsel to the Board and who may make a recommendation in support of or in opposition to the admission or reinstatement of an Applicant or Petitioner.

[Adopted effective October 1, 2002; September 1, 2006.]

RULE 20.4
CLERK

The Executive Director of the Bar Association may appoint a suitable person or persons to act as Clerk to the Board, and to assist the Board in carrying out its functions under these rules.

[Adopted effective October 1, 2002; September 1, 2006.]

RULE 20.5
SERVICE

Service of papers and documents shall be made by first class postage prepaid mail to the Applicant's or Petitioner's, or his or her counsel's, last known address on record with the Bar Association. If properly made, service by mail is deemed accomplished on the date of the mailing. Any notice of change of address shall be submitted in writing to the Bar Association.

[Adopted effective October 1, 2002; September 1, 2006.]

APR 21
CHARACTER DEFINED

Good moral character is a record of conduct manifesting the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibilities, adherence to the law, and a respect for the rights of other persons and the judicial process.

[Adopted effective September 1, 2006.]

APR 22
FITNESS DEFINED; INDEPENDENT FITNESS EXAMINATION

(a) Fitness - defined. Fitness is the absence of any current mental impairment or current drug or alcohol dependency or abuse which, if extant, would substantially impair the ability of the Applicant or Petitioner to practice law.

(b) Testimony and Evidence: If it appears that the Applicant or Petitioner has engaged in conduct that was or may have been caused in whole or in part by a mental impairment or drug or alcohol dependency or abuse, the Applicant or Petitioner may present testimony or evidence from a licensed or certified mental health professional (hereafter "examining professional").

(c) Independent Fitness Examination: If after reviewing such testimony or evidence the Board finds that further examination is necessary, the Board by majority vote may require an examination of the Applicant or Petitioner by an examining professional approved by the Lawyers' Assistance Program of the Washington State Bar Association.

(d) Failure to Comply: The failure of an Applicant or a Petitioner to agree or submit to a required independent fitness examination shall result in the Applicant's or Petitioner's application or petition being denied.

(e) Costs: The cost of any examination required by the Board shall be borne by the Bar Association.

(f) Report: The examining professional shall issue a written report of his or her findings which report shall be provided to the Applicant or Petitioner and his or her counsel, Bar Counsel and the Character and Fitness Board.

(g) Confidentiality: Any report and testimony of an examining professional may be admitted into evidence at a hearing on, or review of, the Applicant's or Petitioner's fitness and transmitted with the record on review by the Disciplinary Board or the Supreme Court. Reports and testimony regarding the Applicant's or Petitioner's fitness shall otherwise be kept confidential in all respects and neither the report nor the testimony of the examining professional shall be discoverable or admissible in any other proceeding or action.

[Adopted effective September 1, 2006.]

APR 23
CHARACTER AND FITNESS BOARD - PREHEARING PROCEDURE - APPLICATIONS FOR ADMISSION

(a) Admissions Staff Review. All applications for admission to practice law in Washington State shall be reviewed by the Bar Association Admissions staff for purposes of determining whether any of the factors set forth in rule 24.2(a) are present.

(b) Admissions Staff Review - Standard. All applications which reflect one or more of the factors set forth in rule 24.2(a) shall be referred to Bar Counsel for review.

(c) Review By Bar Counsel - Standard. Upon receiving a referral from the admissions staff, Bar Counsel may conduct such further investigation as he or she deems necessary and thereafter, applying the factors and considerations set forth in rule 24.2, and upon reviewing the material evidence in the light most favorable to the Bar Association's obligation to recommend the admission to the practice of law only those persons who possess good moral character and fitness, Bar Counsel shall refer to the Character and Fitness Board for hearing any Applicant about whom there is a substantial question whether the Applicant possesses the requisite good moral character and fitness to practice law.

[Adopted effective September 1, 2006.]

APR 24
APPLICATIONS FOR ADMISSION

[Adopted effective September 1, 2006.]

APR 24.1
DUTY OF APPLICANT

It shall be the duty of every Applicant to cooperate in good faith with any investigation by promptly furnishing written or oral explanations, documents, releases, authorizations, or anything else reasonably required by the Board or Bar Counsel. Failure to appear as directed or to furnish additional proof or answers as required or to cooperate fully shall be sufficient reason for the Board to recommend the rejection of an application.

[Adopted effective September 1, 2006.]

APR 24.2
FACTORS CONSIDERED WHEN DETERMINING CHARACTER AND FITNESS

(a) Factors. The following factors shall be considered by the Admissions staff and Bar Counsel when determining whether an applicant shall be referred to the Character and Fitness Board for a determination of the applicant's character and/or fitness to practice law:

(1) unlawful conduct.
(2) academic misconduct.
(3) making of false statements or omitting material information in connection with an application to sit for a bar examination.
(4) misconduct in employment.
(5) acts involving dishonesty, making false statements, fraud, deceit or misrepresentation.
(6) abuse of legal process.
(7) neglect of financial responsibilities.
(8) disregard of professional obligations.

(9) violation of a court order.
(10) evidence of a current substantial mental impairment, including without limitation, drug or alcohol dependency or abuse.
(11) denial of admission to the bar in another jurisdiction on character and fitness grounds.
(12) disciplinary action by any professional disciplinary agency of any jurisdiction.
(13) any other conduct or condition which reflects adversely on moral character or fitness of the Applicant to practice law.

(b) Factors Considered by the Character and Fitness Board When Determining Good Moral Character. When determining whether past conduct disqualifies the Applicant from taking the Washington Bar Examination, or for admission to the Bar, the Character and Fitness Board shall consider those factors specified in rule 24.2(a) and the following factors in mitigation or aggravation:

(1) Applicant's age at the time of the conduct.
(2) Recency of the conduct.
(3) Reliability of the information concerning the conduct.
(4) Seriousness of the conduct.
(5) Factors or circumstances underlying the conduct.
(6) Cumulative nature of the conduct.
(7) Candor in the admissions process and before the Board.
(8) Materiality of any omissions or misrepresentations.
(9) Evidence of rehabilitation, which may include but is not limited to the following:

(i) absence of recent misconduct.
(ii) compliance with any disciplinary, judicial or administrative order arising out of the misconduct.
(iii) sufficiency of punishment.
(iv) restitution of funds or property, where applicable.
(v) Applicant's attitude toward the misconduct, including without limitation acceptance of responsibility and remorse.
(vi) personal assurances, supported by corroborating evidence, of a desire and intent to engage in exemplary conduct in the future;
(vii) constructive activities and accomplishments since the conduct in question.
(viii) the Applicant's understanding and acceptance of the factors leading to the misconduct and how similar misconduct may be avoided in the future.

(c) Factors Considered by the Character and Fitness Board in Fitness Cases Involving Drug or Alcohol Dependence or Abuse. When determining whether an Applicant is unfit to practice law due to drug or alcohol dependence or abuse, the Character and Fitness Board shall consider the following factors, no single one of which is determinative:

(1) Whether the Applicant is currently using drugs or alcohol.

(2) Whether the Applicant's drug or alcohol dependence or abuse is likely to cause or contribute to any of the conduct specified in rule 24.2(a).

(3) The nature, extent and duration of the Applicant's drug or alcohol dependence or abuse, and the Applicant's candor in the admissions process and before the Board when describing the problem.

(4) Whether the Applicant has been or is now in treatment and, if so:

(i) The nature and duration of the treatment.
(ii) Whether treatment was or is voluntary or involuntary.
(iii) Consistency of participation in or compliance with treatment.
(iv) Whether the treatment was effective.

(5) Whether the Applicant has undergone a drug or alcohol evaluation by a certified chemical dependency counselor or other professional with credentials acceptable to the Board and, if so, whether the substance of such person's opinion the findings have been made available to the Committee.

(6) The length of time the Applicant has been in recovery. In cases where the period of recovery is less than two years, the Applicant must demonstrate through appropriate expert opinion that there has been an adequate period of recovery.

(d) Factors Considered by the Character and Fitness Board in Fitness Cases Involving a Mental Impairment. When determining whether an Applicant is unfit to practice law due to a mental impairment, the Character and Fitness Board shall consider the following factors, no single one of which is determinative:

(1) Whether there is a current mental impairment.

(2) Whether the Applicant's mental impairment is likely to cause or contribute to any of the conduct specified in rule 24.2(a).

(3) The nature, extent and duration of the Applicant's mental impairment, and the Applicant's candor in the admissions process and before the Board when describing the impairment.

(4) Whether the Applicant's mental impairment is chronic or situational in nature.

(5) Whether the applicant has received or is receiving professional mental health treatment appropriate for the impairment, and if so:

(i) Whether the Applicant's impairment has been in remission for at least two years as verified by an appropriate mental health professional and, if not, whether the Applicant has demonstrated through appropriate expert opinion that the period of remission has been adequate.

(ii) Whether a mental health professional has identified any conditions, including without limitation further treatment, that must be complied with to continue the Applicant's state of remission and, if so, whether the Applicant is in compliance with those conditions.

(e) Factors Not Considered by the Character andFitness Board. The following factors shall not be considered as evidence of an Applicant's character or fitness:

(1) Racial or ethnic identity.
(2) Sex.
(3) Sexual orientation.
(4) Marital status.

(5) Religious or spiritual beliefs or affiliation.
(6) Political beliefs or affiliation.
(7) Physical disability.
(8) National origin.
(9) Age.
(10) Learning disabilities.

[Adopted effective September 1, 2006.]

APR 24.3
HEARINGS

(a) Notice. The Character and Fitness Board may fix a time and place for a hearing on the application, and shall serve notice thereof not less than 30 days prior to the hearing upon the Applicant and upon such other persons as may be ordered by the Character and Fitness Board. This notice requirement may be waived by the Applicant.

(b) Right to Counsel. An Applicant may be represented by counsel.

(c) Burden of Proof. An Applicant must establish by clear and convincing evidence that he or she is of good moral character and possesses the requisite fitness to practice law.

(d) Proceedings Not Civil or Criminal. Hearings before the Character and Fitness Board are not civil nor criminal but are sui generis hearings to determine whether an Applicant possesses good moral character and fitness to be admitted to practice law.

(e) Rules of Evidence.

(1) Evidentiary rulings shall be made by the Board chairperson. A majority of Board members present may by vote overrule a ruling by the chairperson.

(2) Consistent with section (d) of this rule, evidence, including hearsay evidence, is admissible if in the chairperson's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The chairperson may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(3) Witnesses shall testify under oath; all testimony shall be transcribed by a certified court reporter.

(4) Expert witnesses shall appear and testify in person before the Board, unless in the discretion of the Board their appearance before the Board is waived.

(5) Generally, all documentary evidence submitted to the Board for consideration must be delivered to Bar Counsel not less than 14 days prior to the hearing. Bar Counsel will provide copies of all documentary evidence, and any hearing briefs, memoranda, or other documentary material, to the Board members and to the Applicant prior to the hearing date.

(6) The Board may take notice of any judicially cognizable facts, or technical or scientific facts within a Board member's specialized knowledge.

(7) Questioning of the Applicant and the Applicant's witnesses shall be conducted by Bar Counsel or his or her designee and by two members of the Board designated by the chair.

(f) Confidentiality: All hearings and documents before the Character and Fitness Board on applications for admission to the bar are confidential.

[Adopted effective September 1, 2006.]

APR 24.4
DECISION AND RECOMMENDATION.

(a) Decision. Within 20 days after the proceedings are concluded, unless a greater or shorter period is directed by the Board chair, the Board will file with the Bar Association written findings of fact, conclusions of law, and a recommendation. Any Board member or members may file a written dissent within the same time period.

(b) Action on Board Recommendation. The recommendation of the Character and Fitness Board shall be served upon the Applicant pursuant to rule 20.5. If the Board recommends admission, the record, recommendation and all exhibits shall be transmitted to the Supreme Court for disposition. If the Board recommends against admission, the record and recommendation shall be retained in the office of the Bar Association unless the Applicant requests that it be submitted to the Supreme Court by filing a Notice of

Appeal with the Board within 15 days of service of the recommendation of the Character and Fitness Board. If the Applicant so requests, the Board will transmit the record, including the transcript, exhibits, and recommendation to the Supreme Court for review and disposition. If the Applicant does not so request, the bar examination fee shall be refunded to the Applicant.

[Adopted effective September 1, 2006.]

APR 24.5
ACTION ON SUPREME COURT'S DETERMINATION

(a) Application Approved. If the application is approved by the Supreme Court, admission shall be subject to the Applicant's taking and passing the bar examination and complying with rule 5.

(b) Application Denied. If the application is denied, the bar examination fee shall be refunded to the Applicant.

[Adopted effective September 1, 2006.]

APR 25
PETITIONS FOR REINSTATEMENT AFTER DISBARMENT

[Adopted effective September 1, 2006.]

APR 25.1
RESTRICTIONS ON REINSTATEMENT

(a) Petitions For Reinstatement. All Petitions for Reinstatement after Disbarment shall be referred for hearing before the Character and Fitness Board.

(b) When Petition May Be Filed. No petition for reinstatement shall be filed within a period of 5 years after disbarment or within a period of 2 years after an adverse decision of the Supreme Court upon a former petition, or within a period of 1 year after an adverse recommendation of the Character and Fitness Board on a former petition when that recommendation is not submitted to the Supreme Court. If prior to disbarment the lawyer was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for Enforcement of Lawyer Conduct, or any comparable rule, the period of such suspension shall be credited toward the 5 years referred to above.

(c) When Reinstatement May Occur. No disbarred lawyer may be reinstated sooner than 6 years following disbarment. If prior to disbarment the lawyer was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for Enforcement of Lawyer Conduct, or any comparable rule, the period of such suspension shall be credited toward the 6 years referred to above.

(d) Payment of Obligations. No disbarred lawyer may file a petition for reinstatement until costs and expenses and restitution ordered by the Disciplinary Board or the Supreme Court have been paid and until amounts paid out of the Lawyers' Fund for Client Protection for losses caused by the conduct of the Petitioner have been repaid to the client protection fund, or until periodic payment plans for costs and expenses, restitution and repayment to the client protection fund have been entered into by agreement between the Petitioner and disciplinary counsel. A Petitioner may seek review by the Chair of the Disciplinary Board of an adverse determination by disciplinary counsel regarding the reasonableness of any such proposed periodic payment plan. Such review will proceed as directed by the Chair of the Disciplinary Board and the decision of the Chair of the Disciplinary Board is final unless the Chair of the Disciplinary Board determines that the matter should be reviewed by the Disciplinary Board, in which case the Disciplinary Board review will proceed as directed by the Chair and the decision of the Board will be final.

[Adopted effective September 1, 2006.]

APR 25.2
REVERSAL OF CONVICTION

If a lawyer has been disbarred solely because of his or her conviction of a crime and the conviction is later reversed and the charges dismissed on their merits, the Supreme Court may in its discretion, upon direct application by the lawyer, enter an order reinstating the lawyer upon such conditions as determined by the Supreme Court. At the time such direct application is filed with the court a copy shall be filed with the Bar Association. The Supreme Court may request a response to the application from the Bar Association.

[Adopted effective September 1, 2006.]

APR 25.3
PETITIONS AND INVESTIGATIONS

(a) Form of Petition. A petition for reinstatement after disbarment shall be in writing in such form as the Character and Fitness Board may prescribe. The petition shall be filed with the Character and Fitness Board. The petition shall set forth the age, residence and address of the Petitioner, the date of disbarment, and a concise statement of facts claimed to justify reinstatement. The petition shall be accompanied by the total fees required of a lawyer Applicant under these rules.

(b) Investigations. The petition for reinstatement shall be referred to the Character and Fitness Board.

(c) Duty to Cooperate. It shall be the duty of every Petitioner to cooperate in good faith with any investigation by promptly furnishing written or oral explanations, documents, releases, authorizations, or anything else reasonably required by the Board or Bar Counsel. Failure to appear as directed or to furnish additional proof or answers as required or to cooperate fully shall be sufficient reason for the Committee to recommend the rejection of a petition.

(d) Proceedings Public. A petition for reinstatement after disbarment shall be a public proceeding from the time the petition is filed.

(e) Protective Orders. To protect a compelling interest, a Petitioner may, on a showing of good cause, move for a protective order prohibiting the disclosure or release of specific information, documents, or pleadings, and directing that the proceedings be conducted so as to implement the order.

[Adopted effective September 1, 2006.]

APR 25.4
HEARING BEFORE CHARACTER AND FITNESS BOARD

(a) Notice. The Character and Fitness Board may fix a time and place for a hearing on the petition, and shall serve notice thereof not less than 30 days prior to the hearing upon the Petitioner and upon such other persons as may be determined by Bar Counsel or as ordered by the Character and Fitness Board. Notice of the hearing shall also be published at least once in the Washington State Bar News and such other newspaper or periodical as the Character and Fitness Board may direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and shall give the date fixed for the hearing.

(b) Statement in Support or Opposition. On or prior to the date of hearing, anyone wishing to do so may file with the Character and Fitness Board a written statement for or against the petition, such statements to set forth factual matters showing that the Petitioner does or does not meet the requirements for reinstatement as set forth in these rules.

(c) Hearings. Hearings shall be conducted pursuant to rule 24.3.

[Adopted effective September 1, 2006.]

APR 25.5
ACTION BY CHARACTER AND FITNESS BOARD

(a) Requirements for Favorable Recommendation. Reinstatement may be recommended by the Character and Fitness Board only upon a showing, supported by clear and convincing proof, that the

Petitioner possesses the qualifications and meets the requirements for reinstatement as set forth in these rules and that the Petitioner has been rehabilitated.

(b) Factors Considered by the Character and Fitness Board. In reaching the decision of whether the Petitioner has been rehabilitated, the Board shall consider the factors set forth in Rule 24.2 (b), (c) and (d), where applicable, and the following factors:

(i) The Petitioner's character, standing, and professional reputation in the community in which the Petitioner resided and practiced prior to disbarment.

(ii) The ethical standards which the Petitioner observed in the practice of law.

(iii) The nature and character of the conduct for which the Petitioner was disbarred.

(iv) The sufficiency of the punishment undergone in connection therewith, and the making or failure to make restitution where required.

(v) The Petitioner's attitude, conduct, and reformation subsequent to disbarment.

(vi) The time that has elapsed since disbarment.

(vii) The Petitioner's current proficiency in the law; and

(viii) The sincerity, frankness, and truthfulness of the Petitioner in presenting and discussing the factors relating to the Petitioner's disbarment and reinstatement.

(c) Factors Not Considered by the Character and Fitness Board. The following factors shall not be considered as evidence of a Petitioner's character or fitness:

(1) Racial or ethnic identity.
(2) Sex.
(3) Sexual orientation.
(4) Marital status.
(5) Religious or spiritual beliefs or affiliation.
(6) Political beliefs or affiliation.
(7) Physical disability.
(8) National origin.
(9) Learning disabilities.

(d) Action on Board Recommendation. The recommendation of the Character and Fitness Board shall be served upon the Petitioner pursuant to rule 20.5. If the Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar Association unless the Petitioner requests that it be submitted to the Disciplinary Board by filing with the Clerk of the Disciplinary Board a request for Disciplinary Board review within 15 days of service of the recommendation of the Character and Fitness Board. If the Petitioner so requests, the record and recommendation shall be transmitted to the Disciplinary Board for disposition and the review will be conducted under the procedure of rules 11.9 and 11.12 of the Rules for Enforcement of Lawyer Conduct. If the Petitioner does not so request, the bar examination fee shall be refunded to the Petitioner, but the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Character and Fitness Board.

(e) Action on Disciplinary Board Recommendation. The recommendation of the Disciplinary Board shall be served upon the Petitioner. If the Disciplinary Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Disciplinary Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar Association unless the Petitioner requests that it be submitted to the Supreme Court by filing with the Clerk of the Disciplinary Board a request for Supreme Court review within 30 days of service of the recommendation. If the Petitioner so requests, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Petitioner does not so request, the bar examination fee shall be refunded to the Petitioner, but the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Disciplinary Board under the procedure of rule 13.9 of the Rules for Enforcement of Lawyer Conduct.

[Adopted effective September 1, 2006.]

APR 25.6
ACTION ON SUPREME COURT'S DETERMINATION

(a) Petition Approved. If the petition for reinstatement is approved by the Supreme Court, the reinstatement shall be subject to the Petitioner's taking and passing the bar examination,

paying to the Bar Association its membership fee for the current year and paying the costs incidental to the reinstatement proceeding as directed by the Supreme Court.

(b) Petition Denied. If the petition for reinstatement is denied, the bar examination fee shall be refunded to the Petitioner, but the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding.

[Adopted effective September 1, 2006.]

APR 26
INSURANCE DISCLOSURE

(a) Each active member of the Bar Association shall certify annually in a form approved by the Board of Governors by the date specified by the form (1) whether the lawyer is engaged in the private practice of law; (2) if engaged in the private practice of law, whether the lawyer is currently covered by professional liability insurance; (3) whether the lawyer intends to maintain insurance during the period of time the lawyer is engaged in the private practice of law; and (4) whether the lawyer is engaged in the practice of law as a full-time government lawyer or is counsel employed by an organizational client and does not represent clients outside that capacity. Each lawyer admitted to the active practice of law who reports being covered by professional liability insurance shall notify the Bar Association in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect or terminates for any reason.

(b) The information submitted pursuant to this rule will be made available to the public by such means as may be designated by the Board of Governors, which may include publication on the website maintained by the Bar Association.

(c) Any lawyer admitted to the active practice of law who fails to comply with this rule by the date specified in section (a) may be ordered suspended from the practice of law by the Supreme Court until such time as the lawyer complies. Supplying false information in response to this rule shall subject the lawyer to appropriate disciplinary action.

Adopted effective July 1, 2007.

APR 27
PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER

(a) Determination of Existence of Major Disaster. Solely for purposes of this Rule, the Supreme Court shall determine when an emergency affecting the justice system as a result of a natural or other major disaster has occurred in:

(1) Washington and whether the emergency caused by the major disaster affects the entirety or only a part of the State of Washington, or

(2) another jurisdiction, but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in Washington pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) Temporary Practice in Washington Following Major Disaster in Washington. Following the determination of an emergency affecting the justice system in Washington pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in Washington are in need of pro bono services and the assistance of lawyers from outside of Washington is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in Washington on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be supervised by a lawyer licensed to practice in Washington and assigned by a qualified legal services provider as defined in Rule 8(e) or as otherwise ordered by the Supreme Court. A qualified legal services provider shall be entitled to receive all court-awarded attorney fees for any representation rendered by the assigned lawyer pursuant to this Rule. When a lawyer authorized to practice under this rule signs correspondence or pleadings, the lawyer's signature shall be followed by the title "active disaster relief lawyer."

(c) Temporary Practice in Washington Following Major Disaster in Another Jurisdiction. Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in

any jurisdiction, may provide legal services in Washington on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) Duration of Authority for Temporary Practice. The authority to practice law in Washington granted by paragraph (b) of this Rule shall end when the Supreme Court determines that the emergency affecting the justice system caused by the major disaster in Washington has ended except that a lawyer then representing clients in Washington pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in Washington granted by paragraph (c) of this Rule shall end 60 days after the Supreme Court declares that the emergency affecting the justice system caused by the major disaster in the affected jurisdiction has ended.

(e) Court Appearances. The authority granted by this Rule does not include appearances in court except:

(1) pursuant to Rule 8(b) and, if such authority is granted, any fees for such admission shall be waived; or

(2) if the Supreme Court, in any determination made under paragraph (a) of this Rule, grants blanket permission to appear in all or designated courts of Washington to lawyers providing legal services pursuant to paragraph (b) of this Rule. If such an authorization is included, any admission fees shall be waived.

(f) Disciplinary Authority and Registration Requirement and Approval. Lawyers providing legal services in Washington pursuant to paragraphs (b) or (c) are subject to the disciplinary authority of Washington and the Washington Rules of Professional Conduct as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in Washington under paragraphs (b) or (c) must file a registration statement with the Washington State Bar Association. The registration statement shall be in a form prescribed by the Bar Association. Any lawyer seeking to provide legal services pursuant to this rule must be approved by the Supreme Court before being authorized to provide such legal services. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in Washington.

(g) Notification to Clients. Lawyers licensed to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in Washington of the jurisdiction in which they are licensed to practice law, any limits on that license, and that they are not authorized to practice law in Washington except as permitted by this Rule. They shall not state or imply to any person that they are otherwise licensed to practice law in Washington.

[Adopted effective September 1, 2008.]

APR 28

[New]

LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. Purpose. The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribe the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.

B. Definitions. For purposes of this rule, the following definitions will apply:

(1) "APR" means the Supreme Court's Admission to Practice Rules.

(2) "Board" when used alone means the Limited License Legal Technician Board.

(3) "Lawyer" means a person licensed and eligible to practice law in any United States jurisdiction.

(4) "Limited License Legal Technician" (LLLT) means a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client.

(5) "Paralegal/legal assistant" means a person qualified by education, training, or work experience; who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity; and who performs specifically delegated substantive law-related work for which a lawyer is responsible.

(6) "Reviewed and approved by a Washington lawyer" means that a Washington lawyer has personally supervised the legal work and documented that supervision by the Washington lawyer's

signature and bar number.

(7) "Substantive law-related work" means work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.

(8) "Supervised" means a lawyer personally directs, approves; and has responsibility for work performed by the Limited License Legal Technician.

(9) "Washington lawyer" means a person licensed and eligible to practice law in Washington and who is an active or emeritus member of the Washington State Bar Association.

(10) Words of authority:

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

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

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

C. Limited License Legal Technician Board

(1) Establishment. There is hereby established a Limited License Legal Technician Board. The Board shall consist of 13 members appointed by the Supreme Court of the State of Washington, nine of whom shall be active Washington lawyers, and four of whom shall be nonlawyer Washington residents. At least one member shall be a legal educator. The members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three year terms. No member may serve more than two consecutive full three year terms.

(2) Board Responsibilities. The Board shall be responsible for the following:

(a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;

(b) Processing applications and fees, and screening applicants;

(c) Administering the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to Limited License Legal Technicians, rules relating to the attorney-client privilege, procedural rules, and substantive law issues related to one or more approved practice areas;

(d) Determining LLLT Continuing Legal Education (LLLT CLE) requirements and approval of LLLT CLE programs;

(e) Approving education and experience requirements for licensure in approved practice areas;

(f) Establishing and overseeing committees and tenure of members;

(g) Establishing and collecting examination fees, LLLT CLE fees, annual license fees, and other fees in such amounts approved by the Supreme Court as are necessary to carry out the duties and responsibilities of the Board; and

(h) Such other activities and functions as are expressly provided for in this rule.

(3) Rules and Regulations. The Board shall propose rules and regulations for adoption by the Supreme Court that:

(a) Establish procedures for grievances and disciplinary proceedings;

(b) Establish trust account requirements and procedures;

(c) Establish rules of professional and ethical conduct; and

(d) Implement the other provisions of this rule.

D. Requirements for Applicants. An applicant for licensure as a Limited License Legal Technician shall:

(1) Age. Be at least 18 years of age.

(2) Moral Character and Fitness to Practice. Be of good moral character and demonstrate fitness to practice as a Limited License Legal Technician.

(3) Education and Experience. Have the following education and experience:

(a)(i) An associate degree or equivalent program, or a bachelor degree, in paralegal/legal assistant studies approved by the American Bar Association or the Board, together with a minimum of two years' experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; or

(ii) A post-baccalaureate certificate program in paralegal/legal assistant studies approved by the Board, together with a minimum of three years' experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; and

(b) Complete at least 20 hours of pro bono legal service in Washington as approved by the Board, within two years prior to taking the Limited License Legal Technician examination.

In all cases, the paralegal/legal assistant experience must be acquired after completing the education requirement, unless waived by the Board for good cause shown.

(4) Application. Execute under oath and file with the Board two copies of his/her application, in such form as the Board requires. An applicant's failure to furnish information requested by the Board or pertinent to the pending application may be grounds for denial of the application.

(5) Examination Fee. Pay, upon the filing of the application, the examination fee and any other required application fees as established by the Board and approved by the Supreme Court.

E. Licensing Requirements. In order to be licensed as a Limited License Legal Technician, all applicants must:

(1) Examination. Take and pass the examinations required under these rules;

(2) Annual License Fee. Pay the annual license fee;

(3) Financial Responsibility. Show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rules. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe; and

(4) Meet all other licensing requirements set forth in the rules and regulations proposed by the Board and adopted by the Supreme Court.

F. Scope of Practice Authorized by Limited Practice Rule. The Limited License Legal Technician shall ascertain whether the

issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is withineth defined practice area, the LLLT may undertake the following:

(1) Obtain relevant facts, and explain the relevancy of such information to the client;

(2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;

(3) Inform the client of applicable procedures for proper service of process and filing of legal documents;

(4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;

(5) Review documents or exhibits that the client has received from the opposing side, and explain them to the client;

(6) Select and complete forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;

(7) Perform legal research and draft legal letters and documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;

(8) Advise a client as to other documents that may be necessary to the client's case (such as exhibits, witness declarations, or party declarations), and explain how such additional documents or pleadings may affect the client's case;

(9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

G. Conditions Under Which A Limited License Legal Technician May Provide Services

(1) A Limited License Legal Technician must have a principal place of business having a physical street address for the acceptance of service of process in the State of Washington;

(2) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a nonlicensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;

(3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician, that includes the following provisions:

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

(b) Identification of all fees and costs to be charged to the client for the services to be performed;

(c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the first page of the contract in minimum twelve-point bold type print;

(e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the Board.

(4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client should seek the services of a lawyer.

(5) A document prepared by an LLLT shall include the LLLT's name, signature, and license number beneath the signature of the client.

H. Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

(2) Retain any fees or costs for services not performed;

(3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client;

(4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized by the license held by the Limited License Legal Technician;

(5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

(6) Negotiate the client's legal rights or responsibilities, or communicate with another person the client's position or convey to the client the position of another party, unless permitted by GR

24(b);

(7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client;

(8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;

(9) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

I. Continuing Licensing Requirements

(1) Continuing Education Requirements. Each Limited License Legal Technician annually must complete the Board-approved number of credit hours in courses or activities approved by the Board, provided that the Limited License Legal Technician shall not be required to comply with this subsection during the calendar year in which he or she is initially licensed.

(2) Financial Responsibility. Each Limited License Legal Technician shall annually provide proof of financial responsibility in such form and in such amount as the Board may by regulation prescribe.

(3) Annual Fee. Each Limited License Legal Technician shall pay the annual license fee established by the Board and approved by the Supreme Court.

J. Existing Law Unchanged. This rule shall in no way modify existing law prohibiting nonlawyers from practicing law or giving legal advice other than as authorized under this rule or associated rules and regulations.

K. Professional Responsibility and Limited License Legal Technician-Client Relationship

(1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.

(2) Limited License Legal Technicians shall be held to the ethical standards of the Limited License Legal Technicians' Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

(3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.

Adopted effective September 1, 2012

Rules for Lawyer Discipline (RLD)

The Rules for Lawyer Discipline (RLD) have been superseded by the Rules for Enforcement of Lawyer Conduct (ELC) effective October 1, 2002.

Rules for Enforcement of Lawyer Conduct (ELC)

Table of Rules

Title 1 - Scope, Jurisdiction, and Definitions

ELC 1.1 Scope of Rules
ELC 1.2 Jurisdiction
ELC 1.3 Definitions
ELC 1.4 No Statute of Limitation
ELC 1.5 Violation of Duties Imposed by These Rules

Title 2 - Organization and Structure

ELC 2.1 Supreme Court
ELC 2.2 Board of Governors
ELC 2.3 Disciplinary Board
ELC 2.4 Review Committees
ELC 2.5 Hearing Officer or Panel
ELC 2.6 Hearing Officer Conduct
ELC 2.7 Conflicts Review Officer
ELC 2.8 Disciplinary Counsel; Special Disciplinary Counsel
ELC 2.9 Adjunct Investigative Counsel
ELC 2.10 Removal of Appointees
ELC 2.11 Compensation and Expenses
ELC 2.12 Communications to the Association Privileged
ELC 2.13 Respondent Lawyer

Title 3 - Access and Notice

ELC 3.1 Open Meetings and Public Disciplinary Information
ELC 3.2 Confidential Disciplinary Information
ELC 3.3 Application to Stipulations, Disability Proceedings, and Diversion Contracts
ELC 3.4 Release or Disclosure of Otherwise Confidential Information
ELC 3.5 Notice of Discipline
ELC 3.6 Maintenance of Records

Title 4 - General Procedural Rules

ELC 4.1 Service of Papers
ELC 4.2 Filing; Orders
ELC 4.3 Papers
ELC 4.4 Computation of Time
ELC 4.5 Stipulation to Extension or Reduction of Time
ELC 4.6 Subpoena Under the Law of Another Jurisdiction
ELC 4.7 Enforcement of Subpoenas

Title 5 - Grievance Investigations and Disposition

ELC 5.1 Grievants
ELC 5.2 Confidential Sources
ELC 5.3 Investigation of Grievance
ELC 5.4 Privileges
ELC 5.5 Discovery Before Formal Complaint
ELC 5.6 Disposition of Grievance
ELC 5.7 Advisory Letter

Title 6 -- Diversion

ELC 6.1 Referral to Diversion
ELC 6.2 Less Serious Misconduct
ELC 6.3 Factors For Diversion
ELC 6.4 Notice to Grievant
ELC 6.5 Diversion Contract
ELC 6.6 Affidavit Supporting Diversion
ELC 6.7 Effect of Non-Participation In Diversion
ELC 6.8 Status of Grievance
ELC 6.9 Termination of Diversion

Title 7 - Interim Procedures

ELC 7.1 Interim Suspension For Conviction of A Crime
ELC 7.2 Interim Suspension In Other Circumstances
ELC 7.3 Automatic Suspension When Respondent Asserting Incapacity
ELC 7.4 Stipulation to Interim Suspension
ELC 7.5 Interim Suspensions Expedited
ELC 7.6 Effective Date of Interim Suspensions
ELC 7.7 Appointment of Custodian to Protect Clients' Interests

Title 8 - Disability Proceedings

ELC 8.1 Action On Adjudication of Incompetency
ELC 8.2 Determination of Incapacity to Practice Law
ELC 8.3 Disability Proceedings During the Course of Disciplinary Proceedings
ELC 8.4 Appeal of Transfer to Disability Inactive Status
ELC 8.5 Stipulated Transfer to Disability Inactive Status
ELC 8.6 Costs In Disability Proceedings
ELC 8.7 Burden and Standard of Proof
ELC 8.8 Reinstatement to Active Status
ELC 8.9 Petition For Limited Guardianship

Title 9 - Resolutions Without Hearing

ELC 9.1 Stipulations
ELC 9.2 Reciprocal Discipline and Disability Inactive Status; Duty to Self-Report
ELC 9.3 Resignation In Lieu of Disbarment

Title 10 - Hearing Procedures

ELC 10.1 General Procedure
ELC 10.2 Hearing Officer or Panel
ELC 10.3 Commencement of Proceedings
ELC 10.4 Notice to Answer
ELC 10.5 Answer
ELC 10.6 Default Proceedings
ELC 10.7 Amendment of Formal Complaint
ELC 10.8 Motions
ELC 10.9 Interim Review
ELC 10.10 Prehearing Dispositive Motions
ELC 10.11 Discovery and Prehearing Procedures
ELC 10.12 Scheduling Hearing
ELC 10.13 Disciplinary Hearing
ELC 10.14 Evidence and Burden of Proof
ELC 10.15 Bifurcated Hearings
ELC 10.16 Decision of Hearing Officer or Panel

Title 11 - Review by Board

ELC 11.1 Scope of Title
ELC 11.2 Decisions Subject to Board Review
ELC 11.3 Sua Sponte Review
ELC 11.4 Transcript of Hearing
ELC 11.5 Record On Review
ELC 11.6 Designation of Bar File Documents and Exhibits
ELC 11.7 Preparation of Bar File Documents and Exhibits
ELC 11.8 Briefs For Reviews Involving Suspension or Disbarment Recommendation
ELC 11.9 Briefs For Reviews Not Involving Suspension or Disbarment Recommendation
ELC 11.10 Supplementing Record on Review
ELC 11.11 Request For Additional Proceedings
ELC 11.12 Decision of Board
ELC 11.13 Chair May Modify Requirements

Title 12 - Review by Supreme Court

ELC 12.1 Applicability of Rules of Appellate Procedure
ELC 12.2 Methods of Seeking Review
ELC 12.3 Appeal
ELC 12.4 Discretionary Review
ELC 12.5 Record to Supreme Court
ELC 12.6 Briefs
ELC 12.7 Argument
ELC 12.8 Effective Date of Opinion
ELC 12.9 Violation of Rules

Title 13 - Sanctions and Remedies

ELC 13.1 Sanctions and Remedies
ELC 13.2 Effective Date of Suspensions and Disbarments
ELC 13.3 Suspension
ELC 13.4 Reprimand
ELC 13.5 Admonition
ELC 13.6 Discipline For Cumulative Admonitions
ELC 13.7 Restitution
ELC 13.8 Probation
ELC 13.9 Costs and Expenses

Title 14 - Duties on Suspension or Disbarment

ELC 14.1 Notice to Clients and Others; Providing Client Property
ELC 14.2 Lawyer to Discontinue Practice
ELC 14.3 Affidavit of Compliance
ELC 14.4 Lawyer to Keep Records of Compliance

Title 15 - Audits and Trust Account Overdraft Notification

ELC 15.1 Audit and Investigation of Books and Records
ELC 15.2 Cooperation of Lawyer
ELC 15.3 Disclosure
ELC 15.4 Trust Account Overdraft Notification
ELC 15.5 Declaration or Questionnaire
ELC 15.6 Regulations

Title 16 - Effect of These Rules On Pending Proceedings

ELC 16.1 Effect On Pending Proceedings

JUDICIAL INFORMATION SYSTEM
COMMITTEE RULES (JISCR)

TABLE OF RULES

Rule
1 Judicial Information System
2 Composition
3 Staff
4 Budgets
5 Standard Data Elements
6 Reports
7 Codes and Case Numbers
8 Retention
9 Communications Link With Other Systems
10 Attorney Identification Numbers
11 Security, Privacy, and Confidentiality
12 Dissemination of Court Information
13 Local Court Systems
14 Control of Data Processing Equipment
15 Data Dissemination of Computer-Based Court Information
16 Record and Dissemination Data Processing
17 Effective Date
18 Adding Records to the Judicial Information System

ELC 1.1
SCOPE OF RULES

These rules govern the procedure by which a lawyer may be subjected to disciplinary sanctions or actions for violation of the Rules of Professional Conduct adopted by the Washington Supreme Court.

[Adopted effective October 1, 2002.]

JURISDICTION

Except as provided in RPC 8.5(c), any lawyer admitted, or permitted by rule, to practice law in this state, and any lawyer specially admitted by a court of this state for a particular case, is subject to these Rules for Enforcement of Lawyer Conduct. Jurisdiction exists regardless of the lawyer's residency or authority to practice law in this state.

[Adopted effective October 1, 2002; amended effective September 1, 2010]

ELC 1.3
DEFINITIONS

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

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

(b) "Bar file" means the pleadings, motions, rulings, decisions, and other formal papers filed in a proceeding.

(c) "Board" when used alone means the Disciplinary Board.

(d) “Chair” when used alone means the Chair of the Disciplinary Board.

(e) “Clerk” when used alone means the Clerk to the Disciplinary Board.

(f) “Disciplinary action” means sanctions under rule 13.1 and admonitions under rule 13.5.

(g) “Final” means no review has been sought in a timely fashion or all appeals have been concluded.

(h) “Grievant” means the person or entity who files a grievance, except for a confidential source under rule 5.2.

(i) “Hearing officer” means the person assigned under rule 10.2(a)(1) or, when a hearing panel has been assigned, the hearing panel chair.

(j) “Mental or physical incapacity” includes, but is not limited to, insanity, mental illness, senility, or debilitating use of alcohol or drugs.

(k) "Panel" means a hearing panel under rule 10.2(a)(2).

(l) “Party” means disciplinary counsel or respondent, except in rules 2.3(h) and 2.6(e) “party” also includes a grievant.

(m) “Respondent” means a lawyer against whom a grievance is filed or a lawyer investigated by disciplinary counsel.

(n) “APR” means the Admission to Practice Rules.

(o) “CR” means the Superior Court Civil Rules.

(p) “RAP” means the Rules of Appellate Procedure.

(q) “RPC” means the Rules of Professional Conduct adopted by the Washington Supreme Court.

(r) Words of authority.

(1) “May” means “has discretion to,” “has a right to,” or “is permitted to”.

(2) “Must” means “is required to”.

(3) “Should” means recommended but not required, except:

(A) in rules 2.3(h) and 2.6, “should” has the meaning ascribed to it in the Code of Judicial Conduct; and

(B) in title 12, “should” has the meaning ascribed to it in the Rules of Appellate Procedure.

[Adopted effective October 1, 2002.]

ELC 1.4
NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct

occurred may be considered in determining what if any action or sanction is warranted.

[Adopted effective October 1, 2002.]

ELC 1.5
VIOLATION OF DUTIES IMPOSED BY THESE RULES

A lawyer violates RPC 8.4(l) and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

- respond to inquiries or requests about matters under investigation, rule 5.3(f);
- file an answer to a formal complaint or to an amendment to a formal complaint, rule 10.5;
- cooperate with discovery and comply with hearing orders, rules 10.11(g) and 5.5;
- attend a hearing and bring materials requested by disciplinary counsel, rule 10.13(b) and (c);
- respond to subpoenas and comply with orders enforcing subpoenas, rule 10.13(e);
- notify clients and others of inability to act, rule 14.1;
- discontinue practice, rule 14.2;
- file an affidavit of compliance, rule 14.3;
- maintain confidentiality, rule 3.2(f);
- report being disciplined or transferred to disability inactive status in another jurisdiction, rule 9.2(a);
- cooperate with an examination of books and records, rule 15.2;
- notify the Association of a trust account overdraft, rule 15.4(d);
- file a declaration or questionnaire certifying compliance with RPC 1.15A, rule 15.5;
- comply with conditions of probation, rule 13.8;
- comply with conditions of a stipulation, rule 9.1;
- pay restitution, rule 13.7; or
- pay costs, rule 5.3(f) or 13.9.

[Adopted effective October 1, 2002; September 1, 2006.]

RULE 1
JUDICIAL INFORMATION SYSTEM

It is the intent of the Supreme Court that a statewide Judicial Information System be developed. The system is to be designed and operated by the Administrator for the Courts under the direction of the Judicial Information System Committee and with the approval of the Supreme Court pursuant to RCW 2.56. The system is to serve the courts of the state of Washington.

[Effective May 15, 1976.]

RULE 2
COMPOSITION

(a) Membership. The Judicial Information System Committee (JISC) shall be appointed by the Chief Justice. The Chief Justice will consider for appointment those individuals who have been suggested by representative groups and associations from within the judicial system but shall not be bound thereby. In addition, the Chief Justice shall consider for appointment only those individuals who have demonstrated an interest and commitment to judicial administration and to automation of judicial systems and functions. The committee shall be composed of four members from the appellate court level (Supreme Court and Court of Appeals), five members from the superior court level, two of whom shall be members of the Superior Court Judges' Association, and one of whom shall be a member of the Washington Association of Juvenile Court Administrators, five members from the courts of limited jurisdiction level, one of whom shall be a member of the Misdemeanant Corrections Association, and three at large members from outside the judiciary, one of whom will be a member of the Washington State Bar Association, one of whom will be a member of the Washington Association of Sheriffs and Police Chiefs, and one of whom will be a member of the Washington State Association of Prosecuting Attorneys.

(b) Terms of Office. The term of membership for those who are appointed to represent specific organizations shall be for a term of 3 years with the initial term as determined by lot, staggered so as to insure that an equal number of terms expire each year. Any vacancy in the membership of the committee shall be filled in the same manner in which the original appointment was made and the term of membership shall expire on the same date as the original appointment expiration date.

(c) Operation. The Supreme Court Justice shall be the chairperson. The members of the committee shall elect a vice-chairperson from among themselves. Meetings of the committee shall be called regularly and at a minimum of four times per year at the discretion of the chair. Any members with two unexcused absences from regularly scheduled JISC meetings during any calendar year shall be requested to resign and the respective association shall appoint a successor to fulfill the unexpired term. User advisory committees shall be established for each level of court and will be representative of the users at each level. Ad hoc committees shall also be established for the purpose of monitoring specific projects undertaken by the Judicial Information System.

[Adopted effective July 1, 1976; amended effective July 1, 1987; June 4, 1996; December 29, 1998; February 11, 2010.]

RULE 3
STAFF

Staff for the Judicial Information System Committee will be provided by and be responsible to the Administrator for the Courts who will be charged with providing operational, statistical, and other information to legitimate and appropriate users of judicial information.

[Effective May 15, 1976.]

RULE 4
BUDGETS

The Administrator for the Courts, under the direction of the Judicial Information System Committee, and with the approval of the Supreme Court, shall prepare funding requests for personnel, hardware, and software as required for a phased implementation of the Judicial Information System. Any budget requests prepared by the Administrator for the Courts shall address the issues of control and dissemination of data from court files, developmental and operational priorities, a clear definition of operational expenses and security, and privacy of information and facilities within the system.

[Effective May 15, 1976.]

RULE 5
STANDARD DATA ELEMENTS

A standard court data element dictionary for the Judicial Information System shall be prepared and maintained by the Administrator for the Courts with the approval of the Judicial Information System Committee. Any modifications, additions, or deletions from the standard court data element dictionary must be reviewed and approved by the Judicial Information System Committee.

[Effective May 15, 1976.]

RULE 6
REPORTS

The Administrator for the Courts shall furnish to the courts and clerks of the state standard report formats as recommended and approved by the Judicial Information System Committee. Records and reports either in computerized or manual formats shall be in accordance with the standard court data elements established by the Judicial Information System Committee and consistent with the definitions contained therein.

[Effective May 15, 1976.]

RULE 7
CODES AND CASE NUMBERS

The Administrator for the Courts shall establish, with the approval of

the Judicial Information System Committee, a uniform set of codes and case numbering systems for criminal charges, civil actions, juvenile referrals, attorney identification, and standard disposition identification codes.

[Effective May 15, 1976.]

RULE 8
RETENTION

The Administrator for the Courts shall establish retention periods for all computerized records based upon the recommendations of the Judicial Information System Committee and consistent with state law.

[Effective May 15, 1976.]

RULE 9
COMMUNICATIONS LINK WITH OTHER SYSTEMS

The Judicial Information System will serve as the communications link for the courts with all local, regional, statewide, and national noncourt systems. The Judicial Information System shall perform all functions relating to the transfer of computerized judicial data or information except as specifically approved by the Supreme Court upon the recommendations of the Judicial Information System Committee.

[Effective May 15, 1976.]

RULE 10
ATTORNEY IDENTIFICATION NUMBERS

The Office of the Administrator for the Courts will assign and maintain a uniform attorney identification number consistent with the number currently utilized by the Washington State Bar Association. The use of such code numbers will be subject to rules promulgated by the Supreme Court upon recommendations by the Judicial Information System Committee and the Board of Governors of the Washington State Bar Association.

[Effective May 15, 1976.]

RULE 11
SECURITY, PRIVACY, AND CONFIDENTIALITY

All court record systems must conform to the privacy and confidentiality rules as promulgated by the Supreme Court upon the recommendation of the Judicial Information System Committee, which rules shall be consistent with all applicable law relating to public records. Any modifications, additions, or deletions from the established rules must be reviewed by the Judicial Information System Committee and approved by the Supreme Court. Additionally:

(a) Courts obtaining information from computerized files subject to special security and privacy administrative rules or legislative direction must insure that all such rules or legislative enactments are followed in the handling of such information.

(b) In all automated systems, duplicate records must be prepared regularly and stored separately and a transaction log kept of all record changes covering the entire time period since the preparation of the last duplicate set of records.

(c) The Office of the Administrator for the Courts will maintain a library of court system documentation for the state. All automated information systems which have received approval from the Supreme Court to collect, store, and/or disseminate computerized judicial information must submit to the Office of the Administrator for the Courts and maintain on file a copy of all system documentation related to the collection, storage, and dissemination of such information.

[Effective May 15, 1976.]

RULE 12
DISSEMINATION OF COURT INFORMATION

The Judicial Information System Committee will adopt rules, consistent with all applicable law relating to public records, governing the release of information contained within the Judicial Information System. Such rules and any amendments thereto shall be forwarded to the Supreme Court and, unless altered by the court or returned to the Judicial Information System Committee for its further consideration and recommendations, shall take effect 45 days after the receipt of such rules by the Supreme Court.

[Effective May 15, 1976.]

RULE 13
LOCAL COURT SYSTEMS

Counties or cities wishing to establish automated court record systems shall provide advance notice of the proposed development to the Judicial Information System Committee and the Office of the Administrator for the Courts 90 days prior to the commencement of such projects for the purpose of review and approval.

[Effective May 15, 1976.]

RULE 14
CONTROL OF DATA PROCESSING EQUIPMENT

Data processing for courts shall be processed on computer equipment managed and controlled by the courts. In exceptional instances where extreme care has been taken to insure the integrity of the internal function of the courts, explicit approval may be obtained from the Supreme Court upon the recommendation of the Administrator for the Courts and the Judicial Information System Committee to utilize facilities not totally managed and controlled by the courts.

[Effective May 15, 1976.]

RULE 15
DATA DISSEMINATION OF COMPUTER-BASED
COURT INFORMATION

It is declared to be the policy of the courts to facilitate public access to court records, provided such disclosures in no way present an unreasonable invasion of personal privacy and will not be unduly burdensome to the ongoing business of the courts.

Due to the confidential nature of some court information, authority over the dissemination of such information shall be exercised by the judicial branch. This rule establishes the minimum criteria to be met by each information request before allowing dissemination.

(a) Application. This rule applies to all requests for computer-based court information submitted by an individual, as well as public and private associations and agencies. This rule does not apply to requests initiated by or with the consent of the Administrator for the Courts for the purpose of answering a request vital to the internal business of the courts.

(b) Excluded Information. Records sealed, exempted, or otherwise restricted by law or court rule may not be released to the general public except by court order.

(c) Data Dissemination Committee. Rescinded.

(d) Data Dissemination Policies and Procedures. The Administrator for the Courts shall promulgate policies and procedures for handling applications for computer-based information. These policies and procedures shall be subject to the approval of the Judicial Information System Committee.

(e) Information for Release of Data. Information which must be supplied by the requestor and upon which evaluation will be made includes:

(1) Identifying information concerning the applicant;

(2) Statement of the intended use and distribution;

(3) Type of information needed.

(f) Criteria To Determine Release of Data. The criteria against which the applications are evaluated are as follows:

(1) Availability of data;

(2) Specificity of the request;

(3) Potential for infringement of personal privacy created by release of the information requested;

(4) Potential disruption to the internal, ongoing business of the courts.

(g) Cost. The requestor shall bear the cost of honoring the request for information in accordance with section (d).

(h) Appeal. If a request is denied by the Administrator for the Courts, the requestor may appeal the decision to the Judicial Information System Committee in accordance with section (d). The Judicial Information System Committee shall review and act upon the appeal in accordance with procedures promulgated by the Committee for this purpose.

[Adopted effective March 20, 1981; amended effective July 1, 1987.]

RULE JISCR 16
RECORD AND DISSEMINATION DATA PROCESSING

The Administrative Office of the Courts shall be responsible for the recording and dissemination of decisions concerning the

policies of the Supreme Court in the area of data processing, except for such policies as relate to the preparation of appellate court opinions and their publication in the official law reports which are the responsibility of the Washington Court Reports Commission.

[Former Rule 15 renumbered as Rule 16 effective March 20, 1981; amended effective January 3, 2006.]

RULE 17
EFFECTIVE DATE

These rules, with the exception of rule 2, shall take effect on May 15, 1976. Rule 2 shall take effect on July 1, 1976, and until such time, the Superior Courts Management Information System (SCOMIS) Committee formed on February 21, 1974, shall continue to function as directed by this court.

[Former Rule 16 renumbered as Rule 17 effective March 20, 1981.]

RULE 18
ADDING RECORDS TO THE JUDICIAL INFORMATION SYSTEM

In all courts adding records to the Judicial Information System, for all persons on whom a juvenile or adult criminal offense, infraction, or a juvenile non-offender case is filed, a record will be created in the person data base according to rules and procedures adopted by the Judicial Information System Committee. Provided, truancy records associated with a juvenile who has no other case history, and records of a juvenile's parents who have no other case history, shall be removed from the Judicial Information System when the juvenile is no longer subject to the compulsory attendance laws under Chapter 28A.225 RCW.

[Adopted effective March 18, 1994; amended effective July 22, 2001.]

ELC 2.1
SUPREME COURT

The Washington Supreme Court has exclusive responsibility in the state to administer the lawyer discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability. Persons carrying out the functions set forth in these rules act under the Supreme Court’s authority.

[Adopted effective October 1, 2002.]

ELC 2.2
BOARD OF GOVERNORS

(a) Function. The Board of Governors of the Association:

(1) supervises the general functioning of the Disciplinary Board, review committees, disciplinary counsel, Association staff, and adjunct investigative counsel;

(2) makes appointments, removes those appointed, and fills vacancies as provided in these rules; and

(3) performs other functions and takes other actions provided in these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Limitation of Authority. The Board of Governors has no right or responsibility to review hearing officer, hearing panel, or Disciplinary Board decisions or recommendations in specific cases.

(c) Restriction on Representing Respondents. Former members of the Board of Governors and former Presidents of the Association are subject to the restrictions on representing respondents in rule 2.13(b).

[Adopted effective October 1, 2002.]

ELC 2.3
DISCIPLINARY BOARD

(a) Function. The Board performs the functions provided under these rules, delegated by the Board of Governors or Supreme Court, or necessary and proper to carry out its duties.

(b) Membership.

(1) Composition. The Board consists of not fewer than three nonlawyer members, appointed by the Court, and not fewer than one lawyer member from each congressional district, appointed by the Board of Governors.

(2) Qualifications. Lawyer members must have been active members of the Association for at least seven years.

(3) Voting. Each member, including the Chair and the Vice Chair, whether nonlawyer or lawyer, has one vote.

(4) Quorum. A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least seven members vote.

(5) Leave of Absence While Grievance Is Pending. If a grievance is filed against a lawyer member of the Board, the following procedures apply:

(A) the member initially decides whether to remain on the Board or take a leave of absence until the matter is resolved;

(B) if the member chooses to remain on the Board, the Conflicts Review Officer must promptly provide a confidential summary of the grievance to the Board of Governors with a copy to the member;

(C) the Board of Governors should then, or at any time thereafter it deems appropriate, determine if the member is so impaired from serving on the Disciplinary Board that the member should take, or continue to take, a leave of absence to protect the integrity of the discipline system. In making this determination, the Board of Governors should consider, among other things, the facts, circumstances, and nature of the misconduct alleged, the possible outcome, and the extent of public concern regarding the matter;

(D) the Board of Governors' deliberations are confidential. All materials of the Board of Governors in connection with such a matter are confidential unless released under rule 3.4(d) or (e).

(c) Terms of Office. The term of office for a Board member is three years. Newly created Board positions may be filled by appointments of less than three years, as designated by the Court or the Board of Governors, to permit as equal a number of positions as possible to be filled each year. Terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members continue to serve until replaced, except a member's term of office ends immediately if a disciplinary sanction is imposed.

(d) Chair. The Board of Governors annually designates one lawyer member of the Board to act as Chair and another as Vice Chair. The Vice Chair serves in the absence of or at the request of the Chair.

(e) Unexpired Terms. The Board of Governors fills unexpired terms in lawyer membership on the Board. The Supreme Court fills unexpired terms in nonlawyer membership. A member appointed to fill an unexpired term will complete the unexpired term of the member replaced, and may be reappointed to a consecutive term if the unexpired term is less than 18 months.

(f) Pro Tempore Members. If a Board member is disqualified or unable to function, the Chair may, by written order, designate a member pro tempore. A member pro tempore must have either previously served on the Board or be appointed as an alternate Board member by the Board of Governors if a lawyer or by the Supreme Court if a nonlawyer. Only a lawyer may be appointed to substitute for a lawyer member, and only a nonlawyer to substitute for a nonlawyer member.

(g) Meetings. The Board meets regularly at times and places

it determines. The Chair may convene special Board meetings. In the Chair's discretion, the Board may meet and act through electronic, telephonic, written, or other means of communication.

(h) Disqualification.

(1) A Board member should disqualify him or herself from a particular matter in which the member's impartiality might reasonably be questioned, including, but not limited to, instances in which:

(A) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

(B) the member previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the member practices law serves or has previously served as a lawyer concerning the matter, or such lawyer is or has been a material witness concerning the matter;

(C) the member knows that, individually or as a fiduciary, the member or the member's spouse or relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under section (i);

(D) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:

(i) is a party to the matter, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the matter;

(iii) is to the member's knowledge likely to be a material witness in the matter;

(E) the member served as a hearing officer or hearing panel member for a hearing on the matter, or served on a review committee that issued an admonition to the lawyer regarding the matter.

(i) Remittal of Disqualification. A member disqualified under subsection (h)(1)(C) or (h)(1)(D) may, instead of withdrawing from consideration of the matter, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the member's participation, all agree in writing or on the record that the member's relationship is immaterial or that the member's economic interest is de minimis, the member is no longer disqualified, and may participate in the matter. If a party is not immediately available, the member may proceed on the assurance of the party's counsel that the party's consent will be subsequently given.

(j) Counsel and Clerk. The Executive Director of the Association, under the direction of the Board of Governors, may appoint a suitable person or persons to act as counsel and clerk to the Board, to assist the Board and the review committees in carrying out their functions under these rules.

(k) Restriction on Representing Respondents. Former members of the Disciplinary Board are subject to the restrictions on representing respondents in rule 2.13(b).

[Adopted effective October 1, 2002.]

ELC 2.4
REVIEW COMMITTEES

(a) Function. A review committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.

(b) Membership. The Chair appoints three or more review committees of three members each from among the Board members. Each review committee consists of two lawyers and one nonlawyer. The Chair may reassign members among the several committees on an interim or permanent basis. The Chair does not serve on a review committee.

(c) Review Committee Chair. The Chair of the Disciplinary Board designates one member of each review committee to act as its chair.

(d) Terms of Office. A review committee member serves as long as the member is on the Board.

(e) Distribution of Cases. The Clerk assigns matters to the several review committees under the Chair's direction, equalizing the committee's caseloads as possible.

(f) Meetings. A review committee meets at times and places determined by the review committee chair, under the general direction of the Chair of the Disciplinary Board. In the review committee chair's discretion, the committee may meet and act through electronic, telephonic, written, or other means of communication.

(g) Adjunct Review Committee Members. Notwithstanding other provisions of these rules, if deemed necessary to the efficient operation of the discipline system, the Board may authorize the Chair to appoint former Board members as adjunct review committee members for a period deemed necessary by the Chair, but those appointments terminate at the end of the term of the Chair making the appointment. The Chair may remove adjunct review committee members when deemed appropriate. The Chair may appoint adjunct review committee members to existing review committees or may create adjunct review committees. An adjunct member has the same authority as a regular review committee member and must comply with rule 2.3(b)(5) but is not otherwise a Board member.

[Adopted effective October 1, 2002.]

ELC 2.5
HEARING OFFICER OR PANEL

(a) Function. A hearing officer or panel to whom a case has been assigned for hearing conducts the hearing and performs other functions as provided under these rules.

(b) Qualifications. A hearing officer must be an active member of the Association, have been an active or judicial member of the Association for at least seven years, have no record of public discipline, and have experience as an adjudicator or as an advocate in contested adjudicative hearings.

(c) Hearing Officer Selection Panel. The hearing officer selection panel makes recommendations to the Board of Governors for appointment, reappointment, and removal of hearing officers. The panel is appointed by the Board of Governors and includes, but is not limited to, a Board of Governors member who serves as its chair, one or more former Chairs of the Disciplinary Board, and one or more former nonlawyer members of the Disciplinary Board.

(d) Appointment. The Board of Governors appoints hearing officers to the hearing officer list giving consideration to recommendations of the hearing officer selection panel. The list should include as many lawyers as the Board of Governors considers necessary to carry out the provisions of these rules effectively and efficiently. In making appointments, the Board of Governors should consider diversity in gender, ethnicity, geography, and practice experience. The Board of Governors also maintains a list of nonlawyers willing to serve on hearing panels under section (h).

(e) Terms of Appointment. Appointment to the hearing officer list, or the list of nonlawyers, is for an initial period of one year, followed by periods of five years. Reappointment is in the Board of Governors' discretion. A hearing officer or panel member may continue to act in any matter assigned before his or her term expires. On the recommendation of the hearing officer selection panel, the Board of Governors may remove a person from the list of hearing officers or from the list of nonlawyer panel members.

(f) Chief Hearing Officer. The Board of Governors appoints a chief hearing officer who, in addition to hearing matters, assigns cases, monitors and evaluates the performance of hearing officers and panel members, establishes requirements for and supervises hearing officer and hearing panel member training, administers hearing officer compensation, hears prehearing motions when no hearing officer has been assigned, and performs other administrative duties necessary for an efficient and effective hearing system. If the chief hearing officer position is vacant or the chief hearing officer has recused or been disqualified from a particular matter, the Chair may, as necessary, perform the administrative duties of chief hearing officer.

(g) Case Assignment. The chief hearing officer assigns hearing officers to cases from the list of hearing officers appointed by the Board of Governors.

(h) Hearing Panel. If a hearing panel is assigned to hear a matter, the chief hearing officer appoints the panel. A

panel consists of three persons, with at least one from the hearing officer list and at least one nonlawyer from the list maintained by the Board of Governors.

(i) Training. Hearing officers and hearing panel members must comply with training requirements established by the chief hearing officer.

[Adopted effective October 1, 2002.]

ELC 2.6
HEARING OFFICER CONDUCT

(a) "Hearing Officer" Includes Panel Members. In this rule, the term "hearing officer" includes hearing panel members.

(b) Integrity of Hearing Officer System. The integrity and fairness of the disciplinary system requires that hearing officers observe high standards of conduct. To the extent applicable, the Code of Judicial Conduct should guide hearing officers. The following rules have been adapted from Canon 2 and Canon 3 of the Code of Judicial Conduct as particularly applicable to hearing officers, and the words "should" and "shall" have the meanings ascribed to them in those rules.

(c) Hearing Officer's Duty To Avoid Impropriety and the Appearance of Impropriety. Hearing officers should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Hearing officers should not allow family, social, or other relationships to influence their conduct or judgment. Hearing officers should not lend the prestige of the hearing officer position to advance the private interests of the hearing officer or others; nor should hearing officers convey or permit others to convey the impression that they are in a special position to influence them. Hearing officers should not be members of any organization practicing discrimination prohibited by law.

(d) Conduct of Those on Hearing Officer List. A person on the hearing officer list should not:

(1) testify voluntarily as a character witness in a disciplinary proceeding;

(2) serve as an expert witness related to the professional conduct of lawyers in any proceeding; or

(3) serve as special disciplinary counsel, adjunct investigative counsel, or respondent's counsel.

(e) Performing Duties Impartially and Diligently. When acting as a hearing officer, the following standards apply:

(1) Adjudicative Responsibilities.

(2)

(A) Hearing officers should be faithful to the law and maintain professional competence in it. Hearing officers should be unswayed by partisan interests, public clamor, or fear of criticism.

(B) Hearing officers should maintain order and decorum in proceedings before them.

(C) Hearing officers should be patient, dignified, and courteous to parties, witnesses, lawyers, and others with whom hearing officers deal in their official capacity, and should require similar conduct of lawyers, and of the staff, and others subject to their direction and control.

(D) Hearing officers should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Hearing officers, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

(E) Hearing officers shall perform their duties without bias or prejudice.

(F) Hearing officers should dispose promptly of assigned matters.

(G) Hearing officers shall not, while a proceeding is pending or impending, make any public comment that

might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. The hearing officer shall require similar abstention on the part of personnel subject to the hearing officer's direction and control. This section does not prohibit hearing officers from making public statements in the course of their official duties or from explaining for public information the procedures of the discipline system.

(2) Administrative Responsibilities.

(A) Hearing officers should diligently discharge their administrative responsibilities.

(B) Hearing officers should require their staff and others subject to their direction and control to observe the standards of fidelity and diligence that apply to them.

(3) Disciplinary Responsibilities.

(A) Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules should take appropriate action. Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules that raises a substantial question as to the other hearing officer's fitness for office should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(B) Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of Lawyer Conduct should take appropriate action. Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of Lawyer Conduct that raises a substantial question as to the lawyer's fitness as a lawyer should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(4) Disqualification.

(A) Hearing officers should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(i) the hearing officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the hearing officer previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the hearing officer previously practiced law served during such association as a lawyer concerning the matter, or such lawyer has been a material witness concerning it;

(iii) the hearing officer knows that, individually or as a fiduciary, the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or is an officer, director or trustee of a party or has any other interest that could be substantially affected by the outcome of the proceeding, unless there is a remittal of disqualification;

(iv) the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director, or trustee of a party;

(b) is acting as a lawyer in the proceeding;

(c) is to the hearing officer's knowledge likely to be a material witness in the proceeding.

(B) Hearing officers should inform themselves about their personal and fiduciary economic interests, and make a reasonable effort to inform themselves about the personal economic interests of their spouse and minor children residing in their household.

(5) Remittal of Disqualification. A hearing officer disqualified by the terms of subsections (e)(4)(A)(iii) or (iv) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the hearing officer's participation, all agree in writing or on the record that the hearing officer's relationship is immaterial or that the hearing officer's economic interest is de minimis, the hearing officer is no longer disqualified and may participate in the proceeding. When a party is not immediately available, the hearing officer may proceed on the assurance of the lawyer that the

party's consent will be subsequently given.

[Adopted effective October 1, 2002.]

ELC 2.7
CONFLICTS REVIEW OFFICER

(a) Function. Conflicts Review Officers review grievances filed against disciplinary counsel and other lawyers employed by the Association, hearing officers, conflicts review officers and conflicts review officers pro tempore, and members of the Disciplinary Board, the Board of Governors, and the Supreme Court. Conflicts Review Officers also review grievances filed against persons who have been assigned cases as adjunct investigative counsel or special disciplinary counsel, or appointed in disability matters pursuant to ELC 8.2(c)(2), at the time the grievance is filed.

(1) Limitation of Authority. A Conflicts Review Officer's duties are limited to performing the initial review of grievances covered by this Rule. A Conflicts Review Officer may obtain the respondent lawyer's response to the grievance, if he/she feels it necessary to do so, in his/her sole discretion. A Conflicts Review Officer may dismiss the grievance, defer the investigation, or assign the grievance to special disciplinary counsel for investigation.

(2) Independence. Conflicts Review Officers act independently of disciplinary counsel and the Association.

(b) Appointment and Qualifications.

(1) The Supreme Court, on the recommendation of the Board of Governors, shall appoint three active members of the Association as Conflicts Review Officers. Each Conflicts Review Officer is appointed for a three-year term on a staggered basis, and may be recommended for reappointment at the discretion of the Board of Governors. Applications shall be solicited from those eligible to serve and submitted to the Board of Governors in such manner as the Association deems most appropriate under the policies and procedures then in effect for recruitment and appointment of volunteers in the discipline system.

(2) When no Conflicts Review Officer is available to handle a matter due to conflict of interest or other good cause, the Supreme Court, on the recommendation of the Board of Governors, shall appoint a Conflicts Review Officer pro tempore for the matter.

(3) To be eligible for appointment as Conflicts Review Officer or Conflicts Review Officer pro tempore, a lawyer must have prior experience as a Disciplinary Board member, disciplinary counsel, or special disciplinary counsel. Conflicts Review Officers and Conflicts Review Officers pro tempore may have no other active role in the discipline system during the term of appointment.

(4) The Association shall assign matters to the Conflicts Review Officers in such a manner as to balance their caseloads insofar as it is practicable to do so.

(c) Access to Disciplinary Information. Conflicts Review Officers and Conflicts Review Officers pro tempore have access to any otherwise confidential disciplinary information necessary to perform the duties required by these rules. Conflicts Review Officers and Conflicts Review Officers pro tempore shall return original files to the Association promptly upon completion of the duties required by these rules and shall not retain copies.

(d) Compensation and Expenses. The Association reimburses Conflicts Review Officers and Conflicts Review Officers pro tempore for all necessary and reasonable expenses, and may provide compensation at a level established by the Board of Governors.

[Adopted, effective October 1, 2002; amended, effective January 12, 2010]

ELC 2.8
DISCIPLINARY COUNSEL; SPECIAL DISCIPLINARY COUNSEL

(a) Function. Disciplinary counsel acts as counsel on the Association’s behalf on all matters under these rules, and performs other duties as required by these rules, the Executive Director, or the Board of Governors.

(b) Appointment. The Executive Director of the Association, under the direction of the Board of Governors, employs a suitable member or members of the Association as disciplinary counsel. Special disciplinary counsel may be appointed whenever necessary to conduct an individual investigation or proceeding.

[Adopted effective October 1, 2002.]

ELC 2.9
ADJUNCT INVESTIGATIVE COUNSEL

(a) Function. Adjunct investigative counsel performs the functions set forth in these rules.

(b) Appointment and Term of Office. The Board of Governors, in consultation with the Chief Disciplinary Counsel, appoints adjunct investigative counsel from among the active members of the Association, who have been active or judicial Association members for at least seven years, have no record of disciplinary misconduct, and are in good standing. In appointing adjunct investigative counsel, the Board of Governors should consider diversity in gender, ethnicity, geography, and practice experience. Each adjunct investigative counsel is appointed for a five year term on a staggered basis and may be reappointed. Adjunct investigative counsel should be trained in the investigation of discipline cases.

[Adopted effective October 1, 2002.]

ELC 2.10
REMOVAL OF APPOINTEES

The power granted by these rules to any person, committee, or board to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform his or her duties, or for any other cause, and to fill the resulting vacancy.

[Adopted effective October 1, 2002.]

ELC 2.11
COMPENSATION AND EXPENSES

(a) Compensation. The Association compensates the chief hearing officer to the extent authorized by the Board of Governors. The Association may compensate hearing officers and hearing panel members to the extent authorized by the Board of Governors. Board members and adjunct investigative counsel receive no compensation for their services.

(b) Expenses. The Association pays expenses incurred by hearing officers, hearing panel members, the chief hearing officer, Board members, and adjunct investigative counsel in connection with their duties, subject to any limitation established by resolution of the Board of Governors.

(c) Special Appointments. The Association pays the fees for counsel appointed under rules 7.7, 8.2(c)(2), or 8.3(d)(3) and costs or expenses reasonably incurred by these counsel.

[Adopted effective October 1, 2002.]

ELC 2.12
COMMUNICATIONS TO THE ASSOCIATION PRIVILEGED

Communications to the Association, Board of Governors, Disciplinary Board, review committee, hearing officer or panel, disciplinary counsel, adjunct investigative counsel, Association staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness, or other person providing information.

[Adopted effective October 1, 2002; Amended effective January 2, 2008.]

ELC 2.13
RESPONDENT LAWYER

(a) Right to Representation. A lawyer may be represented by

counsel during any stage of an investigation or proceeding under these rules.

(b) Restrictions on Representation of Respondent. A former Association president, a former Board of Governors member, or a former Disciplinary Board member cannot represent a respondent lawyer in any proceeding under these rules until three years after leaving office. Service as an Adjunct Review Committee Member or as a Member Pro Tempore of the Board does not invoke this rule.

(c) Restriction on Charging Fee To Respond to Grievance. A respondent lawyer may not seek to charge a grievant a fee or recover costs from a grievant for responding to a grievance unless otherwise permitted by these rules.

(d) Medical and Psychological Records. A respondent must furnish written releases or authorizations to permit disciplinary counsel access to medical, psychiatric, or psychological records as may be relevant to the investigation or proceeding, subject to a motion to the chief hearing officer, or the hearing officer if one has been appointed, to limit the scope of the requested releases or authorizations for good cause shown.

[Adopted effective October 1, 2002.]

ELC 3.1
OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION

(a) Open Meetings. Disciplinary hearings and meetings of the Board are public. Except as otherwise provided in these rules, Supreme Court proceedings are public to the same extent as other Supreme Court proceedings. Deliberations of a hearing officer or panel, board, review committee, or court, and matters made confidential by a protective order, or by other provisions of these rules, are not public.

(b) Public Disciplinary Information. The public has access to the following information subject to these rules:

(1) the record before a review committee and the order of the review committee in any matter that a review committee has ordered to hearing or ordered an admonition be issued;

(2) the record upon distribution to a review committee or to the Supreme Court in proceedings based on a conviction of a felony or serious crime, as defined in rule 7.1(a);

(3) the record upon distribution to a review committee or to the Supreme Court in proceedings under rule 7.2;

(4) a statement of concern to the extent provided under rule 3.4(f);

(5) the record and order upon approval of a stipulation for discipline imposing a sanction or admonition, and the order approving a stipulation to dismissal of a matter previously made public under these rules;

(6) the record before a hearing officer or panel;

(7) the record and order before the Board in any matter reviewed under rule 10.9 or title 11;

(8) the bar file and any exhibits and any Board or review committee order in any matter that the Board or a review committee has ordered to public hearing, or any matter in which disciplinary action has been taken, or any proceeding under rules 7.1-7.6;

(9) in any disciplinary matter referred to the Supreme Court, the file, record, briefs, and argument in the case;

(10) a lawyer's resignation in lieu of disbarment under rule 9.3; and

(11) any sanction or admonition imposed on a respondent.

(c) Regulations. Public access to file materials and proceedings permitted by this rule may be subject to reasonable regulation as to time, place, and manner of access. Certified copies of public bar file documents will be made available at the same rate as certified copies of superior court records. Uncertified copies of public bar file documents will be made available at a rate to be set by the Executive Director of the Association.

[Adopted effective October 1, 2002.]

ELC 3.2
CONFIDENTIAL DISCIPLINARY INFORMATION

(a) Scope of Confidentiality. All disciplinary materials that are not public information as defined in rule 3.1(b) are confidential, and are held by the Association under the authority of the Supreme Court, including but not limited to materials submitted to a review committee under rule 8.9 or information protected by rule 3.3(b), rule 5.4(b), rule 5.1(c)(3), a protective order under rule 3.2(e), rule 3.2(b), court order, or other applicable law (e.g., medical records, police reports, etc.).

(b) Restriction on Release of Client Information. Notwithstanding any other provision of this title, no information identified or known to the Association to constitute client information that a lawyer would be required to keep confidential under RPC 1.6 may be released under rule 3.4(c) - (i) unless the client consents, including implied consent under rule 5.1(b).

(c) Investigative Confidentiality. During the course of an investigation or proceeding, the Chief Disciplinary Counsel may direct that otherwise public information be kept confidential if necessary to further the purposes of the investigation. At the conclusion of the proceeding, those materials become public information unless subject to a protective order.

(d) Discipline Under Prior Rules. Discipline imposed under prior rules of this state that was confidential when imposed remains confidential. A record of confidential discipline may be kept confidential during proceedings under these rules, or in connection with a stipulation under rule 9.1, through a protective order under section (e).

(e) Protective Orders. To protect a compelling interest of a grievant, witness, third party, respondent lawyer, or other participant in an investigation, on motion and for good cause shown, the Board Chair, the chair of a review committee to which a matter is assigned, or a hearing officer to whom a matter is assigned may issue a protective order prohibiting the disclosure or release of specific information, documents, or pleadings, and direct that the proceedings be conducted so as to implement the order. Filing a motion for a protective order stays the provisions of this title as to any matter sought to be kept confidential until five days after a ruling is served on the parties. The Board reviews decisions granting or denying a protective order if either the respondent lawyer or disciplinary counsel requests a review within five days of service of the decision. On review, the Board may affirm, reverse, or modify the protective order. The Board's decision is not subject to further review. A request for review by the Board stays the provisions of this title as to any matter sought to be kept confidential in that request, and the request itself is confidential until a ruling is issued.

(f) Wrongful Disclosure or Release. Disclosure or release, except as permitted by these rules, by any person involved with an investigation or proceeding, either as the Association's officer or agent (including, but not limited to, its staff, members of the Board of Governors, the Disciplinary Board, a review committee, hearing panels, hearing officers, disciplinary counsel, adjunct investigative counsel, a lawyer appointed under rule 7.7, or any other individual acting under authority of these rules) of any information about a pending or completed investigation or proceeding, except as permitted by these rules, may subject that person to an action for contempt of the Supreme Court. If the person is a lawyer, wrongful disclosure or release may also be grounds for discipline.

[Adopted effective October 1, 2002.]

ELC 3.3
APPLICATION TO STIPULATIONS, DISABILITY PROCEEDINGS, AND DIVERSION CONTRACTS

(a) Application to Stipulations. A stipulation under rule 9.1 providing for imposition of a disciplinary sanction or admonition is confidential until approved, except that a grievant may be advised concerning a stipulation and its proposed or actual content at any time. An approved stipulation is public, unless:

(1) it is approved before the filing of a formal

complaint;

(2) it provides for dismissal of a grievance without a disciplinary sanction or admonition; and

(3) proceedings have not been instituted for failure to comply with the terms of the stipulation.

(b) Application to Disability Proceedings. Disability proceedings under title 8 are confidential. However, a grievant may be advised that a lawyer against whom the grievant has complained is subject to disability proceedings. The following information is public:

(1) that a lawyer has been transferred to disability inactive status, or has been reinstated to active status; and

(2) that a disciplinary proceeding is deferred pending supplemental proceedings under title 8.

(c) Diversion Contracts. Diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, despite rule 3.1(b)(1), unless admitted into evidence in a disciplinary proceeding following termination of the diversion contract for material breach. When a matter that has previously become public under rule 3.1(b) is diverted by a diversion contract, that contract and the supporting documents are confidential but the fact that the matter was diverted from discipline is public information.

[Adopted effective October 1, 2002.]

ELC 3.4
RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

(a) Disclosure of Information. Except as provided in rule 3.2(e), the grievant, respondent lawyer, or any witness may disclose the existence of proceedings under these rules or any documents or correspondence the person received.

(b) Investigative Disclosure. The Association may disclose information as necessary to conduct the investigation or to keep a grievant advised of the status of a matter except as prohibited by rule 3.3(b), 5.4(b), or 5.1(c)(3), a protective order under rule 3.2(e), other court order, or other applicable law.

(c) Release Based upon Lawyer's Waiver. Upon a written waiver by a lawyer, the Association may release the status of otherwise confidential disciplinary proceedings and provide copies of nonpublic information to:

(1) the Washington State Bar Association Committee of Law Examiners, the Washington State Bar Association Character and Fitness Committee, the National Conference of Bar Examiners, or the comparable body in other jurisdictions to evaluate the character and fitness of an applicant for admission to the practice of law in that jurisdiction;

(2) the Washington State Bar Association Judicial Recommendation Committee, or the comparable body in other jurisdictions, to evaluate the character and fitness of a candidate for judicial office;

(3) the Governor of the State of Washington, or of any other state, or his or her delegate, to evaluate the character and fitness of a potential nominee to judicial office; and

(4) any other agency that a lawyer authorizes to investigate the lawyer's disciplinary record.

(d) Response to Inquiry or False or Misleading Statement.

(1) Subject to rule 3.2(e), the President, the Board of Governors, the Executive Director, or Chief Disciplinary Counsel, or a designee of any of them, may release otherwise confidential information:

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

(B) if necessary to correct a false or misleading public statement.

(2) A respondent must be given notice of a decision to release information under this section unless the President, the Board of Governors, the Executive Director, or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public or compromise an ongoing investigation.

(e) Discretionary Release. The Executive Director or the

Chief Disciplinary Counsel may authorize the general or limited release of any confidential information obtained during an investigation when it appears necessary to protect the interests of clients or other persons, the public, or the integrity of the disciplinary process. A respondent must be given notice of a decision to release information under this section before its release unless the Executive Director or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public, or that the delay caused by giving the respondent notice would be detrimental to the integrity of the disciplinary process.

(f) Statement of Concern.

(1) Authority. The Chief Disciplinary Counsel has discretion to file a statement of concern with the Clerk when deemed necessary to protect members of the public from a substantial threat, based on information from a pending investigation into a lawyer's apparent ongoing serious misconduct not otherwise made public by these rules.

(2) Procedure.

(A) On or before the date it is filed, a copy of the statement of concern must be served under rule 4.1 on the lawyer about whom the statement of concern has been made. The statement of concern is not public information until 14 days after service.

(B) The lawyer may at any time appeal to the Chair to have the statement of concern withdrawn.

(C) If an appeal to the Chair is filed with the Clerk under rule 4.2(a) within 14 days of service of the statement of concern, the statement of concern is not public information unless the Chair so orders and becomes public information upon issuance of the Chair's order.

(D) The Chair's decision is not subject to further review.

(E) The Chief Disciplinary Counsel may withdraw a statement of concern at any time.

(g) Release to Judicial Officers. Any state or federal judicial officer may be advised of the status of a confidential disciplinary grievance about a lawyer appearing before the judicial officer in a representational capacity and may be provided with requested confidential information if the grievance is relevant to the lawyer's conduct in a matter before that judicial officer. The judicial officer must maintain the confidentiality of the matter.

(h) Cooperation with Criminal and Disciplinary Authorities. Except as provided in rule 3.2(e), information or testimony may be released to authorities in any jurisdiction authorized to investigate alleged criminal activity or judicial or lawyer misconduct.

(i) Release to Lawyers' Fund for Client Protection. Information obtained in an investigation and about applications pending before the Lawyers' Fund for Client Protection may be released to the Fund. The Fund must treat such information as confidential unless this title or the Executive Director authorizes release.

(j) Conflicts Review Officer. Conflicts review officers have access to any otherwise confidential disciplinary information necessary to perform their duties.

(k) Board of Governors Access. In furtherance of its supervisory function, and not in derogation of the foregoing, the Board of Governors has access to all confidential disciplinary information, but must maintain its confidentiality.

(l) Release to Practice of Law Board. Information obtained in an investigation relating to possible unauthorized practice of law may be released to the Practice of Law Board. Such information shall remain under the control of the Office of Disciplinary Counsel and the Practice of Law Board must treat it as confidential unless this title or the Executive Director authorizes release.

[Adopted effective October 1, 2002; September 1, 2005.]

ELC 3.5
NOTICE OF DISCIPLINE

(a) Notice to Supreme Court. The counsel to the Board must provide the Supreme Court with:

(1) a copy of any decision imposing a disciplinary sanction when that decision becomes final;

(2) a copy of any admonition, together with the order issuing the admonition, when the admonition is accepted or

otherwise becomes final; and

(3) a copy of any resignation in lieu of disbarment.

(b) Other Notices. The counsel to the Board must also notify the following entities of the imposition of a disciplinary sanction or admonition, a resignation in lieu of disbarment, or the filing of a statement of concern under rule 3.4(f) as follows, in such form as may appear appropriate:

(1) the lawyer discipline authority or highest court in any jurisdiction where the lawyer is believed to be admitted to practice;

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

(3) the National Discipline Data Bank; and

(4) the Washington State Bar News.

(c) Preparation of Bar News Notice. The counsel to the Board has discretion in drafting notices for publication in the Washington State Bar News, and should include sufficient information to adequately inform the public and the members of the Association about the misconduct found, the rules violated and the disciplinary action imposed. All notices should include the respondent lawyer's name, bar number, date of admission, the time frame of the misconduct, the rules violated, and the disciplinary action. The counsel to the Board must serve a copy of the draft notice on respondent and disciplinary counsel under rule 4.1 and review any comments filed with the counsel to the Board within five days of service, but counsel to the Board's decision about the content of the notice is not subject to further review.

(d) Notices of Suspension, Disbarment, Resignation in Lieu of Disbarment, or Disability Inactive Status. The Association must publish a notice of the disbarment, suspension, resignation in lieu of disbarment, or transfer to disability inactive status of a lawyer in the Washington State Bar News and electronic or other index or site maintained by the Association for public information. The Association must provide copies of these notices to the news media in a manner designed to notify the public in the county or region where the lawyer has maintained a practice. For a transfer to disability inactive status, no reference may be made to the specific disability.

(e) Notice to Judges. The Association must promptly notify the presiding judge of the superior court of the county in which the lawyer maintained a practice of the lawyer's disbarment, suspension, resignation in lieu of disbarment, or transfer to disability inactive status, and may similarly notify the presiding judge of any district court located in the county where the lawyer practiced, or the judge of any other court in which the lawyer may have practiced or is known to have practiced.

[Adopted effective October 1, 2002.]

ELC 3.6
MAINTENANCE OF RECORDS

(a) Permanent Records. In any matter in which a disciplinary sanction has been imposed, the bar file and transcripts of the proceeding are permanent records. Related file materials, including investigative files, may be maintained in disciplinary counsel's discretion. Exhibits may be returned to the party supplying them, but copies should be retained where possible.

(b) Destruction of Files. In any matter in which a grievance or investigation has been dismissed without the imposition of a disciplinary sanction, whether following a hearing or otherwise, file materials relating to the matter may be destroyed three years after the dismissal first occurred, and must be destroyed at that time on the respondent lawyer's request unless the files are being used in an ongoing investigation or unless other good cause exists for retention. However, file materials on a matter concluded with an admonition must be retained at least five years after the admonition was issued. If disciplinary counsel opposes a request by a respondent for destruction of files under this rule, the Board rules on that request.

(c) Retention of Docket. If a file on a matter has been destroyed under section (b), the Association may retain a docket record of the matter for statistical purposes only. That docket record must not include the name or other identification of the respondent.

(d) Deceased Lawyers. Records and files relating to a deceased lawyer, including permanent records, may be destroyed at any time in disciplinary counsel's discretion.

[Adopted effective October 1, 2002.]

ELC 4.1
SERVICE OF PAPERS

(a) Service Required. Every pleading, every paper relating to discovery, every written request or motion other than one which may be heard ex parte, and every similar paper or document issued by disciplinary counsel or the respondent lawyer under these rules must be served on the opposing party. If a hearing is pending and a hearing officer has been assigned, except for discovery, the party also must serve a copy on the hearing officer or panel chair or, if required by these rules, on each member of a hearing panel.

(b) Methods of Service.

(1) Service by Mail.

(A) Unless personal service is required or these rules specifically provide otherwise, service may be accomplished by postage prepaid mail. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.

(B) Except as provided below, service by mail must be by certified or registered mail, return receipt requested. Service may be by first class mail if:

(i) the parties so agree;

(ii) the document is a notice of dismissal by disciplinary counsel or by a review committee under rule 5.6, a notice regarding deferral under rule 5.3(c), or a request for review of any of these notices;

(iii) one or more properly made certified mailings is returned as unclaimed; or

(iv) service is on a hearing officer or panel.

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

(i) for the respondent, or his or her attorney of record, the address in the answer, a notice of appearance, or any subsequent document filed by the respondent or his or her attorney; or, in the absence of an answer, the respondent's address on file with the Association;

(ii) for disciplinary counsel, at the address of the Association or other address that disciplinary counsel requests.

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

(3) Personal Service. Personal service on a respondent is accomplished as follows:

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

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

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

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at his or her last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Association.

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

(c) Service Where Question of Mental Competence. If a guardian or guardian ad litem has been appointed for a

respondent who has been judicially declared to be of unsound mind or incapable of conducting his or her own affairs, service under sections (a) and (b) above must also be made on the guardian or guardian ad litem.

(d) Proof of Service. If personal service is required, proof of service may be made by affidavit of service, sheriff's return of service, or a signed acknowledgment of service. In other cases, proof of service may also be made by certificate of a lawyer similar to that allowed by CR 5(b)(2)(B), which certificate must state the form of mail used. Proof of service in all cases must be filed but need not be served on the opposing party.

[Adopted effective October 1, 2002.]

ELC 4.2
FILING; ORDERS

(a) Filing Originals. Except in matters before the Supreme Court, the original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the Clerk. Filing may be made by first class mail and is deemed accomplished on the date of mailing. Filing of papers for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

(b) Filing and Service of Orders. Any written order, decision, or ruling, except an order of the Supreme Court or an informal ruling issued under rule 10.8(e), must be filed with the Clerk, and the Clerk serves it on the respondent lawyer and disciplinary counsel.

[Adopted effective October 1, 2002.]

ELC 4.3
PAPERS

All pleadings or other papers must be typewritten or printed, double spaced, on good quality 8½ by 11-inch paper. The use of letter-size copies of exhibits is encouraged if it does not impair legibility.

[Adopted effective October 1, 2002.]

ELC 4.4
COMPUTATION OF TIME

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

[Adopted effective October 1, 2002.]

ELC 4.5
STIPULATION TO EXTENSION OR REDUCTION OF TIME

Except for notices of appeal or matters pending before the Supreme Court, the respondent lawyer and disciplinary counsel may stipulate in any proceeding to extension or reduction of the time requirements.

[Adopted effective October 1, 2002.]

ELC 4.6
SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION

Disciplinary counsel, the chief hearing officer, or the

Chair may issue a subpoena for use in lawyer discipline or disability proceedings in another jurisdiction if the issuance of the subpoena has been authorized under the law of that jurisdiction and upon a showing of good cause. The subpoena may compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. These rules apply to service, enforcement, and challenges to subpoenas issued under this rule.

[Adopted effective October 1, 2002.]

ELC 4.7
ENFORCEMENT OF SUBPOENAS

(a) Authority. To enforce subpoenas issued under these rules, the Supreme Court delegates contempt authority to the Superior Courts as necessary for the Superior Courts to act under this rule.

(b) Procedure.

(1) If a person fails to obey a subpoena, or obeys the subpoena but refuses to testify or produce documents when requested, disciplinary counsel, the respondent lawyer or the person issuing the subpoena may petition the Superior Court of the county where the hearing is being conducted, where the subpoenaed person resides or is found, or where the subpoenaed documents are located, for enforcement of the subpoena. The petition must:

(A) be accompanied by a copy of the subpoena and proof of service;

(B) state the specific manner of the lack of compliance; and

(C) request an order compelling compliance.

(2) Upon the filing of the petition, the Superior Court enters an order directing the person to appear before it at a specified time and place to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the Superior Court's show cause order must be served on the person.

(3) At the show cause hearing, if it appears to the Superior Court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the Superior Court enters an order requiring the person to appear at a specified time and place and testify or produce the required documents. On failing to obey this order, the person is dealt with as for contempt of court.

[Adopted effective October 1, 2002.]

ELC 5.1
GRIEVANTS

(a) Filing of Grievance. Any person or entity may file a grievance against a lawyer admitted to practice law in this state, or against a lawyer specially admitted by a court of this state for a particular case.

(b) Consent to Disclosure. By filing a grievance, the grievant consents to disclosure of the content of the grievance to the respondent lawyer, or to any other person contacted during the investigation of the grievance, or to any person under rules 3.1 - 3.4, unless a protective order is issued under rule 3.2(e) or the grievance was filed under rule 5.2. By filing a grievance, the grievant also agrees that the respondent or any other lawyer contacted by the grievant may disclose to disciplinary counsel any information relevant to the investigation, unless a protective order is issued under rule 3.2(e).

(c) Grievant Rights. A grievant has the following rights:

(1) to be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;

(2) to have a reasonable opportunity to speak with the

person assigned to the grievance, by telephone or in person, about the substance of the grievance or its status;

(3) to receive a copy of any response submitted by the respondent, except:

(A) if the response refers to a client's confidences or secrets to which the grievant is not privy;

(B) if the response contains information of a personal and private nature about the respondent; or

(C) if a review committee determines that the interests of justice would be better served by not releasing the response;

(4) to submit additional supplemental written information or documentation at any time;

(5) to attend any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e);

(6) to provide relevant testimony at any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e);

(7) to be notified of any proposed decision to refer the respondent to diversion and to be given a reasonable opportunity to submit to disciplinary counsel a written comment thereon;

(8) to be advised of the disposition of the grievance; and

(9) to request reconsideration of a dismissal of the grievance as provided in rule 5.6(b).

(d) Grievant Duties. A grievant must do the following, or the grievance may be dismissed:

(1) give the person assigned to the grievance documents or other evidence in his or her possession, and witnesses' names and addresses;

(2) assist in securing relevant evidence; and

(3) appear and testify at any hearing resulting from the grievance.

[Adopted effective October 1, 2002.]

ELC 5.2
CONFIDENTIAL SOURCES

If a person files a grievance or provides information to disciplinary counsel or the Association about a lawyer's possible misconduct or disability, and asks to be treated as a confidential source, an investigation may be conducted in the Association's name. The confidential source has neither the rights nor the duties of a grievant. Unless otherwise ordered, the person's identity may not be disclosed, either during the investigation or in subsequent formal proceedings. If the respondent lawyer requests disclosure of the person's identity, the Chair, the chair of a review committee, or a hearing officer before whom a matter is pending examines disciplinary counsel and any requested documents or file materials in camera without the presence of the respondent or respondent's counsel and may order disciplinary counsel to reveal the identity to the respondent if doing so appears necessary for the respondent to conduct a proper defense in the proceeding.

[Adopted effective October 1, 2002.]

ELC 5.3
INVESTIGATION OF GRIEVANCE

(a) Review and Investigation. Disciplinary counsel must review and may investigate any alleged or apparent misconduct by a lawyer and any alleged or apparent incapacity of a lawyer to practice law, whether disciplinary counsel learns of the misconduct by grievance or otherwise. If there is no grievant, the Association may open a grievance in the Association's name.

(b) Adjunct Investigative Counsel. Disciplinary counsel may assign a case to adjunct investigative counsel for

investigation. Disciplinary counsel assists in those investigations and monitors the performance of adjunct investigative counsel. On receiving a report of an investigation by an adjunct investigative counsel, disciplinary counsel may, as appears appropriate, request or conduct additional investigation or take any action under these rules.

(c) Deferral by Disciplinary Counsel.

(1) Disciplinary counsel may defer an investigation into alleged acts of misconduct by a lawyer:

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

(B) if it appears that the respondent lawyer is physically or mentally unable to respond to the investigation; or

(C) for other good cause, if it appears that the deferral will not endanger the public.

(2) Disciplinary counsel must inform the grievant and respondent of a decision to defer or a denial of a request to defer and of the procedure for requesting review. A grievant or respondent may request review of a decision on deferral. If review is requested, disciplinary counsel refers the matter to a review committee for reconsideration of the decision on deferral. To request review, the grievant or respondent must deliver or deposit in the mail a request for review to the Association no later than 45 days after the Association mails the notice regarding deferral.

(d) Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance: the unwillingness of a grievant to continue the grievance, the withdrawal of the grievance, a compromise between the grievant and the respondent, or restitution by the respondent.

(e) Duty To Furnish Prompt Response. Any lawyer must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation. Upon inquiry or request, any lawyer must:

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

(2) permit inspection and copying of the lawyer's business records, files, and accounts;

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

(4) furnish written releases or authorizations if needed to obtain documents or information from third parties; and

(5) comply with discovery conducted under rule 5.5.

(f) Failure To Cooperate.

(1) Noncooperation Deposition. If a lawyer has not complied with any request made under section (e) or rule 2.13(d) for more than 30 days, disciplinary counsel may notify the lawyer that failure to comply within ten days may result in the lawyer's deposition or subject the lawyer to interim suspension under rule 7.2. Ten days after this notice, disciplinary counsel may serve the lawyer with a subpoena for a deposition. Any deposition conducted after the ten-day period and necessitated by the lawyer's continued failure to cooperate may be conducted at any place in Washington State.

(2) Costs and Expenses.

(A) Regardless of the underlying grievance's ultimate disposition, a lawyer who has been served with a subpoena under this rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, and the cost of transcribing the deposition, if ordered by disciplinary counsel. In addition, a lawyer who has been served with a subpoena for a deposition under this rule is liable for a reasonable attorney fee of $500.

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

(i) Disciplinary counsel applies to a review committee by itemizing the cost and expenses and stating the reasons for the deposition.

(ii) The lawyer has ten days to respond to disciplinary counsel's application.

(iii) The review committee by order assesses appropriate costs and expenses.

(iv) Rule 13.9(e) governs Board review of the review committee order.

(3) Grounds for Discipline. A lawyer's failure to cooperate fully and promptly with an investigation as required by section (e) or rule 2.13(d) is also grounds for discipline.

[Adopted effective October 1, 2002.]

ELC 5.4
PRIVILEGES

(a) Privilege Against Self-Incrimination. A lawyer's duty to cooperate is subject to the lawyer's privilege against self-incrimination, where applicable.

(b) Attorney-Client Privilege. A lawyer may not assert the attorney-client privilege or other prohibitions on revealing client confidences or secrets as a basis for refusing to provide information during the course of an investigation, but information obtained during an investigation involving client confidences or secrets must be kept confidential to the extent possible under these rules unless the client otherwise consents. Nothing in these rules waives or requires waiver of any lawyer's own privilege or other protection as a client against the disclosure of confidences or secrets.

[Adopted effective October 1, 2002.]

ELC 5.5
DISCOVERY BEFORE FORMAL COMPLAINT

(a) Procedure. Before filing a formal complaint, disciplinary counsel may depose either a respondent lawyer or a witness, or issue requests for admission to the respondent. To the extent possible, CR 30 or 31 applies to depositions under this rule. CR 36 governs requests for admission.

(b) Subpoenas for Depositions. Disciplinary counsel may issue subpoenas to compel the respondent's or a witness's attendance, or the production of books, documents, or other evidence, at a deposition. Subpoenas must be served as in civil cases in the superior court and may be enforced under rule 4.7.

(c) Cooperation. Every lawyer must promptly respond to discovery requests from disciplinary counsel.

[Adopted effective October 1, 2002.]

ELC 5.6
DISPOSITION OF GRIEVANCE

(a) Dismissal by Disciplinary Counsel. Disciplinary counsel may dismiss grievances with or without investigation. On dismissal, disciplinary counsel must notify the grievant of the procedure for review in this rule.

(b) Review of Dismissal. A grievant may request review of dismissal of the grievance by delivering or depositing in the mail a request for review to the Association no later than 45 days after the Association mails the notice of dismissal. Mailing requires postage prepaid first class mail. If review is requested, disciplinary counsel may either reopen the matter for investigation or refer it to a review committee.

(c) Report in Other Cases. Disciplinary counsel must report to a review committee the results of investigations except those dismissed or diverted.

(d) Authority on Review. In reviewing grievances under this rule, a review committee may:

(1) affirm the dismissal;

(2) issue an advisory letter under rule 5.7;

(3) issue an admonition under rule 13.5;

(4) order a hearing on the alleged misconduct; or

(5) order further investigation as may appear appropriate.

[Adopted effective October 1, 2002.]

ELC 5.7
ADVISORY LETTER

An advisory letter may be issued when a hearing does not appear warranted but it appears appropriate to caution a respondent lawyer concerning his or her conduct. An advisory letter may be issued by a review committee but may not be issued when a grievance is dismissed following a hearing. An advisory letter does not constitute a finding of misconduct, is not a sanction, is not disciplinary action, and is not public information.

[Adopted effective October 1, 2002.]

ELC 6.1
REFERRAL TO DIVERSION

In a matter involving less serious misconduct as defined in rule 6.2, before filing a formal complaint, disciplinary counsel may refer a respondent lawyer to diversion. Diversion may include

- fee arbitration;
- arbitration;
- mediation;
- law office management assistance;
- lawyer assistance programs;
- psychological and behavioral counseling;
- monitoring;
- restitution;
- continuing legal education programs; or
- any other program or corrective course of action agreed to by disciplinary counsel and respondent to address respondent's misconduct.

Disciplinary counsel may negotiate and execute diversion contracts, monitor and determine compliance with the terms of diversion contracts, and determine fulfillment or any material breach of diversion contracts, subject to review under rule 6.9.

[Adopted effective October 1, 2002.]

ELC 6.2
LESS SERIOUS MISCONDUCT

Less serious misconduct is conduct not warranting a sanction restricting the respondent lawyer's license to practice law. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

(A) the misconduct involves the misappropriation of funds;

(B) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;

(C) the respondent has been sanctioned in the last

three years;

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

(E) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

(F) the misconduct constitutes a “serious crime” as defined in rule 7.1(a); or

(G) the misconduct is part of a pattern of similar misconduct.

[Adopted effective October 1, 2002.]

ELC 6.3
FACTORS FOR DIVERSION

Disciplinary counsel considers the following factors in determining whether to refer a respondent lawyer to diversion:

(A) whether the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions for the violations raised by the grievance or grievances is likely to be no more severe than reprimand or admonition;

(B) whether participation in diversion is likely to improve the respondent’s future professional conduct and accomplish the goals of lawyer discipline;

(C) whether aggravating or mitigating factors exist; and

(D) whether diversion was already tried.

[Adopted effective October 1, 2002.]

ELC 6.4
NOTICE TO GRIEVANT

As provided in rule 5.1(c)(7), disciplinary counsel must notify the grievant, if any, of the proposed decision to refer the respondent lawyer to diversion, and must give the grievant a reasonable opportunity to submit written comments. The grievant must be notified when the grievance is diverted and when the grievance is dismissed on completion of diversion. Such decisions to divert or dismiss are not appealable.

[Adopted effective October 1, 2002.]

ELC 6.5
DIVERSION CONTRACT

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

(b) Required Terms. A diversion contract must:

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

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

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

(4) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the grievances to be deferred; and

(5) include a specific acknowledgment that a material violation of a term of the contract renders the respondent's participation in diversion voidable by disciplinary counsel.

(c) Amendment. The contract may be amended on agreement of the respondent and disciplinary counsel.

[Adopted effective October 1, 2002.]

ELC 6.6
AFFIDAVIT SUPPORTING DIVERSION

A diversion contract must be supported by the respondent lawyer's affidavit or declaration as approved by disciplinary counsel setting forth the respondent's misconduct related to the grievance or grievances to be deferred under this title. If the diversion contract is terminated due to a material breach, the affidavit or declaration is admissible into evidence in any ensuing disciplinary proceeding. Unless so admitted, the affidavit or declaration is confidential and must not be provided to the grievant or any other individual outside the Office of Disciplinary Counsel, but may be provided to a review committee or the Board considering the grievance.

[Adopted effective October 1, 2002.]

ELC 6.7
EFFECT OF NON-PARTICIPATION IN DIVERSION

The respondent lawyer has the right to decline disciplinary counsel's offer to participate in diversion. If the respondent chooses not to participate, the matter proceeds as though no referral to diversion had been made.

[Adopted effective October 1, 2002.]

ELC 6.8
STATUS OF GRIEVANCE

After a diversion contract is executed by the respondent lawyer and disciplinary counsel, the disciplinary grievance is deferred pending successful completion of the contract.

[Adopted effective October 1, 2002.]

ELC 6.9
TERMINATION OF DIVERSION

(a) Fulfillment of the Contract. The contract terminates when the respondent lawyer has fulfilled the terms of the contract and gives disciplinary counsel an affidavit or declaration demonstrating fulfillment. Upon receipt of this affidavit or declaration, disciplinary counsel must acknowledge receipt and either dismiss any grievances deferred pending successful completion of the contract or notify the respondent that fulfillment of the contract is disputed. The grievant cannot appeal the dismissal. Successful completion of the contract is a bar to any further disciplinary proceedings based on the same allegations.

(b) Material Breach. A material breach of the contract is cause for termination of the diversion. After a material breach, disciplinary counsel must notify the respondent of termination from diversion and disciplinary proceedings may be instituted, resumed, or reinstated.

(c) Review by the Chair. The Chair may review disputes about fulfillment or material breach of the terms of the contract on the request of the respondent or disciplinary counsel. The request must be filed with the Board within 15 days of notice to the respondent of the determination for which review is sought. Determinations by the Chair under this section are not subject to further review and are not reviewable in any proceeding.

[Adopted effective October 1, 2002.]

ELC 7.1
INTERIM SUSPENSION FOR CONVICTION OF A CRIME

(a) Definitions.

(1) "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(2) "Serious crime" includes any:

(A) felony;

(B) crime a necessary element of which, as determined by its statutory or common law definition, includes any of the following:

- interference with the administration of justice;
- false swearing;
- misrepresentation;
- fraud;
- deceit;
- bribery;
- extortion;
- misappropriation; or
- theft; or

(C) attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".

(b) Court Clerk To Advise Association of Conviction. When a lawyer is convicted of a crime, the clerk of the court must advise the Association of the conviction, and on request provide the Association with certified copies of any order or other document showing the conviction.

(c) Procedure upon Conviction.

(1) If a lawyer is convicted of a felony, disciplinary counsel must file a formal complaint regarding the conviction. Disciplinary counsel must also petition the Supreme Court for an order suspending the respondent lawyer during the pendency of disciplinary proceedings. The petition for suspension may be filed before the formal complaint.

(2) If a lawyer is convicted of a crime that is not a felony, disciplinary counsel may refer the matter to a review committee to determine whether the crime is a serious crime. If so, disciplinary counsel proceeds in the same manner as for a felony.

(3) If a lawyer is convicted of a crime that is neither a felony nor a serious crime, the review committee considers a report of the conviction in the same manner as any other report of possible misconduct by a lawyer.

(d) Petition. A petition to the Supreme Court for suspension under this rule must include a copy of any available document establishing the fact of conviction. If the crime is not a felony, the petition must also include a copy of the review committee order finding that the crime is a serious crime. Disciplinary counsel may also include additional facts, statements, arguments, affidavits, and documents in the petition. A copy of the petition must be personally served on the respondent, and proof of service filed with the Court.

(e) Immediate Interim Suspension. Upon the filing of a petition for suspension under this rule, the Court determines whether the crime constitutes a serious crime as defined in section (a).

(1) If the crime is a felony, the Court must enter an order immediately suspending the respondent from the practice of law.

(2) If the crime is not a felony, the Court conducts a show cause proceeding under rule 7.2(b) to determine if the crime is a serious crime. If the Court determines the crime is a serious crime, the Court must enter an

order immediately suspending the respondent from the practice of law. If the Court determines that the crime is not a serious crime, upon being so advised, the Association processes the matter as it would any other grievance.

(3) If suspended, the respondent must comply with title 14.

(4) Suspension under this rule occurs:

(A) whether the conviction was under a law of this state, any other state, or the United States;

(B) whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and

(C) regardless of the pendency of an appeal.

(f) Duration of Suspension. A suspension under this rule must terminate when the disciplinary proceeding is fully completed, after appeal or otherwise.

(g) Termination of Suspension.

(1) Petition and Response. A respondent may at any time petition the Board to recommend termination of an interim suspension. Disciplinary counsel may file a response to the petition. The Chair may direct disciplinary counsel to investigate as appears appropriate.

(2) Board Recommendation. If either party requests, the Board must hear oral argument on the petition at a time and place and under terms as the Chair directs. The Board may recommend termination of a suspension only if the Board makes an affirmative finding of good cause to do so. There is no right of appeal from a Board decision declining to recommend termination of a suspension.

(3) Court Action. The Court determines the procedure for its consideration of a recommendation to terminate a suspension.

(h) Notice of Dismissal to Supreme Court. If disciplinary counsel has filed a petition for suspension under this rule, and the disciplinary proceedings based on the criminal conviction are dismissed, the Supreme Court must be provided a copy of the decision granting dismissal whether or not the respondent is suspended at the time of dismissal.

[Adopted effective October 1, 2002.]

ELC 7.2
INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

(a) Types of Interim Suspension.

(1) Review Committee Finding of Risk to Public. Disciplinary counsel may petition the Supreme Court for an order suspending the respondent lawyer during the pendency of any proceeding under these rules if:

(A) it appears that a respondent's continued practice of law poses a substantial threat of serious harm to the public; and

(B) a review committee recommends an interim suspension.

(2) Board Recommendation for Disbarment. When the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. The respondent must be suspended absent an affirmative showing that the respondent's continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest. If the Board's decision is not appealed and becomes final, the petition need not be filed, or if filed may be withdrawn.

(3) Failure To Cooperate with Investigation. When any lawyer fails without good cause to comply with a request under rule 5.3(f) for information or documents, or with a subpoena issued under rule 5.3(f), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the lawyer pending compliance with the request or subpoena. If the lawyer complies with the request or subpoena, the lawyer may petition the Court to terminate the suspension on terms the Court deems appropriate.

(b) Procedure.

(1) Petition. A petition to the Court under this rule must set forth the acts of the lawyer constituting grounds for suspension, and if filed under subsection (a)(2) must include a copy of the Board's decision. The petition may be supported by documents or affidavits. The Association must serve the petition by mail on the day of filing. In addition, a copy of the petition must be personally served on the lawyer no later than the date of service of the show cause order.

(2) Show Cause Order. Upon filing of the petition, the Chief Justice orders the lawyer to appear before the Court on a date set by the Chief Justice, and to show cause why the petition for suspension should not be granted. Disciplinary counsel must have a copy of the order to show cause personally served on the lawyer at least ten days before the scheduled show cause hearing. Subsection (b)(5) notification requirements must be included in the show cause order.

(3) Answer to Petition. The lawyer may answer the petition. An answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the show cause hearing.

(4) Filing of Answer. A copy of any answer must be filed with both the Court and disciplinary counsel by the date specified in the show cause order, which will be at least five days before the scheduled show cause hearing.

(5) Notification. The lawyer must inform the court no less than 7 days prior to the show cause hearing whether the lawyer will appear for the show cause hearing, or the hearing will be stricken and the Court will decide the matter without oral argument.

(6) Application of Other Rules. If the Court enters an order suspending the lawyer, the rules relating to suspended lawyers, including title 14, apply.

[Adopted effective October 1, 2002; amended effective January 3,2006.]

ELC 7.3
AUTOMATIC SUSPENSION WHEN RESPONDENT ASSERTING INCAPACITY

When a respondent lawyer asserts incapacity to conduct a proper defense to disciplinary proceedings, upon receipt of appropriate documentation of the assertion, the respondent must be suspended on an interim basis by the Supreme Court pending the conclusion of the disability proceedings. However, if the hearing officer in the supplemental proceeding files a decision that the respondent is not incapacitated, on petition of either party, the Court may terminate the interim suspension.

[Adopted effective October 1, 2002.]

ELC 7.4
STIPULATION TO INTERIM SUSPENSION

At any time a respondent lawyer and disciplinary counsel may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a serious crime, a substantial threat of serious harm to the public, or incapacity to practice law. A stipulation must state the factual basis for the stipulation and be submitted directly to the Supreme Court for expedited consideration. Stipulations under this rule are public upon filing with the Court, but the Court may order that supporting materials are confidential. Either party may petition the Court to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Court may terminate the suspension.

[Adopted effective October 1, 2002.]

ELC 7.5
INTERIM SUSPENSIONS EXPEDITED

(a) Expedited Review. Petitions seeking interim suspension under this title receive an expedited hearing, ordinarily no later than 14 days from issuance of an order to show cause.

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

[Adopted effective October 1, 2002.]

ELC 7.6
EFFECTIVE DATE OF INTERIM SUSPENSIONS

Interim suspensions become effective on the date of the Supreme Court’s order unless the order provides otherwise.

[Adopted effective October 1, 2002.]

ELC 7.7
APPOINTMENT OF CUSTODIAN TO PROTECT CLIENTS' INTERESTS

(a) Custodians Allowed. The Chair, on motion by disciplinary counsel or any other interested person, may appoint one or more lawyers or Association counsel as a custodian to act as counsel for the limited purpose of protecting clients’ interests whenever a lawyer has been transferred to disability inactive status, suspended, or disbarred, and fails to carry out the obligations of title 14 or fails to protect the clients' interests, or whenever a lawyer disappears or dies, unless a partner, personal representative, or other responsible person appears to be properly protecting the clients’ interests. The Chair may enter orders to carry out the provisions and purposes of this rule.

(b) Duties. The custodian takes possession of the necessary files and records and takes action as seems indicated to protect the clients' interests or required by the Chair’s orders or these rules. Such action may include but is not limited to assuming control of trust accounts or other financial affairs. Any bank or other person honoring the authority of the custodian is exonerated from any resulting liability. In determining ownership of funds in the trust account, including by subrogation or indemnification, the custodian should act as a reasonably prudent lawyer maintaining a client trust account. The custodian may rely on a certification of ownership issued by a person who conducts audits for the Association under rule 15.1. If the client trust account does not contain sufficient funds to meet known client balances, the custodian may disburse funds on a pro rata basis.

(c) Discharge. On motion by disciplinary counsel or any interested person, the Chair may discharge the custodian from further duties. The Chair may also order destruction of files and records as appropriate.

(d) Costs. Payment of any costs incurred by the Association under this rule may be a condition of reinstatement of a disbarred lawyer or a lawyer transferred to disability inactive status, or may be ordered as restitution in a disciplinary proceeding for failure to comply with rule 14.1.

[Adopted effective October 1, 2002.]

ELC 8.1
ACTION ON ADJUDICATION OF INCOMPETENCY

(a) Grounds. The Association must automatically transfer a lawyer from active to disability inactive membership status upon receipt of a certified copy of the judgment, order, or other appropriate document demonstrating that the lawyer:

(1) was found to be incapable of assisting in his or her own defense in a criminal action;

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

(3) had a guardian (but not a limited guardian) appointed for his or her person or estate on a finding of incompetency; or

(4) was found to be mentally incapable of conducting the practice of law in any other jurisdiction.

(b) Notice to Lawyer. The Association must forthwith notify the disabled lawyer and his or her guardian, if one has been appointed, of the transfer to disability inactive status. The Association must also notify the Supreme Court of the transfer and provide a copy of the judgment, order, or other appropriate document on which the transfer was based.

[Adopted effective October 1, 2002.]

ELC 8.2
DETERMINATION OF INCAPACITY TO PRACTICE LAW

(a) Review Committee May Order Hearing. Disciplinary counsel reports to a review committee on investigations into an active, suspended, or inactive respondent lawyer's mental or physical capacity to practice law. The committee orders a hearing if it appears there is reasonable cause to believe that the respondent does not have the mental or physical capacity to practice law. In other cases, the committee may direct further investigation as appears appropriate or dismiss the matter.

(b) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(c) Procedure.

(1) Applicable Rules. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) Appointment of Counsel. If counsel for the respondent does not appear within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent.

(3) Health Records. After a review committee orders a hearing under this rule, disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the inquiry, subject to a motion to the hearing officer, or if no hearing officer has been appointed, to the chief hearing officer, to limit the scope of the requested releases or authorizations for good cause.

(4) Examination. Upon motion, the hearing officer, or if no hearing officer has been appointed, the chief hearing officer, may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in determining the respondent's capacity to practice law. Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(5) Hearing Officer Recommendation. If the hearing officer or panel finds that the respondent does not have the mental or physical capacity to practice law, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status.

(6) Appeal Procedure. The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(7) Transfer Following Board Review. If, after review of the decision of the hearing officer or panel, the Board finds that the respondent does not have the mental or physical capacity to practice law, it must enter an order immediately transferring the respondent to disability inactive status. The transfer is effective upon service of the order under rule 4.1.

(d) Interim Suspension.

(1) When a review committee orders a hearing on the capacity of a respondent to practice law, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a)

unless the respondent is already suspended on an interim basis.

(2) Even if the Court previously denied a petition for interim suspension under subsection (d)(1), disciplinary counsel may petition the Court for the interim suspension of a respondent under rule 7.2(a)(3) if the respondent fails:

(A) to appear for an independent examination under this rule;

(B) to waive health care provider-patient privilege as required by this rule; or

(C) to appear at a hearing under this rule.

(e) Termination of Interim Suspension. If the hearing officer or panel files a decision recommending that a respondent placed on interim suspension under this rule not be transferred to disability inactive status, upon either party's petition, the Court may terminate the interim suspension.

[Adopted effective October 1, 2002.]

ELC 8.3
DISABILITY PROCEEDINGS DURING THE COURSE OF DISCIPLINARY PROCEEDINGS

(a) Supplemental Proceedings on Capacity To Defend. A hearing officer or hearing panel, or chief hearing officer if no hearing officer has been appointed, must order a supplemental proceeding on the respondent lawyer's capacity to defend the disciplinary proceedings if the respondent asserts, or there is reasonable cause to believe, that the respondent is incapable of properly defending the disciplinary proceeding because of mental or physical incapacity.

(b) Purpose of Supplemental Proceedings. In a supplemental proceeding, the hearing officer or panel determines if the respondent:

(1) is incapable of defending himself or herself in the disciplinary proceedings because of mental or physical incapacity;

(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or

(3) is currently unable to practice law because of mental or physical incapacity.

(c) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(d) Procedure for Supplemental Proceedings.

(1) Applicable Rules. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) Deferral of Disciplinary Proceedings. The disciplinary proceedings are deferred pending the outcome of the supplemental proceeding.

(3) Appointment of Counsel. If counsel for the respondent does not appear within 20 days of notice to the respondent of the issues to be considered in a supplemental proceeding under this rule, or within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent in the supplemental proceedings.

(4) Health Records. Disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the determination under section (b), subject to a motion to the hearing officer to limit the scope of the requested releases or authorizations for good cause. If the respondent asserted incapacity, there is a rebuttable presumption that good cause does not exist.

(5) Examination. Upon motion, the hearing officer may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in the determinations to be made under section (b). Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary

counsel, and the respondent.

(6) Failure To Appear or Cooperate. If the respondent fails to appear for an independent examination, fails to waive health care provider-patient privilege as required in these rules, or fails to appear at the hearing, the following procedures apply:

(A) If the Association has the burden of proof, the hearing officer must hold a hearing and, if presented with sufficient evidence to determine incapacity, order the respondent transferred to disability inactive status. If there is insufficient evidence to determine incapacity, the hearing officer must enter an order terminating the supplemental proceedings and reinstating the disciplinary proceedings. A respondent who does not appear at the hearing may move to vacate the order of transfer under rule 10.6(c).

(B) If the respondent has the burden of proof, the hearing officer must enter an order terminating the supplemental proceedings and resuming the disciplinary proceedings.

(7) Hearing Officer Decision.

(A) Capacity To Defend and Practice Law. If the hearing officer or panel finds that the respondent is capable of defending himself or herself and has the mental and physical capacity to practice law, the disciplinary proceedings resume.

(B) Capacity To Defend with Counsel. If the hearing officer or panel finds that the respondent is not capable of defending himself or herself in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint a member of the Association as counsel for the respondent in the disciplinary proceeding.

(C) Finding of Incapacity. If the hearing officer or panel finds that the respondent either does not have the mental or physical capacity to practice law, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status. The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(8) Transfer Following Board Review.

(A) The Board must enter an order immediately transferring the respondent to disability inactive status if after review of a hearing officer's or panel's recommendation of transfer to disability inactive status, the Board finds that the respondent:

(i) does not have the mental or physical capacity to practice law; or

(ii) is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity.

(B) The transfer is effective upon service of the order on the respondent under rule 4.1.

(e) Interim Suspension. When supplemental proceedings have been ordered, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a)(1) or seek automatic suspension under rule 7.3 unless the respondent is already suspended on an interim basis.

[Adopted effective October 1, 2002.]

ELC 8.4
APPEAL OF TRANSFER TO DISABILITY INACTIVE STATUS

The respondent lawyer may appeal an order of transfer to disability inactive status under rule 12.3. The Board's order remains in effect, regardless of the pendency of an appeal, unless and until reversed by the Supreme Court.

[Adopted effective October 1, 2002.]

ELC 8.5
STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS

(a) Requirements. At any time a respondent lawyer and disciplinary counsel may stipulate to the transfer of the respondent to disability inactive status under this title. The respondent and disciplinary counsel must sign the stipulation.

(b) Form. The stipulation must:

(1) state with particularity the nature of the respondent's incapacity to practice law and the nature of any pending disciplinary proceedings that will be deferred as a result of the respondent's transfer to disability inactive status;

(2) state that it is not binding on the Association as a statement of all existing facts relating to the professional conduct of the respondent and that any additional existing facts may be proved in a subsequent disciplinary proceeding; and

(3) fix the amount of costs and expenses to be paid by the respondent.

(c) Approval. The stipulation must be presented to the Board. The Board reviews the stipulation based solely on the record agreed to by the respondent and disciplinary counsel. The Board may either approve the stipulation or reject it. Upon approval, the transfer to disability inactive status is not subject to further review.

(d) Stipulation Not Approved. If the stipulation is rejected by the Board, the stipulation has no force or effect and neither it nor the fact of its execution is admissible in any pending or subsequent disciplinary proceeding or in any civil or criminal action.

[Adopted effective October 1, 2002.]

ELC 8.6
COSTS IN DISABILITY PROCEEDINGS

When reviewing a matter under this title, the Board may authorize disciplinary counsel to seek assessment of the costs and expenses against the respondent lawyer. If the Board authorizes, disciplinary counsel may file a statement of costs within 20 days of service of the Board's order. Rule 13.9 governs assessment of these costs and expenses. The respondent is not required to pay the costs and expenses until 90 days after reinstatement to active status.

[Adopted effective October 1, 2002.]

ELC 8.7
BURDEN AND STANDARD OF PROOF

In proceedings under rules 8.2 or 8.3, the party asserting or alleging the incapacity has the burden of establishing it by a preponderance of the evidence. If the issue of incapacity is raised by a hearing officer or panel, the Association has the burden of proof.

[Adopted effective October 1, 2002.]

ELC 8.8
REINSTATEMENT TO ACTIVE STATUS

(a) Right of Petition and Burden. A respondent lawyer transferred to disability inactive status may resume active status only by Board or Supreme Court order. Any respondent transferred to disability inactive status may petition the Board for transfer to active status. The respondent has the burden of showing that the disability has been removed.

(b) Petition. The petition for reinstatement must:

(1) state facts demonstrating that the disability has been removed;

(2) include the name and address of each psychiatrist, psychologist, physician, or other person and each hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status; and

(3) be filed with the Clerk and served on disciplinary counsel.

(c) Waiver of Privilege. The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status waives any privilege as to treatment of any medical, psychological, or psychiatric condition during the period of disability. The respondent must furnish, if requested by the Board or disciplinary counsel, written consent to each treatment provider to divulge information and records relating to the disability.

(d) Initial Review by Chair. The Chair reviews the petition and any response by disciplinary counsel and directs appropriate action to determine whether the disability has been removed, including investigation by disciplinary counsel or any other person or an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition.

(e) Board Review.

(1) The respondent must have a reasonable opportunity to review any reports of investigations or examinations ordered by the Chair and submit additional materials before the matter is submitted to the Board.

(2) On submission, the Board reviews the petition and any reports as expeditiously as possible and takes one or more of the following actions:

(A) grants the petition;

(B) directs additional action as the Board deems necessary to determine whether the disability has been removed;

(C) orders that a hearing be held before a hearing officer or panel under the procedural rules for disciplinary proceedings;

(D) directs the respondent to establish proof of competence and learning in the law, which may include certification by the bar examiners of successful completion of an examination for admission to practice;

(E) denies the petition;

(F) directs the respondent to pay the costs of the reinstatement proceedings; or

(G) approves or rejects a stipulation to reinstatement between the respondent and the Association.

(3) The petition may be denied without the respondent having an opportunity for a hearing before a hearing officer or panel only if the Board determines that a hearing is not necessary because:

(A) the respondent fails to state a prima facie case for reinstatement in the petition; or

(B) the petition does not indicate a material change of circumstance since a previous denial of a petition for reinstatement.

(f) Petition Granted. If the petition for reinstatement is granted, the Association immediately restores the respondent to the respondent's prior status and notifies the Supreme Court of the transfer. If a disciplinary proceeding has been deferred because of the disability transfer, the proceeding resumes upon reinstatement.

(g) Review by Supreme Court. If the petition for reinstatement is not granted, the respondent may appeal the Board's decision to the Supreme Court, by filing a notice of appeal with the Clerk within 15 days of service of the Board's decision on the respondent. Title 12 applies to review under this section.

[Adopted effective October 1, 2002.]

ELC 8.9
PETITION FOR LIMITED GUARDIANSHIP

(a) Guardian Powers and Qualifications. A guardian may be appointed under this rule to take any action deemed advisable related to the respondent lawyer's license to practice law and any disciplinary or disability investigation or proceeding.

(b) Referral to Review Committee. A hearing officer or panel, the Association, the respondent, or respondent's counsel may request that a review committee authorize the filing of a petition for a limited guardianship of a respondent as described in section (a). The person requesting the petition must give notice to the parties at the time of the request. The Association and the respondent may submit declarations or affidavits relevant to the Review Committee's decision.

(c) Review Committee Determination. The review committee may authorize the Association to petition for the appointment of a limited guardian as described in section (a) when the review committee reasonably believes that grounds for such an appointment exist under RCW 11.88.010(2). The review committee may require the respondent to submit to any necessary examinations or evaluations and may retain independent counsel to assist in the investigation and the filing of any petition.

(d) Action for Limited Guardianship.

(1) Upon authorization of a review committee, the Association may file a petition in any Superior Court seeking a limited guardian to act regarding the respondent's license or any disciplinary or disability investigation or proceeding.

(2) Notwithstanding any other provisions regarding the qualifications of a guardian ad litem, any guardian ad litem appointed under this rule must be a lawyer qualified to maintain and protect the confidences and secrets of the respondent's clients.

(3) Upon application to the Superior Court, the respondent may have the matter moved to the county where the respondent is domiciled or maintains an office or another county as authorized by law.

(4) The guardianship proceedings must be sealed to the extent necessary to protect confidences and secrets of the respondent's clients or on any other basis found by the Superior Court.

(5) The costs of any guardianship are paid out of the guardianship estate, except if the guardianship estate is indigent, the Association pays the costs.

[Adopted effective October 1, 2002.]

ELC 9.1
STIPULATIONS

(a) Requirements. Any disciplinary matter or proceeding may be resolved by a stipulation at any time. The stipulation must be signed by the respondent lawyer and approved by disciplinary counsel. The stipulation may impose terms and conditions of probation and contain any other appropriate provisions.

(b) Form. A stipulation must:

(1) provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Board or hearing officer to form an opinion as to the propriety of the proposed resolution, and, if approved, to make the stipulation useful in any subsequent disciplinary proceeding against the respondent;

(2) set forth the respondent’s prior disciplinary record or its absence;

(3) state that the stipulation is not binding on the Association as a statement of facts about the respondent’s conduct, and that additional facts may be proved in a subsequent disciplinary proceeding; and

(4) fix the amount of costs and expenses to be paid by the respondent.

(c) Approval.

(1) By Hearing Officer. A hearing officer or panel may approve a stipulation disposing of a matter pending before the officer or panel, unless the stipulation requires the respondent’s suspension or disbarment. This approval constitutes a final decision and is not subject to further review.

(2) By Board. All other stipulations must be presented to the Board. The Board reviews a stipulation based solely on the record agreed to by the respondent lawyer and disciplinary counsel. The parties may jointly ask the Chair to permit them to

address the Board regarding a stipulation. Such presentations are at the Chair's discretion. The Board may approve, conditionally approve, or reject a stipulation. Regardless of the provisions of rule 3.3(a), the Board may direct that information or documents considered in reviewing a stipulation be kept confidential.

(d) Conditional Approval. The Board may condition its approval of a stipulation on the agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the Board deems necessary to accomplish the purposes of lawyer discipline. If the Board conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the Chair, both parties serve on the Clerk written consent to the conditional terms in the Board's order.

(e) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, the parties may serve on the Clerk a joint motion for reconsideration and may ask to address the Board on the motion.

(f) Stipulation Rejected. The Board's order rejecting a stipulation must state the reasons for the rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any disciplinary, civil, or criminal proceeding.

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

[Adopted effective October 1, 2002.]

ELC 9.2
RECIPROCAL DISCIPLINE AND DISABILITY INACTIVE STATUS; DUTY TO SELF-REPORT

(a) Duty To Self-Report Discipline or Transfer to Disability Inactive Status. Within 30 days of being disciplined or transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the discipline or transfer.

(b) Obtaining Order. Upon notification from any source that a lawyer admitted to practice in this state was disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel must obtain a certified copy of the order and file it with the Supreme Court.

(c) Supreme Court Action. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in this state has been disciplined or transferred to disability inactive status in another jurisdiction, the Supreme Court orders the respondent lawyer to show cause within 30 days of service why it should not impose the identical discipline or disability inactive status. The Association must personally serve this order, and a copy of the order from the other jurisdiction, on the respondent under rule 4.1(b)(3).

(d) Deferral. If the other jurisdiction has stayed the discipline or transfer, any reciprocal discipline or transfer in this state is deferred until the stay expires.

(e) Discipline or Transfer To Be Imposed.

(1) Thirty days after service of the order under section (c), the Supreme Court imposes the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or the Court finds, that it clearly appears on the face of the record on which the discipline or disability transfer is based, that:

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

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

(C) the imposition of the same discipline would result in grave injustice;

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

(E) the reason for the original transfer to disability

inactive status no longer exists; or

(F) appropriate discipline has already been imposed in this jurisdiction for the misconduct.

(2) If the Court determines that any of the factors in subsection (1) exist, it enters an appropriate order. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that imposing the same discipline is not appropriate.

(f) Conclusive Effect. Except as this rule otherwise provides, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct or should be transferred to disability inactive status conclusively establishes the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

[Adopted effective October 1, 2002.]

ELC 9.3
RESIGNATION IN LIEU OF DISBARMENT

(a) Grounds. A respondent lawyer who desires not to contest or defend against allegations of misconduct may, at any time before the answer in any disciplinary proceeding is due, resign his or her membership in the Association in lieu of further disciplinary proceedings.

(b) Process. The respondent first notifies disciplinary counsel that the respondent intends to submit a resignation and asks disciplinary counsel to prepare a statement of alleged misconduct and to provide a declaration of costs. After receiving the statement and the declaration of costs, if any, the respondent may resign by submitting to disciplinary counsel a signed resignation, sworn to or affirmed under oath and notarized, that:

(1) includes disciplinary counsel's statement of the alleged misconduct and either an admission of that misconduct or a statement that while not admitting the misconduct the respondent agrees that the Association could prove by a clear preponderance of the evidence that the respondent committed violations sufficient to result in respondent's disbarment;

(2) affirmatively acknowledges that the resignation is permanent including the statement:

"I understand that my resignation is permanent and that any future application by me for reinstatement as a member of the Washington State Bar Association is currently barred. If the Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by one who has been disbarred for ethical misconduct, and that, if I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this resignation was based.";

(3) assures that the respondent will:

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

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

(C) provide disciplinary counsel with copies of any of these notifications and any responses;

(4) assures that the respondent will:

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

(B) seek to resign permanently from any such license; and

(C) provide disciplinary counsel with copies of any of these notifications and any responses;

(5) states that when applying for any employment or license the respondent agrees to disclose the resignation in lieu of disbarment in response to any question regarding disciplinary action or the status of

the respondent's license to practice law;

(6) states that the respondent agrees to pay any restitution or additional costs and expenses ordered by the review committee, and attaches payment for costs as described in section (f) below, or states that the respondent will execute a confession of judgment or deed of trust as described in section (f); and

(7) states that when the resignation becomes effective, the respondent will be subject to all restrictions that apply to a disbarred lawyer.

(c) Public Filing. Upon receipt of a resignation meeting the requirements set forth above, and any executed confession of judgment or deed of trust required under section (f), disciplinary counsel promptly causes it to be filed with the Clerk as a public and permanent record of the Association.

(d) Effect. A resignation under this rule is effective upon its filing with the Clerk. All disciplinary proceedings against the respondent terminate except disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances to create a record of the respondent's actions. The Association immediately notifies the Supreme Court of a resignation under this rule and the respondent's name is forthwith stricken from the roll of lawyers. Upon filing of the resignation, the resigned respondent must comply with the same duties as a disbarred lawyer under title 14 and comply with all restrictions that apply to a disbarred lawyer. Notice is given of the resignation in lieu of disbarment under rule 3.5.

(e) Resignation is Permanent. Resignation under this rule is permanent. A respondent who has resigned under this rule will never be eligible to apply and will not be considered for admission or reinstatement to the practice of law nor will the respondent be eligible for admission for any limited practice of law.

(f) Costs and Expenses.

(A) If a respondent resigns under this rule, the expenses under rule 13.9(c) are $1,000 for any proceedings for which an answer was not due when the respondent notified disciplinary counsel of the respondent's intent to resign under section (b). With the resignation, the respondent must pay this $1,000 expense, plus all actual costs for which disciplinary counsel provides documentation, up to an additional $1,000. If the respondent demonstrates inability to pay these costs and expenses, instead of paying this amount, the respondent must execute, in disciplinary counsel's discretion, a confession of judgment or a deed of trust for that amount. Disciplinary counsel may file a claim under section (g) for costs not covered by the payment, confession of judgment, or deed of trust.

(B) If at the time respondent serves the notice of intent to resign, an additional proceeding is pending against the respondent for which an answer has been filed or is due, disciplinary counsel may also file a claim under section (g) for costs and expenses for that proceeding.

(g) Review of Costs, Expenses, and Restitution. Any claims for restitution or for costs and expenses not resolved by agreement between disciplinary counsel and the respondent may be submitted at any time, including after the resignation, to a review committee in writing for the determination of appropriate restitution or costs and expenses. The Lawyers' Fund for Client Protection may request review including a determination by the review committee of whether any funds were obtained by the respondent by dishonesty of, or failure to account for money or property entrusted to, the respondent in connection with the respondent's practice of law or while acting as a fiduciary in a matter related to the respondent's practice of law. The review committee's order is not subject to further review and is the final assessment of restitution or costs and expenses for the purposes of rule 13.9 and may be enforced as any other order for restitution or costs and expenses. The record before the review committee and the review committee's order is public information under rule 3.1(b).

[Adopted effective October 1, 2002.]

(a) Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated, apply directly. A party may not move for summary judgment, but either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding. Motions for judgment on the pleadings and motions to dismiss based upon the pleadings are available only to the extent permitted in rule 10.10.

(b) Meaning of Terms in Civil Rules. In applying the civil rules to proceedings under these rules, terms have the following meanings:

(1) "Court" or "judge" means the hearing officer or hearing panel or its chair, as appropriate; and

(2) "Parties" means the respondent lawyer and disciplinary counsel.

(c) Hearing Officer Authority. In addition to the powers specifically provided in these rules, the hearing officer may make any ruling that appears necessary and appropriate to insure a fair and orderly proceeding.

[Adopted effective October 1, 2002.]

ELC 10.2
HEARING OFFICER OR PANEL

(a) Assignment.

(1) Hearing Officer. The chief hearing officer ordinarily assigns a single hearing officer, from those eligible under rule 2.5, to hear a matter ordered to hearing.

(2) Hearing Panel. On either party's motion, or when otherwise deemed advisable, the chief hearing officer may assign a hearing panel. In determining whether to assign a hearing panel, the chief hearing officer considers whether public interest in the proceeding makes a panel advisable and whether a nonlawyer on a hearing panel could contribute to the fairness, or the perception of fairness, in the process and the outcome. When a panel is assigned, the chief hearing officer designates one lawyer member as panel chair. The chief hearing officer's ruling on assigning a hearing panel is not subject to interim review. The chief hearing officer makes an assignment to fill any hearing officer or panel member vacancy.

(b) Disqualification and Removal.

(1) Removal Without Cause. Either party may have an assigned hearing officer or hearing panel member removed, without establishing cause for the removal, by filing a written request with the chief hearing officer within ten days of service on the moving party of that officer or panel member's assignment. A party may only once request removal without cause in any proceeding.

(2) Disqualification for Cause. Either party may seek to disqualify any assigned hearing officer or hearing panel member for good cause. A motion under this subsection must be filed promptly after the party knows, or in the exercise of due diligence should have known, of the basis for the disqualification.

(3) Removal. The chief hearing officer decides all requests for removal and disqualification motions, except the Chair decides a request to remove or disqualify the chief hearing officer. The decision of the chief hearing officer or Chair on a request for removal or a motion to disqualify is not subject to interim review. Upon removal or disqualification of an assigned hearing officer or hearing panel member, the chief hearing officer assigns a replacement.

[Adopted effective October 1, 2002.]

ELC 10.3
COMMENCEMENT OF PROCEEDINGS

(a) Formal Complaint.

(1) Filing. After a matter is ordered to hearing, disciplinary counsel files a formal complaint with the

Clerk.

(2) Service. After the formal complaint is filed, it must be personally served on the respondent lawyer, with a notice to answer.

(3) Content. The formal complaint must state the respondent's acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct. Disciplinary counsel must sign the formal complaint, but it need not be verified.

(4) Prior Discipline. Prior disciplinary action against the respondent may be described in a separate count of the formal complaint if the respondent is charged with conduct demonstrating unfitness to practice law.

(b) Filing Commences Proceedings. A disciplinary proceeding commences when the formal complaint is filed.

(c) Joinder. The body ordering a hearing on alleged misconduct or the hearing officer or panel may in its discretion consolidate for hearing two or more charges against the same respondent, or may join charges against two or more respondents in one formal complaint.

[Adopted effective October 1, 2002.]

ELC 10.4
NOTICE TO ANSWER

(a) Content. The notice to answer must be substantially in the following form:

BEFORE THE DISCIPLINARY BOARD OF THE

WASHINGTON STATE BAR ASSOCIATION

In re	)	NOTICE TO ANSWER
	)	NOTICE OF HEARING OFFICER [OR PANEL]
_____,	)	NOTICE OF DEFAULT PROCEDURE
Lawyer.	)	

To: The above named lawyer:

A formal complaint has been filed against you, a copy of which is served on you with this notice. You are notified that you must file your answer to the complaint within 20 days of the date of service on you, by filing the original of your answer with the Clerk to the Disciplinary Board of the Washington State Bar Association, [insert address] and by serving one copy [on the hearing officer] [on each member of the hearing panel] if one has been assigned and one copy on disciplinary counsel at the address[es] given below. Failure to file an answer may result in the imposition of a disciplinary sanction against you and the entry of an order of default under rule 10.6 of the Rules for Enforcement of Lawyer Conduct.

Notice of default procedure: Your default may be entered for failure to file a written answer to this formal complaint within 20 days of service as required by rule 10.6 of the Rules for Enforcement of Lawyer Conduct. The entry of an order of default may result in the charges of misconduct in the formal complaint being admitted and discipline being imposed or recommended based on the admitted charges of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of default is vacated on motion timely made under rule 10.6(c) of the Rules for Enforcement of Lawyer Conduct. The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by rule 10.6(b)(2).

The [hearing officer] [hearing panel] assigned to this proceeding is: [insert name, address, and telephone number of hearing officer, or name, address, and telephone number of each hearing panel member with an indication of the chair of the panel].

Dated this _____ day of _____, 20___.

WASHINGTON STATE BAR ASSOCIATION

By

_____

Disciplinary Counsel, Bar No.

Address:

_____

Telephone:

_____

(b) Notice When Hearing Officer or Panel Not Assigned. If no hearing officer or panel has been assigned when a formal complaint is served, disciplinary counsel serves the formal complaint and a notice to answer as in section (a), but without reference to the hearing officer or panel.

[Adopted effective October 1, 2002.]

ELC 10.5
ANSWER

(a) Time to Answer. Within 20 days of service of the formal complaint and notice to answer, the respondent lawyer must file and serve an answer. Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6. The filing of a motion to dismiss for failure to state a claim stays the time for filing an answer during the pendency of the motion.

(b) Content. The answer must contain:

(1) a specific denial or admission of each fact or claim asserted in the formal complaint in accordance with CR 8(b);

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

(3) an address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.

(c) Filing and Service. The answer must be filed and served under rules 4.1 and 4.2. If a hearing panel has been assigned to hear a matter, the respondent must serve each member with a copy of the answer.

[Adopted effective October 1, 2002.]

ELC 10.6
DEFAULT PROCEEDINGS

(a) Entry of Default.

(1) Timing. If a respondent lawyer, after being served with a notice to answer as provided in rule 10.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, disciplinary counsel may serve the respondent with a written motion for an order of default.

(2) Motion. Disciplinary counsel must serve the respondent with a written motion for an order of default and a copy of this rule at least five days before entry of the order of default. The motion for an order of default must include the following:

(A) the dates of filing and service of the notice to answer, formal complaint, and any amendments to the complaint; and

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

(3) Entry of Order of Default. If the respondent fails to file a written answer with the Clerk within five days of service of the motion for entry of an order of default, the hearing officer, or if no hearing officer or panel has been assigned, the chief hearing officer, on proof of proper service of the motion, enters an order finding the respondent in default.

(4) Effect of Order of Default. Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the respondent may not participate further in the proceedings unless the order

of default is vacated under this rule.

(b) Proceedings After Entry of an Order of Default.

(1) Service. The Clerk serves the order of default and a copy of this rule under rule 4.2(b).

(2) No Further Notices. After entry of an order of default, no further notices must be served on the respondent except for copies of the decisions of the hearing officer or hearing panel and the Board.

(3) Disciplinary Proceeding. Within 60 days of the filing of the order of default, the hearing officer must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer or panel, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. Disciplinary counsel may present additional evidence including, but not limited to, requests for admission under rule 10.11(b), and depositions, affidavits, and declarations regardless of the witness's availability.

(c) Setting Aside Default.

(1) Motion To Vacate Order of Default. A respondent may move to vacate the order of default and any decision of the hearing officer or panel or Board arising from the default on the following grounds:

(A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;

(B) erroneous proceedings against a respondent who was, at the time of the default, incapable of conducting a defense;

(C) newly discovered evidence that by due diligence could not have been previously discovered;

(D) fraud, misrepresentation, or other misconduct of an adverse party;

(E) the order of default is void;

(F) unavoidable casualty or misfortune preventing the respondent from defending; or

(G) any other reason justifying relief from the operation of the default.

(2) Time. The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the respondent's motion is based on allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

(3) Burden of Proof. The respondent bears the burden of proving the grounds for setting aside the default. If the respondent proves that the default was entered as a result of a disability which made the respondent incapable of conducting a defense, the default must be set aside.

(4) Service and Contents of Motion. The motion must be filed and served under rules 4.1 and 4.2 and be accompanied by a copy of respondent's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the respondent's asserted defenses and any facts that respondent asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

(A) the date on which the respondent first learned of the entry of the order of default;

(B) the grounds for setting aside the order of default; and

(C) an offer of proof of the facts that the respondent expects to establish if the order of default is vacated.

(5) Response to Motion. Within ten days of filing and service of the motion to vacate, disciplinary counsel may file and serve a written response.

(6) Decision. The hearing officer or panel decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chief hearing officer assigns a hearing officer or panel to decide the motion. Pending a ruling on the motion, the hearing officer or panel may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer or panel has discretion to order appropriate conditions.

(7) Appeal of Denial of Motion. A respondent may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer or panel's decision. The respondent must file the notice of appeal within ten days of service on the respondent of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

(8) Decision To Vacate Is Not Subject to Interim Review. An order setting aside an order of default is not subject to interim review.

(d) Order of Default Not Authorized in Certain Proceedings. The default procedure in this rule does not apply to a proceeding to inquire into a lawyer's capacity to practice law under title 8 except as provided in that title.

[Adopted effective October 1, 2002.]

ELC 10.7
AMENDMENT OF FORMAL COMPLAINT

(a) Right To Amend. Disciplinary counsel may, without review committee authorization, amend a formal complaint at any time to add facts or charges that relate to matters in the formal complaint or to the respondent lawyer’s conduct regarding the pending proceedings.

(b) Amendment with Authorization. Disciplinary counsel must seek review committee authorization for amendments other than those under section (a). The review committee may authorize the amendment or may require that the additional facts or charges be the subject of a separate formal complaint. The Chair, with the consent of the respondent, and after consultation with the hearing officer on the previously filed matter, may consolidate the hearing on the separate formal complaint with the hearing on the other pending formal complaint against the respondent.

(c) Service and Answer. Disciplinary counsel serves an amendment to a formal complaint on the respondent as provided in rule 4.1 but need not serve a Notice to Answer with the amendment. Rule 10.5 governs the answer to an amendment except that any part of a previous answer may be incorporated by reference.

[Adopted effective October 1, 2002.]

ELC
10.8 MOTIONS

(a) Filing and Service. Motions to the hearing officer, except motions which may be made ex parte or motions at hearing, must be in writing and filed and served as required by rules 4.1 and 4.2.

(b) Response. The opposing party has five days from service of a motion to respond, unless the time is shortened by the hearing officer for good cause. A request to shorten time for response to a motion may be made ex parte.

(c) Consideration of Motion. Upon expiration of the time for response, the hearing officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by conference telephone call.

(d) Ruling. A ruling on a written motion must be in writing and filed with the Clerk.

(e) Minor Matters. Alternatively, motions on minor matters may be made by letter to the hearing officer, with a copy to the opposing party and to the Clerk. The provisions of sections (b) and (c) apply to these motions. A ruling on such motion may also be by letter to each party with a copy to the Clerk.

(f) Chief Hearing Officer Authority. Before the assignment of a hearing officer or panel, the chief hearing officer may rule on any prehearing motion.

[Adopted effective October 1, 2002.]

ELC 10.9
INTERIM REVIEW

Unless these rules provide otherwise, the Board may review any interim ruling on request for review by either party, if the Chair determines that review is necessary and appropriate and will serve the ends of justice.

[Adopted effective October 1, 2002.]

ELC 10.10
PREHEARING DISPOSITIVE MOTIONS

(a) Respondent Motion. A respondent lawyer may move for dismissal of all or any portion of one or more counts of a formal complaint for failure to state a claim upon which relief can be granted.

(b) Disciplinary Counsel Motion. Disciplinary counsel may move for an order finding misconduct based on the pleadings. In ruling on this motion, the hearing officer or panel may find that all or some of the misconduct as alleged in the formal complaint is established, but will determine the sanction after a hearing.

(c) Time for Motion. A motion under this rule must be filed within 30 days of the filing of the answer to a formal complaint or amended formal complaint. A respondent may, within the time provided for filing an answer, instead file a motion under this rule. If the motion does not result in the dismissal of the entire formal complaint, the respondent must file and serve an answer to the remaining allegations within ten days of service of the ruling on the motion.

(d) Procedure. Rule 10.8 and CR 12 apply to motions under this rule. No factual materials outside the answer and complaint may be presented. If the motion results in dismissal of part but not all of a formal complaint, the Board must hear an interlocutory appeal of the order by either party. The appeal must be filed within 15 days of service of the order.

[Adopted effective October 1, 2002.]

ELC 10.11
DISCOVERY AND PREHEARING PROCEDURES

(a) General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.

(b) Requests for Admission. After a formal complaint is filed, the parties may request admissions under CR 36. Under appropriate circumstances, the hearing officer may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(c) Other Discovery. After a formal complaint is filed, the parties have the right to other discovery under the Superior Court Civil Rules, including under CR 27-31 and 33 -35, only on motion and under terms and limitations the hearing officer deems just or on the parties' stipulation.

(d) Limitations on Discovery. The hearing officer may exercise discretion in imposing terms or limitations on the exercise of discovery to assure an expeditious, economical, and fair proceeding, considering all relevant factors including necessity and unavailability by other means, the nature and complexity of the case, seriousness of charges, the formal and informal discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise.

(e) Deposition Procedure.

(1) Subpoenas for depositions may be issued under CR 45. Subpoenas may be enforced under rule 4.7.

(2) For a deposition outside Washington State, a

commission need not issue, but a copy of the order of the chief hearing officer or hearing officer, certified by the officer, is sufficient to authorize the deposition.

(f) CR 16 Orders. The hearing officer may enter orders under CR 16.

(g) Duty to Cooperate. A respondent lawyer who has been served with a formal complaint must respond to discovery requests and comply with all lawful orders made by the hearing officer. The hearing officer or panel may draw adverse inferences as appear warranted by the failure of either the Association or the respondent to respond to discovery.

[Adopted effective October 1, 2002.]

ELC 10.12
SCHEDULING HEARING

(a) Where Held. All disciplinary hearings must be held in Washington State, unless the respondent lawyer is not a resident of the state, or cannot be found in the state.

(b) Scheduling of Hearing. If possible, the parties should arrange a date, time, and place for the hearing by agreement among themselves and the hearing officer or panel members. Alternatively, at any time after the respondent has filed an answer to the formal complaint, or after the time to file the answer has expired, either party may move for an order setting a date, time, and place for the hearing. Rule 10.8 applies to this motion. The motion must state:

- the requested date or dates for the hearing;
- other dates that are available to the requesting party;
- the expected duration of the hearing;
- discovery and anything else that must be completed before the hearing; and
- the requested time and place for the hearing.

A response to the motion must contain the same information.

(c) Scheduling Order. The hearing officer must enter an order setting the date and place of the hearing. This order may include any prehearing deadlines the hearing officer deems required by the complexity of the case, and may be in the following form with the following timelines:

IT IS ORDERED that the hearing is set and the parties must comply with prehearing deadlines as follows:

1. Witnesses. A list of intended witnesses, including addresses and phone numbers, must be filed and served by [Hearing Date (H)-8 weeks].

2. Discovery. Discovery cut-off is [H-6 weeks].

3. Motions. Prehearing motions, other than motions to bifurcate, must be served by [H-4 weeks]. An exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing officer unless the motion concerns the exhibit's admissibility. The hearing officer will advise counsel whether oral argument is necessary, and, if so, the date and time, and whether it will be heard by telephone. (Rule 10.15 provides the deadline for a motion to bifurcate.)

4. Exhibits. A list of proposed exhibits must be filed and served by [H-3 weeks].

5. Service of Exhibits/Summary. Copies of proposed exhibits and a summary of the expected testimony of each witness must be served on the opposing counsel by [H-2 weeks].

6. Objections. Objections to proposed exhibits, including grounds, must be exchanged by [H-1 week].

7. Briefs. Any hearing brief must be served and filed by [H-1 week]. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the hearing officer before the hearing.

8. Hearing. The hearing is set for [H] and each day thereafter until recessed by the hearing officer, at [location].

(d) Motion for Hearing Within 120 Days. A respondent's motion under section (b) for a hearing within 120 days must be granted, unless disciplinary counsel shows good cause for setting the hearing at a later date.

(e) Notice. Service of a copy of an order or ruling of the hearing officer setting a date, time, and place for the hearing constitutes notice of the hearing. The respondent must be given at least ten days notice of the hearing absent consent.

(f) Continuance. Either party may move for a continuance of the hearing date. The hearing officer has discretion to grant the motion for good cause shown.

[Adopted effective October 1, 2002.]

ELC 10.13
DISCIPLINARY HEARING

(a) Representation. The Association is represented at the hearing by disciplinary counsel. The respondent lawyer may be represented by counsel.

(b) Respondent Must Attend. A respondent given notice of a hearing must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. If, after proper notice, the respondent fails to attend the hearing, the hearing officer or panel:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and

(2) must admit testimony by deposition regardless of the deponent’s availability. An affidavit or declaration is also admissible, if:

(A) the facts stated are within the witness’s personal knowledge;

(B) the facts are set forth with particularity; and

(C) it shows affirmatively that the witness could testify competently to the stated facts.

(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

(d) Witnesses. Except as provided in subsection (b)(2) and rule 10.6, witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by CR 32. Testimony must be recorded by a court reporter or, if allowed by the hearing officer, by tape recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(e) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this rule and with all lawful orders made by the hearing officer under this rule. Subpoenas may be enforced under rule 4.7. The hearing officer or panel may additionally draw adverse inferences as appear warranted by the respondent’s failure to respond.

(f) Prior Disciplinary Record. The respondent’s record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the hearing officer or panel files a decision.

[Adopted effective October 1, 2002.]

ELC 10.14
EVIDENCE AND BURDEN OF PROOF

(a) Proceedings Not Civil or Criminal. Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis hearings to determine if a lawyer's conduct should have an impact on his or her license to practice law.

(b) Burden of Proof. Disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a formal complaint charges a respondent lawyer with an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.

(d) Rules of Evidence. Consistent with section (a) of this rule, the following rules of evidence apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if in the hearing officer's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(2) if not inconsistent with subsection (1), the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings;

(3) documents may be admitted in the form of copies or excerpts, or by incorporation by reference;

(4) Official Notice.

(A) official notice may be taken of:

(i) any judicially cognizable facts;

(ii) technical or scientific facts within the hearing officer's or panel's specialized knowledge; and

(iii) codes or standards adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association.

(B) the parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material noticed and the sources thereof, including any staff memoranda and data, and they shall have an opportunity to contest the facts and material noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(e) APA as Guidance. The evidence standards in this rule are based on the evidence provisions of the Washington Administrative Procedures Act, which, when not inconsistent with these standards, should be looked to for guidance. "Shall" has the meaning in this rule ascribed to it in the APA.

[Adopted effective October 1, 2002.]

ELC 10.15
BIFURCATED HEARINGS

(a) When Allowed. Upon written motion filed no later than 60 days before the scheduled hearing, either party may request that the disciplinary proceeding be bifurcated. The hearing officer or panel must weigh the reasons for bifurcation against any increased cost and delay, inconvenience to participants, duplication of evidence, and any other factors, and may grant the motion only if it appears necessary to insure a fair and orderly hearing because the respondent has a record of prior disciplinary sanction or because either party would suffer significant prejudice or harm.

(b) Procedure.

(1) Violation Hearing.

(A) A bifurcated proceeding begins with an initial hearing to make factual determinations and legal conclusions as to the violations charged, including the mental state necessary for the violations. During this stage of the proceedings, evidence of a prior disciplinary record is not admissible to prove the respondent's character or to impeach the respondent's credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) At the conclusion of that hearing, the hearing officer or panel files findings and conclusions.

(i) If no violation is found, the proceedings are concluded, the findings and conclusions are the decision of the hearing officer or panel, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under rule 10.16(c), or after ruling on that motion, the findings and conclusions as to those violations are not subject to reconsideration by the hearing officer.

(2) Sanction Hearing. If any violation is found, a second hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings and conclusions as to the violations. At the conclusion of the sanction hearing, the hearing officer or panel files findings and conclusions as to a sanction recommendation, that, together with the previously filed findings and conclusions, is the decision of the hearing officer or panel.

(3) Timing. If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing officer must set a date and place for the sanction hearing. Absent extraordinary circumstances, the sanction hearing should be held no later than 45 days after the anticipated last day of the violation hearing.

[Adopted effective October 1, 2002.]

ELC 10.16
DECISION OF HEARING OFFICER OR PANEL

(a) Decision. Within 20 days after the proceedings are concluded, unless extended by agreement, the hearing officer should file with the Clerk a decision in the form of findings of fact, conclusions of law, and recommendation.

(b) Preparation of Findings. The hearing officer or hearing panel write their own findings of fact, conclusions of law, and recommendations. At the request of the hearing officer, or without a request, either party may submit proposed findings, conclusions, and recommendation.

(c) Amendment.

(1) Timing of Motion. Either party may move to modify, amend, or correct the decision as follows:

(A) In a proceeding not bifurcated, within ten days of service of the decision on the respondent lawyer;

(B) In a bifurcated proceeding, within five days of service of:

(i) the violation findings of fact and conclusions of law; or

(ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings or conclusions.

(C) If a hearing panel member dissents from a decision of the majority, the five or ten day period does not begin until the written dissent is filed or the time to file a dissent has expired, whichever is sooner.

(2) Procedure. Rule 10.8 governs this motion, except that all members of a hearing panel must be served with the motion and any response and participate in a decision on the motion. A panel's deliberation may be conducted through telephone conference call. The hearing officer or panel should rule on the motion within 15 days after the filing of a timely response or after the period to file a response under rule 10.8(b) has expired. The ruling may deny the motion or may amend, modify, or correct the decision.

(3) Effect of Failure To Move. Failure to move for modification, correction, or amendment does not affect any appeal to the Board or review by the Supreme Court.

(d) Dissent of Panel Member. Any member of a hearing panel who dissents from the decision of the majority of the panel should file a dissent, which may consist of alternative findings, conclusions, or recommendation. A dissent should be filed within ten days of the filing of the majority's

decision and becomes part of the record of the proceedings.

(e) Panel Members Unable To Agree. If no two panel members are able to agree on a decision, each panel member files findings, conclusions, and a recommendation, and the Board reviews the matter whether or not an appeal is filed.

(f) When Final. If a hearing officer or panel recommends reprimand or an admonition, or recommends dismissal of the charges, the recommendation becomes the final decision if neither party files an appeal and if the Chair does not refer the matter to the Board for consideration within the time permitted by rule 11.2(b)(3). If the Chair refers the matter to the Board for consideration of a sua sponte review, the decision is final upon entry of an order dismissing sua sponte review under rule 11.3 or upon other Board decision under rule 11.12(g).

[Adopted effective October 1, 2002.]

ELC 11.1
SCOPE OF TITLE

This title provides the procedure for Board review following a hearing officer or panel's findings of fact, conclusions of law, and recommendation. It does not apply to Board review of interim rulings under rule 10.9.

[Adopted effective October 1, 2002.]

ELC 11.2
DECISIONS SUBJECT TO BOARD REVIEW

(a) Decision. For purposes of this title, "Decision" means the hearing officer or panel's findings of fact, conclusions of law, and recommendation, provided that if either party properly files a motion to amend under rule 10.16(c), the "Decision" includes the ruling on the motion, and becomes subject to Board review only upon the ruling on the motion.

(b) Review of Decisions. The Board reviews the following Decisions:

(1) those recommending suspension or disbarment;

(2) those in which no two members of a hearing panel are able to agree on a Decision; and

(3) all others if within 15 days of service of the Decision on the respondent:

(A) either party files a notice of appeal; or

(B) the Chair files a notice of referral for sua sponte consideration of the Decision.

[Adopted effective October 1, 2002.]

ELC 11.3
SUA SPONTE REVIEW

(a) Procedure. Sua sponte review commences when the Chair files a notice of referral under rule 11.2(b)(3)(B). Upon this filing, the Chair causes a copy to be served on the parties and schedules the matter for consideration by the Board. On consideration, the Board either issues an order for sua sponte review setting forth the issues to be reviewed or dismisses the sua sponte review. If the Board issues an order for sua sponte review, the procedures of rule 11.9(e) apply unless otherwise modified by the order, except either party may raise any issue for Board review.

(b) Standards. The Board uses sua sponte review only in extraordinary circumstances to prevent substantial injustice or to correct a clear error. Sua sponte review uses the same standards of review as other cases.

[Adopted effective October 1, 2002.]

ELC 11.4
TRANSCRIPT OF HEARING

(a) Ordering Transcript. A hearing transcript or partial transcript may be ordered at any time by the hearing officer or panel, respondent lawyer, disciplinary counsel, or the Board. Disciplinary counsel must order the entire transcript if the hearing officer or panel recommends suspension or disbarment or if no two panel members can agree on a Decision. If a notice of appeal is filed under rule 11.2(b)(3)(A), disciplinary counsel must order the entire transcript unless the parties agree that no transcript or only a partial transcript is necessary for review. For sua sponte review, the Chair determines the procedure for ordering the transcript if not already ordered.

(b) Filing and Service. The original of the transcript is filed with the Clerk. Disciplinary counsel must cause a copy of the transcript to be served on the respondent except if the respondent ordered the transcript.

(c) Proposed Corrections. Within ten days of service of a copy of the transcript on the respondent, or within ten days of filing the transcript if the respondent ordered the transcript, each party may file any proposed corrections to the transcript. Each party has five days after service of the opposing party's proposed corrections to file objections to those proposed corrections.

(d) Settlement of Transcript. If either party files objections to any proposed correction under section (c), the hearing officer, upon review of the proposed corrections and objections, enters an order settling the transcript. Otherwise, the transcript is deemed settled and any proposed corrections deemed incorporated in the transcript.

[Adopted effective October 1, 2002.]

ELC 11.5
RECORD ON REVIEW

(a) Generally. The record on review consists of:

(1) any hearing transcript or partial transcript; and

(2) bar file documents and exhibits designated by the parties.

(b) References to the Record. Briefs filed under rules 11.8 and 11.9 must specifically refer to the record if available, using the designations TR for transcript of hearing, EX for exhibits, and BF for bar file documents.

(c) Avoid Duplication. Material appearing in one part of the record on review should not be duplicated in another part of the record on review.

(d) No Additional Evidence. Evidence not presented to the hearing officer or panel must not be presented to the Board.

[Adopted effective October 1, 2002.]

ELC 11.6
DESIGNATION OF BAR FILE DOCUMENTS AND EXHIBITS

The parties designate bar file documents and exhibits for Board consideration under the procedure of RAP 9.6 with the following adaptations and modifications:

(a) Bar File Documents. The bar file documents are considered the clerk's papers.

(b) Disciplinary Board and Clerk. The Disciplinary Board is considered the appellate court and the Clerk to the Disciplinary Board is considered the trial court clerk.

(c) Time for Designation.

(1) Review of Suspension or Disbarment Recommendation. When review is under rule 11.2(b)(1), the respondent lawyer must file and serve the respondent's designation of bar file documents and exhibits within 30 days of

service of the Decision.

(2) Review Not Involving Suspension or Disbarment Recommendation. When review is under rule 11.2(b)(3)(A), the party seeking review must file and serve that party's designation of bar file documents and exhibits within 15 days of filing the notice of appeal. When review is under rule 11.2(b)(2) or 11.2(b)(3)(B), the respondent is considered the party seeking review for designating bar file documents and exhibits.

(d) Hearing Officer Recommendation. The bar file documents must include the hearing officer or panel's recommendation.

[Adopted effective October 1, 2002.]

ELC 11.7
PREPARATION OF BAR FILE DOCUMENTS AND EXHIBITS

(a) Preparation. The Clerk prepares the bar file documents and exhibits in the format required by RAP 9.7(a) & (b), and distributes them to the Board. The Clerk provides the parties with a copy of the index of the bar file documents and the cover sheet listing the exhibits.

(b) Costs. Costs for preparing bar file documents and exhibits may be assessed as costs under rule 13.9(b)(9).

[Adopted effective October 1, 2002.]

ELC 11.8
BRIEFS FOR REVIEWS INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION

(a) Caption of Briefs. Parties should caption their briefs as follows:

[Name of Party] Brief [in Support of/in Opposition to] Hearing [Officer's] [Panel's] Decision

[Name of Party] Reply Brief

(b) Briefs in Support or Opposition. In a matter before the Board under rule 11.2(b)(1), each party may file a brief in support of or in opposition to the Decision, or any part of it.

(c) Time for Filing Briefs. Briefs, if any, must be filed as follows:

(1) The respondent lawyer must file a brief within 20 days of service on the respondent of the later of:

(A) a copy of the hearing transcript; or

(B) the Decision.

(2) Disciplinary counsel must file a brief within 15 days of service on disciplinary counsel of the respondent's brief, or, if no brief is filed by the respondent, within 15 days of the expiration of the period for the respondent to file a brief.

(3) The respondent may file a reply to disciplinary counsel's brief within ten days of service of that brief on the respondent.

[Adopted effective October 1, 2002.]

ELC 11.9
BRIEFS FOR REVIEWS NOT INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION

(a) Caption of Briefs. The parties should caption briefs as follows:

[Name of Party] Brief in Opposition to Hearing [Officer's] [Panel's] Decision
[Name of Party] Response
[Name of Party] Reply

(b) Brief in Opposition.

(1) The party seeking review must file a brief in opposition to the Decision within 20 days of the later of:

(A) service on the respondent lawyer of a copy of the transcript, unless the parties have agreed that no transcript is necessary; or

(B) filing of the notice of appeal.

(2) Failure to file a brief within the required period constitutes an abandonment of the appeal.

(c) Response. The opposing party has 15 days from service of the statement of the party seeking review to file a brief responding to the issues raised on appeal.

(d) Reply. The party seeking review may file a reply to the response within ten days of service of the response.

(e) Procedure when Both Parties Seek Review or When No Two Panel Members Can Agree. When both parties file notices of appeal under rule 11.2(b)(3)(A) or when no two panel members are able to agree on a Decision, the respondent is considered the party seeking review and disciplinary counsel is considered the opposing party. In that case, disciplinary counsel's response may raise any issue for Board review, and the respondent has an additional five days to file the reply permitted by section (d).

[Adopted effective October 1, 2002.]

ELC 11.10
SUPPLEMENTING RECORD ON REVIEW

The record on review may be supplemented under the procedures of RAP 9.6 except that leave to supplement is freely granted. The Board may direct that the record be supplemented with any portion of the record before the hearing officer, including any bar file documents and exhibits.

[Adopted effective October 1, 2002.]

ELC 11.11
REQUEST FOR ADDITIONAL PROCEEDINGS

In any brief permitted in rules 11.8 and 11.9, either party may request that an additional hearing be held before the hearing officer or panel to take additional evidence based on newly discovered evidence. A request for an additional hearing must be supported by affidavit describing in detail the additional evidence sought to be admitted and any reasons why it was not presented at the previous hearing. The Board may grant or deny the request in its discretion.

[Adopted effective October 1, 2002.]

ELC 11.12
DECISION OF BOARD

(a) Basis for Review. Board review is based on the hearing officer or panel's Decision, any hearing panel member's dissent, the parties' briefs filed under rule 11.8 or 11.9, and the record on review.

(b) Standards of Review. The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer or panel cannot be considered by the Board.

(c) Oral Argument. The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to file his or her last brief, including a response or reply, under rule 11.8 or 11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the

time, place, and terms for oral argument.

(d) Action by Board. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer or panel. The Board may also direct that the hearing officer or panel hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) Order or Opinion. The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer or panel, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. A copy of the complete decision is served by the Clerk on the parties.

(f) Procedure to Amend, Modify, or Reverse if No Appeal.

(1) If the Board intends to amend, modify, or reverse the hearing officer or panel's recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.

(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.

(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.

(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request for reconsideration, the Board issues an order or opinion after reconsideration under section (e).

(g) Decision Final Unless Appealed. The Board's decision is final if neither party files a notice of appeal nor a petition for review within the time permitted by title 12 or upon the Supreme Court's denial of a petition for discretionary review.

[Adopted effective October 1, 2002.]

ELC 11.13
CHAIR MAY MODIFY REQUIREMENTS

Upon written motion filed with the Clerk by either party, for good cause shown, the Chair may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review. However, the time period for filing a notice of appeal in rule 11.2(b)(3)(A) may not be extended or altered.

[Adopted effective October 1, 2002.]

ELC 12.1
APPLICABILITY OF RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure serve as guidance for review under this title except as to matters specifically dealt with in these rules.

[Adopted effective October 1, 2002.]

ELC 12.2
METHODS OF SEEKING REVIEW

(a) Two Methods for Seeking Review of Board Decisions. The methods for seeking Supreme Court review of Board decisions entered under rule 11.12(e) are: review as a matter of right, called "appeal", and review with Court permission, called "discretionary review". Both "appeal" and "discretionary review" are called "review".

(b) Power of Court Not Affected. This rule does not affect the Court's power to review any Board decision recommending suspension or disbarment and to exercise its inherent and exclusive jurisdiction over the lawyer discipline and disability system. The Court notifies the respondent lawyer and disciplinary counsel of the Court's intent to exercise sua sponte review within 90 days of the Court receiving notice of the decision under rule 3.5(a), rule 7.1(h), or otherwise.

[Adopted effective October 1, 2002.]

ELC 12.3
APPEAL

(a) Respondent's Right to Appeal. The respondent lawyer has the right to appeal a Board decision recommending suspension or disbarment. There is no other right of appeal.

(b) Notice of Appeal. To appeal, the respondent must file a notice of appeal with the Clerk within 15 days of service of the Board's decision on the respondent.

[Adopted effective October 1, 2002.]

ELC 12.4
DISCRETIONARY REVIEW

(a) Decisions Subject to Discretionary Review. Board decisions under rule 11.12(e) not recommending suspension or disbarment are subject to Supreme Court review only through discretionary review. The Court accepts discretionary review only if:

(1) the Board's decision is in conflict with a Supreme Court decision;

(2) a significant question of law is involved;

(3) there is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or

(4) the petition involves an issue of substantial public interest that the Court should determine.

(b) Petition for Review. Either party may seek discretionary review by filing a petition for review with the Court within 25 days of service of the Board's decision.

(c) Content of Petition; Answer; Service; Decision. A petition for review should be substantially in the form prescribed by RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in that rule to the Court of Appeals are considered references to the Board. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4(d) - (h) govern answers and replies to petitions for review and related matters including service and decision by the Court.

(d) Acceptance of Review. The Court accepts discretionary review of a Board decision by granting a petition for review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

[Adopted effective October 1, 2002.]

ELC 12.5
RECORD TO SUPREME COURT

(a) Transmittal. The Clerk should transmit the record to

the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the transcript of oral argument before the Board, if any.

(b) Content. The record transmitted to the Court consists of:

(1) the notice of appeal, if any;

(2) the Board's decision;

(3) the record before the Board;

(4) the transcript of any oral argument before the Board; and

(5) any other portions of the record before the hearing officer, including any bar file documents or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within ten days of entry of an order assessing costs under rule 13.9(e), the Clerk should transmit it to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under rule 13.9(d).

(e) Additions to Record. Either party may at any time move the Court for an order directing the transmittal of additional portions of the record to the Court.

[Adopted effective October 1, 2002.]

ELC 12.6
BRIEFS

(a) Brief Required. The party seeking review must file a brief stating his or her objections to the Board's decision.

(b) Time for Filing. The brief of the party seeking review should be filed with the Supreme Court within 30 days of service under rule 12.5(c) of the list of portions of the record transmitted to the Court.

(c) Answering Brief. The answering brief of the other party should be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. A reply brief of a party seeking review should be filed with the Court within the sooner of 20 days after service of the answering brief or 14 days before oral argument. A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.

(e) Briefs When Both Parties Seek Review. When both the respondent lawyer and disciplinary counsel seek review of a Board decision, the respondent is deemed the party seeking review for the purposes of this rule. In that case, disciplinary counsel may file a brief in reply to any response the respondent has made to the issues presented by disciplinary counsel, to be filed with the Court the sooner of 20 days after service of the respondent's reply brief or 14 days before oral argument.

(f) Form of Briefs. Briefs filed under this rule must conform as nearly as possible to the requirements of RAP 10.3 and 10.4. Bar file documents should be abbreviated BF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Clerk. The Supreme Court clerk reproduces and distributes briefs as provided in RAP 10.5.

[Adopted effective October 1, 2002.]

ELC 12.7
ARGUMENT

(a) Rules Applicable. Oral argument before the Supreme Court is conducted under title 11 of the Rules of Appellate Procedure, unless the Court directs otherwise.

(b) Priority. Disciplinary proceedings have priority and are set upon compliance with the above rules.

[Adopted effective October 1, 2002.]

ELC 12.8
EFFECTIVE DATE OF OPINION

(a) Effective when Filed. An opinion in a disciplinary proceeding takes effect when filed unless the Court specifically provides otherwise.

(b) Motion for Reconsideration. A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment unless the Court enters a stay.

[Adopted effective October 1, 2002.]

ELC 12.9
VIOLATION OF RULES

Sanctions for violation of these rules may be imposed on a party under RAP 18.9. Upon dismissal under that rule of a review sought by a respondent lawyer and expiration of the period to file objections under RAP 17.7, or upon dismissal of review by the Court if timely objections are filed, the Board's decision is final.

[Adopted effective October 1, 2002.]

ELC 13.1
SANCTIONS AND REMEDIES

Upon a finding that a lawyer has committed an act of misconduct, one or more of the following may be imposed:

(a) Sanctions.

(1) Disbarment;

(2) Suspension under rule 13.3; or

(3) Reprimand.

(b) Admonition. An admonition under rule 13.5.

(c) Remedies.

(1) Restitution;

(2) Probation;

(3) Limitation on practice;

(4) Requirement that the lawyer attend continuing legal education courses;

(5) Assessment of costs; or

(6) Other requirements consistent with the purposes of lawyer discipline.

[Adopted effective October 1, 2002.]

ELC 13.2
EFFECTIVE DATE OF SUSPENSIONS AND DISBARMENTS

Suspensions and disbarments are effective on the date set by the Supreme Court's order, which will ordinarily be seven days after the date of the order. If no date is set, the suspension or disbarment is effective on the date of the Court's order.

[Adopted effective October 1, 2002.]

ELC 13.3
SUSPENSION

(a) Term of Suspension. A suspension must be for a fixed period of time not exceeding three years.

(b) Reinstatement.

(1) After the period of suspension, the Association administratively returns the suspended respondent lawyer to the respondent's status before the suspension without further order by the Court upon:

(A) the respondent's compliance with all current licensing requirements; and

(B) disciplinary counsel's certification that the respondent has complied with any specific conditions ordered, and has paid any costs or restitution ordered or is current with any costs or restitution payment plan.

(2) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the Chair may modify the terms of the payment plan if warranted. The Chair determines the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

[Adopted effective October 1, 2002.]

ELC 13.4
REPRIMAND

(a) Administration. The Association administers a reprimand to a respondent lawyer by written statement signed by its President.

(b) Notice and Review of Contents. The Association must serve the respondent with a copy of the proposed reprimand. Within five days of service of the proposed reprimand, the respondent may file a request for review of the content of the proposed reprimand. This request stays the administration of the reprimand. When timely requested, the Disciplinary Board reviews the proposed reprimand in light of the decision or stipulation imposing the reprimand and may take any appropriate action. The Board's action is final and not subject to further review. If no request is received, the content of the reprimand is final, and the reprimand is administered.

[Adopted Amended effective September 1, 2005]

ELC 13.5
ADMONITION

(a) By a Review Committee.

(1) A review committee may issue an admonition when investigation of a grievance shows misconduct.

(2) A respondent lawyer may protest either the review committee's or the Board's prehearing issuance of an admonition by filing a notice to that effect with the Clerk within 30 days of service of the admonition. Upon receipt of a timely protest, the admonition is rescinded, and the grievance is deemed ordered to hearing.

(b) Following a Hearing. A hearing officer or panel may recommend that a respondent receive an admonition following a hearing.

(c) By Stipulation. The parties may stipulate to an admonition under rule 9.1.

(d) Effect. An admonition is admissible in subsequent disciplinary or disability proceedings involving the respondent. Rule 3.6(b) governs destruction of file materials relating to an investigation or hearing concluded with an admonition, including the admonition.

(e) Action on Board Review. Upon review under title 11, the Board may dismiss, issue an admonition, or impose sanctions or other remedies under rule 13.1.

(f) Signing of Admonition. The review committee chair signs an admonition issued by a review committee. The Disciplinary Board Chair or the Chair's designee signs all other admonitions.

[Adopted effective October 1, 2002.]

ELC 13.6
DISCIPLINE FOR CUMULATIVE ADMONITIONS

(a) Grounds. A lawyer may be subject to sanction or other remedy under rule 13.1 if the lawyer receives three admonitions within a five year period.

(b) Procedure. Upon being presented with evidence that a respondent lawyer has received three admonitions within a five year period, a review committee may authorize the filing of a formal complaint based solely on the provisions of this rule. A proceeding under this rule is conducted in the same manner as any disciplinary proceeding. The issues in the proceeding are whether the respondent has received three admonitions within a five year period and, if so, what sanction or other remedy should be recommended.

[Adopted effective October 1, 2002.]

ELC 13.7
RESTITUTION

(a) Restitution May Be Required. A respondent lawyer who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be ordered to make restitution to persons financially injured by the respondent's conduct.

(b) Payment of Restitution.

(1) A respondent ordered to make restitution must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if:

(A) the respondent demonstrates in writing present inability to pay restitution and

(B) disciplinary counsel consults with the persons owed restitution.

(3) A respondent may ask the Chair to review an adverse determination by disciplinary counsel of the reasonableness of a proposed periodic payment plan for restitution. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

(c) Failure To Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

[Adopted effective October 1, 2002.]

ELC 13.8
PROBATION

(a) Conditions of Probation. A respondent lawyer who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be placed on probation for a fixed period of two years or less.

(1) Conditions of probation may include, but are not limited to requiring:

(A) alcohol or drug treatment;

(B) medical care;

(C) psychological or psychiatric care;

(D) professional office practice or management counseling; or

(E) periodic audits or reports.

(2) Upon disciplinary counsel's request, the Chair may appoint a suitable person to supervise the probation. Cooperation with a person so appointed is a condition of the probation.

(b) Failure To Comply. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.

[Adopted effective October 1, 2002.]

ELC 13.9
COSTS AND EXPENSES

(a) Assessment. The Association's costs and expenses may be assessed as provided in this rule against any respondent lawyer who is ordered sanctioned or admonished.

(b) Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Association in the complete performance of its duties under these rules, whether incurred before or after the filing of a formal complaint. Costs include, by way of illustration and not limitation:

(1) court reporter charges for attending and transcribing depositions or hearings;

(2) process server charges;

(3) necessary travel expenses of hearing officers, hearing panel members, disciplinary counsel, adjunct investigative counsel, or witnesses;

(4) expert witness charges;

(5) costs of conducting an examination of books and records or an audit under title 15;

(6) costs incurred in supervising probation imposed under rule 13.8;

(7) telephone toll charges;

(8) fees, costs, and expenses of a lawyer appointed under rule 8.2 or rule 8.3;

(9) costs of copying materials for submission to a review committee, a hearing officer or panel, or the Board; and

(10) compensation provided to hearing officers or panel members under rule 2.11.

(c) Expenses Defined. "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

(1) for an admonition that is accepted under rule 13.5(a), $750;

(2) for a matter that becomes final without review by the Board, $1,500;

(3) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of $2,000;

(4) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of $2,500; and

(5) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of $3,000.

(d) Statement of Costs and Expenses, Exceptions, and Reply.

(1) Timing. Disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:

(A) an admonition is accepted;

(B) the decision of a hearing officer or panel or the Board imposing an admonition or a sanction becomes final;

(C) a notice of appeal from a Board decision is filed and served; or

(D) the Supreme Court accepts or denies discretionary review of a Board decision.

(2) Content. A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. Disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.

(3) Service. The Clerk serves a copy of the statement on the respondent.

(4) Exceptions. The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.

(5) Reply. Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

(e) Assessment. The Chair enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

(f) Review of Chair's Decision.

(1) Matters Reviewed by Court. In matters reviewed by the Supreme Court under title 12, the Chair's decision is subject to review only by the Court.

(2) All Other Matters. In all other matters, the following procedures apply:

(A) Request for Review by Board. Within 20 days of service on the respondent of the order assessing costs and expenses, either party may file a request for Board review of the order.

(B) Board Action. Upon the timely filing of a request, the Board reviews the order assessing costs and expenses, based on the Association's statement of costs and expenses and any exceptions or reply, the decision of the hearing officer or panel or of the Board, and any written statement submitted by either party within the time directed by the Chair. The Board may approve or modify the order assessing costs and expenses. The Board's decision is final when filed and not subject to further review.

(g) Assessment in Matters Reviewed by the Court. When a matter is reviewed by the Court as provided in title 12, any order assessing costs and expenses entered by the Chair under section (e) and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion by the Court imposing a sanction or admonition, costs and expenses may be assessed in favor of the Association under the procedures of RAP Title 14, except that "costs" as used in that title means any costs and expenses allowable under this rule.

(h) Assessment Discretionary. Assessment of any or all costs and expenses may be denied if it appears in the interests of justice to do so.

(i) Payment of Costs and Expenses.

(1) A respondent ordered to pay costs and expenses must do so within 30 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) The respondent must pay interest on any amount not paid within 30 days of the date the assessment is final at the maximum rate permitted under RCW 19.52.020.

(3) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(B) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review, and the Board's decision is not subject to further review.

(j) Failure To Comply. A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

(k) Costs in Other Cases. Rule 9.1 governs costs and expenses in cases resolved by stipulation. Rule 8.6 governs assessment of costs and expenses in disability proceedings.

(l) Money Judgment for Costs and Expenses. After the assessment of costs and expenses is final, upon application by the Association, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and expenses if the respondent has failed to pay the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

[Adopted effective October 1, 2002.]

ELC 14.1
NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY

(a) Providing Client Property. A lawyer who has been suspended from the practice of law, disbarred, or transferred to disability inactive status must provide each client or the client's substituted counsel upon request with the client's assets, files, and other documents in the lawyer's possession, regardless of any possible claim of lien under RCW 60.40.

(b) Notice if Suspended for 60 Days or Less. A lawyer who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client involved in litigation or administrative proceedings, and counsel for each adverse party (or the adverse party directly if not represented by counsel), of the suspension, the reason therefor, and of the lawyer's consequent inability to act as a lawyer after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another lawyer. If the client does not substitute counsel within ten days of this notice, the lawyer must advise the court or agency of the lawyer's inability to act; and

(2) notify all other clients of the suspension, the reason therefor, and consequent inability to act during the suspension. The notice must advise the client to seek legal advice elsewhere if needed during the suspension.

(c) Notice if Otherwise Suspended or Disbarred. A lawyer who has been disbarred or suspended for more than 60 days, for nonpayment of dues, or under title 7 or APR 11 must within ten days of the effective date of the disbarment or suspension:

(1) notify every client of the lawyer's inability to act as the client's lawyer and the reason therefor, and advise the client to seek legal advice elsewhere;

(2) advise every client involved in litigation or

administrative proceedings to seek the prompt substitution of another lawyer. If the client does not substitute counsel within ten days of being notified of the lawyer's inability to act, the lawyer must advise the court or agency of the lawyer's inability to act; and

(3) notify counsel for each adverse party in pending litigation or administrative proceedings, or the adverse party directly if not represented by counsel, of the lawyer's inability to act further on the client's behalf.

(d) Notice if Transferred to Disability Inactive Status. A lawyer transferred to disability inactive status, or his or her guardian if one has been appointed, must give all notices required by section (c), except that the notices need not refer to disability.

(e) Address of Client. All notices to lawyers, adverse parties, courts, or agencies as required by sections (b), (c), or (d) must contain the client's name and last known address, unless doing so would disclose a confidence or secret of the client. If the name and address are omitted, the client must be advised that so long as his or her address remains undisclosed and no new lawyer is substituted, the client may be served by leaving papers with the clerk of the court under CR 5(b)(1) in pending superior court actions, and that comparable provisions may allow similar service in other court proceedings or administrative actions.

[Adopted effective October 1, 2002.]

ELC 14.2
LAWYER TO DISCONTINUE PRACTICE

A disbarred or suspended lawyer, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, suspension, or transfer to disability inactive status, and also must take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on him or her as a lawyer authorized to practice law. This rule does not preclude a disbarred or suspended lawyer, or a lawyer transferred to disability inactive status, from disbursing assets held by the lawyer to clients or other persons or from providing information on the facts and the lawyer's theory of a case and its status to a succeeding lawyer, provided that the suspended or disbarred lawyer not be involved in any discussion regarding matters occurring after the date of the suspension or disbarment. The lawyer must provide this information on request and without charge.

[Adopted effective October 1, 2002.]

ELC 14.3
AFFIDAVIT OF COMPLIANCE

Within 25 days of the effective date of a lawyer's disbarment, suspension, or transfer to disability inactive status, the lawyer must serve on disciplinary counsel an affidavit stating that the lawyer has fully complied with the provisions of this title. The affidavit must also provide a mailing address where communications to the lawyer may thereafter be directed. The lawyer must attach to the affidavit copies of the form letters of notification sent to the lawyer's clients and opposing counsel or parties and copies of letters to any court, together with a list of names and addresses of all clients and opposing counsel or parties to whom notices were sent. The affidavit is a confidential document except the lawyer's mailing address is treated as a change of mailing address under APR 13(b).

[Adopted effective October 1, 2002.]

ELC 14.4
LAWYER TO KEEP RECORDS OF COMPLIANCE

A lawyer who has been disbarred, suspended, or transferred to disability inactive status must maintain written records

of the various steps taken by him or her under this title, so that proof of compliance will be available in any subsequent proceeding.

[Adopted effective October 1, 2002.]

ELC 15.1
AUDIT AND INVESTIGATION OF BOOKS AND RECORDS

The Board and its Chair have the following authority to examine, investigate, and audit the books and records of any lawyer to ascertain and obtain reports on whether the lawyer has been and is complying with RPC 1.15A:

(a) Random Examination. The Board may authorize examinations of the books and records of any lawyer or law firm selected at random. Only the lawyer or law firm's books and records may be examined in an examination under this section.

(b) Particular Examination. Upon receipt of information that a particular lawyer or law firm may not be in compliance with RPC 1.15A, the Chair may authorize an examination limited to the lawyer or law firm's books and records. Information may be presented to the Chair without notice to the lawyer or law firm. Disclosure of this information is subject to rules 3.1 - 3.4.

(c) Audit. After an examination under section (a) or (b), if the Chair determines that further examination is warranted, the Chair may order an appropriate audit of the lawyer's or firm's books and records, including verification of the information in those records from available sources.

[Adopted effective October 1, 2002; September 1, 2006.]

ELC 15.2
COOPERATION OF LAWYER

Any lawyer or firm who is subject to examination, investigation, or audit under rule 15.1 must cooperate with the person conducting the examination, investigation, or audit, subject only to the proper exercise of any privilege against self-incrimination, by:

(a) producing forthwith all evidence, books, records, and papers requested for the examination, investigation, or audit;

(b) furnishing forthwith any explanations required for the examination, investigation, or audit;

(c) producing written authorization, directed to any bank or depository, for the person to examine, investigate, or audit trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the lawyer in the bank or depository.

[Adopted effective October 1, 2002.]

ELC 15.3
DISCLOSURE

The examination and audit report are only available to the Board, disciplinary counsel, and the lawyer or firm examined, investigated, or audited, and to the Board of Governors on its request, unless a disciplinary proceeding is commenced in which case the disclosure provisions of title 3 apply.

[Adopted effective October 1, 2002.]

ELC 15.4.
TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) Overdraft Notification Agreement Required. To be authorized as a

depository for lawyer trust accounts referred to in RPC 1.15A(i) or LPO trust accounts referred to in LPO RPC 1.12A(i), a financial institution, bank, credit union, savings bank, or savings and loan association must file with the Legal Foundation of Washington an agreement, in a form provided by the Washington State Bar Association, to report to the Washington State Bar Association if any properly payable instrument is presented against a lawyer, LPO or closing firm trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institution and cannot be canceled except on 30 days' notice in writing to the Legal Foundation of Washington. The Legal Foundation of Washington must provide copies of signed agreements and notices of cancellation to the Washington State Bar Association

(b) Overdraft Reports.

(1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:

(A) the identity of the financial institution;

(B) the identity of the (1) the lawyer or law firm, or (2) the limited practice officer or closing firm;

(C) the account number; and

(D) either:

(i) the amount of overdraft and date created; or

(ii) the amount of the returned instrument(s) and the date returned.

(2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

(c) Costs. Nothing in these rules precludes a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule, but those charges may not be a transaction cost charged against funds payable to the Legal Foundation of Washington under RPC 1.15A(i)(1) and ELC 15.7(e).

(d) Notification by Lawyer. Every lawyer who receives notification that any instrument presented against his or her trust account was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Office of Disciplinary Counsel of the Association of the information required by section (b). The lawyer must include a full explanation of the cause of the overdraft.

ELC 15.5
DECLARATION OR QUESTIONNAIRE

(a) Questionnaire. The Association annually sends each active lawyer a written declaration or questionnaire designed to determine whether the lawyer is complying with RPC 1.15A. Each active lawyer must complete, execute, and deliver to the Association this declaration or questionnaire by the date specified in the declaration or questionnaire.

(b) Noncompliance. Failure to file the declaration or questionnaire by the date specified in section (a) is grounds for discipline. This failure also subjects the lawyer who has failed to comply with this rule to a full audit of his or her books and records as provided in rule 15.1(c), upon request of disciplinary counsel to a review committee. A copy of any request made under this section must be served on the lawyer. The request must be granted on a showing that the lawyer has failed to comply with section (a) of this rule. If the lawyer should later comply, disciplinary counsel has discretion to determine whether an audit should be conducted, and if so the scope of that audit. A lawyer 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(f).

[Adopted effective October 1, 2002; September 1, 2006.]

ELC 15.6
REGULATIONS

The Disciplinary Board may adopt regulations regarding the powers in this title subject to the approval of the Board of Governors and the Supreme Court.

[Adopted effective October 1, 2002.]

ELC 15.7.
TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

(a) Legal Foundation of Washington. The Legal Foundation of Washington (Legal Foundation) was established by Order of the Supreme Court of Washington to administer distribution of Interest on Lawyer's Trust Account (IOLTA) funds to civil legal aid programs.

(1) Administrative Responsibilities. The Legal Foundation is responsible for assessing the products and services offered by financial institutions operating in the state of Washington and determining whether such institutions meet the requirements of this rule, ELC 15.4, and ELPOC 15.4. The Legal Foundation must maintain a list of financial institutions authorized to establish client trust accounts and publish the list on a website maintained by the Legal Foundation for public information. The Legal Foundation must provide a copy of the list to any person upon request.

(2) Annual Report. The Legal Foundation must prepare an annual report to the Supreme Court of Washington that summarizes the Foundation's income, grants and operating expenses, implementation of its corporate purposes, and any problems arising in the administration of the IOLTA program.

(b) Definitions. The following definitions apply to this rule:

(1) United States Government Securities. United States Government Securities are defined as direct obligations of the United States Government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States Government-Sponsored Enterprises.

(2) Daily Financial Institution Repurchase Agreement. A daily financial institution repurchase agreement must be fully collateralized by United States Government Securities and may be established only with an authorized financial institution that is deemed to be "well capitalized" under applicable regulations of the Federal Deposit Insurance Corporation and the National Credit Union Association.

(3) Money Market Funds. A money market fund is an investment company registered under the Investment Company Act of 1940, as amended, that is regulated as a money market funder under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act, and at the time of the investment, has total assets of at least five hundred million dollars ($500,000,000). A money market fund must be comprised solely of United States Government Securities or investments fully collateralized by United States Government Securities.

(c) Authorized Financial Institutions. Any bank, savings bank, credit union, savings and loan association, or other financial institution that meets the following criteria is eligible to become an authorized financial institution under this rule:

(1) is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration;

(2) is authorized by law to do business in Washington;

(3) complies with all requirements set forth in section (d) of this rule and in ELC 15.4; and

(4) if offering IOLTA accounts, complies with all requirements set forth in section (e) of this rule.

The Legal Foundation determines whether a financial institution is an authorized financial institution under this section. Upon a determination of compliance with all requirements of this rule and ELC 15.4, the Legal Foundation must list a financial institution as an authorized financial institution under section (a)(1). At any time, the Legal Foundation may request that a listed financial institution establish or certify compliance with the requirements of this rule or ELC 15.4. The Legal Foundation may remove a financial institution from the list of authorized financial institutions upon a determination that the financial institution is not in compliance.

(d) Requirements of All Trust Accounts. All trust accounts established pursuant to RPC 1.15A(i) or LPORPC 1.12A(h) must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments.

(e) IOLTA Accounts. To qualify for Legal Foundation approval as an authorized financial institution offering IOLTA accounts, in addition to meeting all other requirements set forth in this Rule, a financial institution must comply with the requirements set forth in this section.

(1) Interest Comparability. For accounts established pursuant to RPC 1.15A, authorized financial institutions must pay the highest interest rate generally available from the institutions to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available to its non-IOLTA customers, authorized financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. An authorized financial institution may satisfy these comparability requirements by selecting one of the following options:

(i) Establish the IOLTA account as the comparable interest-paying product; or

(ii) Pay the comparable interest rate on the IOLTA checking account in lieu of actually establishing the comparable interest-paying product; or

(iii) Pay a rate on IOLTA equal to 75% of the Federal Funds Targeted Rate as of the first business day of the month or IOLTA remitting period, or .75%, whichever is higher, and which rate is deemed to be already net of allowable reasonable service charges or fees.

(2) Remit Interest to Legal Foundation of Washington. Authorized financial institutions must remit the interest accruing on all IOLTA accounts, net of reasonable account fees, to the Legal Foundation monthly, on a report form prescribed by the Legal Foundation. At a minimum, the report must show details about the account, including but not limited to the name of the lawyer, law firm, LPO, or Closing Firm for whom the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the balance used to compute the interest. Interest must be calculated on the average monthly balance in the account, or as otherwise computed in accordance with applicable state and federal regulations and the institution's standard accounting practice for non-IOLTA customers. The financial institution must notify each lawyer, law firm, LPO, or Closing Firm of the amount of interest remitted to the Legal Foundation on a monthly basis on the account statement or other written report.

(3) Reasonable account fees. Reasonable account fees may only include per deposit charges, per check charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administration fee. No service charges or fees other than the allowable, reasonable fees may be assessed against the interest or dividends on an IOLTA account. Any service charges or fees other than allowable reasonable fees must be the sole responsibility of, and may be charged to, the lawyer, law firm, LPO, or Closing Firm maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account must not be deducted from interest or dividends earned on any other account or from the principal.

(4) Comparable Accounts. Subject to the requirements set forth in sections (d) and (e), an IOLTA account may be established as:

(i) A business checking account with an automated investment feature, such as a daily bank repurchase agreement or a money market fund; or

(ii) A checking account paying preferred interest rates, such as a money market or indexed rates; or

(iii) A government interest-bearing checking account such as an account used for municipal deposits; or

(iv) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, business checking account with interest; or

(v) Any other suitable interest-bearing product offered by the authorized financial institution to its non-IOLTA customers.

(5) Nothing in this rule precludes an authorized financial institution from paying an interest rate higher than described above or electing to waive any service charges or fees on IOLTA accounts.

ELC 16.1
EFFECT ON PENDING PROCEEDINGS

These rules and any subsequent amendments will apply in their entirety, on the effective date as ordered by the Supreme Court, to any pending matter or investigation that has not yet been ordered to hearing. They will apply to other pending matters except as would not be feasible or would work an injustice. The hearing officer or panel chair assigned to hear a matter, or the Chair in a matter pending before the Board, may rule on the appropriate procedure with a view to insuring a fair and orderly proceeding.

[Adopted effective October 1, 2002.]

RULES OF EVIDENCE (ER)

TABLE OF RULES

TITLE 1
GENERAL PROVISIONS

Rule
101 Scope
102 Purpose and Construction
103 Rulings on Evidence
104 Preliminary Questions
105 Limited Admissibility
106 Remainder of or Related Writings or Recorded Statements

TITLE 2
JUDICIAL NOTICE

201 Judicial Notice of Adjudicative Facts

TITLE 3
PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

301 Presumptions in General in Civil Actions and Proceedings (Reserved)
302 Applicability of State Law in Civil Actions and Proceedings (Reserved)

TITLE 4
RELEVANCY AND ITS LIMITS

401 Definition of "Relevant Evidence"
402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible
403 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time
404 Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes
405 Methods of Proving Character
406 Habit; Routine Practice
407 Subsequent Remedial Measures
408 Compromise and Offers To Compromise
409 Payment of Medical and Similar Expenses
410 Inadmissibility of Pleas, Offers of Pleas, and Related Statements
411 Liability Insurance
412 Sexual Offenses--Victim's Past Behavior

TITLE 5
PRIVILEGES

501 General Rule
502 Attorney-Client Privilege and Work Product; Limitations on Waiver

TITLE 6
WITNESSES

601 General Rule of Competency
602 Lack of Personal Knowledge
603 Oath or Affirmation
604 Interpreters
605 Competency of Judge as Witness
606 Competency of Juror as Witness
607 Who May Impeach
608 Evidence of Character and Conduct of Witness
609 Impeachment by Evidence of Conviction of Crime
610 Religious Beliefs or Opinions
611 Mode and Order of Interrogation and Presentation
612 Writing Used To Refresh Memory
613 Prior Statements of Witnesses
614 Calling and Interrogation of Witnesses by Court
615 Exclusion of Witnesses

TITLE 7
OPINIONS AND EXPERT TESTIMONY

701 Opinion Testimony by Lay Witnesses
702 Testimony by Experts
703 Bases of Opinion Testimony by Experts
704 Opinion on Ultimate Issue
705 Disclosure of Facts or Data Underlying Expert Opinion
706 Court Appointed Experts

TITLE 8
HEARSAY

801 Definitions
802 Hearsay Rule
803 Hearsay Exceptions; Availability of Declarant Immaterial
804 Hearsay Exceptions; Declarant Unavailable
805 Hearsay Within Hearsay
806 Attacking and Supporting Credibility of Declarant
807 Child Victims or Witnesses (Reserved)

TITLE 9
AUTHENTICATION, IDENTIFICATION AND ADMISSION OF EXHIBITS

901 Requirement of Authentication or Identification
902 Self-Authentication
903 Subscribing Witness' Testimony Unnecessary
904 Admissibility of Documents

TITLE 10
CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

1001 Definitions
1002 Requirement of Original
1003 Admissibility of Duplicates
1004 Admissibility of Other Evidence of Contents
1005 Public Records
1006 Summaries
1007 Testimony or Written Admission of Party
1008 Functions of Court and Jury

TITLE 11
MISCELLANEOUS RULES

1101 Applicability of Rules
1102 Amendments (Reserved)
1103 Title

INTRODUCTORY COMMENT
[1979]

[Deleted effective September 1, 2006.]

RULE ER 101
SCOPE

These rules govern proceedings in the courts of the state of Washington to the extent and with the exceptions stated in rule 1101.

[Adopted effective April 2, 1979]

Comment 101

[Deleted effective September 1, 2006.]

RULE ER 102
PURPOSE AND CONSTRUCTION

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

[Adopted effective April 2, 1979]

Comment 102

[Deleted effective September 1, 2006.]

RULE ER 103
RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike is made, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The court may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Errors Raised for the First Time on Review.
[Reserved ? See RAP 2.5(a).]

[Adopted effective April 2, 1979]

Comment 103
[Deleted effective September 1, 2006.]

RULE ER 104
PRELIMINARY QUESTIONS

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of section (b). In making its determination it is not bound by the Rules of Evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness and so requests.

(d) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross examination as to other issues in the case.

(e) Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

[Amended effective September 1, 1992.]

Comment 104

[Deleted effective September 1, 2006.]

RULE ER 105
LIMITED ADMISSIBILITY

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

[[Adopted effective April 2, 1979.]

Comment 105

[Deleted effective September 1, 2006.]

RULE ER 106
REMAINDER OF OR RELATED WRITINGS
OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the party at that time to introduce any other part, or any other writing or recorded statement, which ought in fairness to be considered contemporaneously with it.

[Adopted effective April 2, 1979.]

Comment 106

[Deleted effective September 1, 2006.]

RULE ER 201
JUDICIAL NOTICE OF ADJUDICATIVE FACTS

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity To Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

[Adopted effective April 2, 1979.]

Comment 201

[Deleted effective September 1, 2006.]

RULE ER 301
PRESUMPTIONS IN GENERAL IN CIVIL ACTIONS AND PROCEEDINGS

(RESERVED)

[Adopted effective April 2, 1979.]

Comment 301

[Deleted effective September 1, 2006.]

RULE ER 302
APPLICABILITY OF STATE LAW IN CIVIL ACTIONS AND PROCEEDINGS

[RESERVED]

[Adopted effective April 2, 1979.]

Comment 302

[Deleted effective September 1, 2006.]

RULE ER 401
DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

[Adopted effective April 2, 1979.]

Comment 401

[Deleted effective September 1, 2006.]

RULE ER 402
RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible.

[Adopted effective April 2, 1979.]

Comment 402

[Deleted effective September 1, 2006.]

RULE ER 403
EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

[Adopted effective April 2, 1979.]

Comment 403

[Deleted effective September 1, 2006.]

RULE ER 404
CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

(a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of Witness. Evidence of the character of a witness, as provided in rules 607, 608, and 609.

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

[Amended effective September 1, 1992.]

Comment 404

[Deleted effective September 1, 2006.]

RULE ER 405
METHODS OF PROVING CHARACTER

(a) Reputation. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation. On cross examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

[Amended effective September 1, 1992.]

Comment 405

[Deleted effective September 1, 2006.]

RULE ER 406
HABIT; ROUTINE PRACTICE

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

[Adopted effective April 2, 1979.]

Comment 406

[Deleted effective September 1, 2006.]

RULE ER 407
SUBSEQUENT REMEDIAL MEASURES

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

[Adopted effective April 2, 1979.]

Comment 407

[Deleted effective September 1, 2006.]

ER 408
COMPROMISE AND OFFERS TO COMPROMISE

In a civil case, evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

[Adopted effective April 2, 1979; amended effective September 1, 2008]

Comment 408

[Deleted effective September 1, 2006.]

RULE ER 409
PAYMENT OF MEDICAL AND SIMILAR EXPENSES

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

[Adopted effective April 2, 1979.]

Comment 409

[Deleted effective September 1, 2006.]

ER 410
INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS

(a) General. Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and in the presence of counsel. This rule does not govern the admissibility of evidence of a deferred sentence imposed under RCW 3.66.067 or RCW 9.95.200-.240.

(b) Statutory Offers of Compromise. Evidence of payment or an offer or agreement to pay (i) to compromise a misdemeanor pursuant to RCW Chapter 10.22, or (ii) for a liability described in RCW 4.24.230, shall not be admissible in any civil or criminal proceeding.

[Adopted effective April 2, 1979. Amended effective September 1, 2008]

Comment 410

[Deleted effective September 1, 2006.]

RULE ER 411
LIABILITY INSURANCE

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

[Amended effective September 1, 1992.]

Comment 411

[Deleted effective September 1, 2006.]

ER 412
SEXUAL OFFENSES - VICTIM'S PAST BEHAVIOR

(a) Criminal Cases. [Reserved. See RCW 9A.44.020.]

(b) Civil Cases; Evidence Generally Inadmissible. The following evidence is not admissible in any civil proceeding involving alleged sexual misconduct except as provided in sections (c) and (d):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predisposition.

(c) Exceptions. In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(d) Procedure to determine admissibility.

(1) A party intending to offer evidence under section (c) must:

(A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

[Adopted effective September 1, 1988.]

Comment 412

[Deleted effective September 1, 2003.]

RULE ER 501
GENERAL RULE

The following citations are to certain statutes that make reference to privileges or privileged communications. This list is not intended to create any privilege, nor to abrogate any privilege by implication or omission.

(a) Attorney-Client. (Reserved. See RCW 5.60.060(2).)

(b) Clergyman or Priest. (Reserved. See RCW 5.60.060(3), 26.44.060, 70.124.060.)

(c) Dispute Resolution Center. (Reserved. See RCW 7.75.050.)

(d) Counselor. (Reserved. See RCW 18.19.180.)

(e) Higher Education Procedures. (Reserved. See RCW 28B.19.120(4).)

(f) Spouse or Domestic Partner. (Reserved. See RCW 5.60.060(1), 26.20.071, 26.21A275(8).)

(g) Interpreter in Legal Proceeding. (Reserved. See RCW 2.42.160; GR 11.1(e).)

(h) Journalist. (Reserved. See RCW 5.68.010.)

(i) Optometrist-Patient. (Reserved. See RCW 18.53.200, 26.44.060.)

(j) Physician-Patient. (Reserved. See RCW 5.60.060(4), 26.26.120, 26.44.060, 51.04.050, 69.41.020, 69.50.403, 70.124.060, 71.05.250.)

(k) Psychologist-Client. (Reserved. See RCW 18.83.110, 26.44.060, 70.124.060.)

(l) Public Assistance Recipient. (Reserved. See RCW 74.04.060.)

(m) Public Officer. (Reserved. See RCW 5.60.060(5).)

(n) Registered Nurse. (Reserved. See RCW 5.62.010, 5.62.020, 5.62.030.)

[Adopted effective September 1, 1988; amended effective September 1, 1992; January 4, 2005; September 1, 2012.]

Comment 501

[Deleted effective September 1, 2006.]

ER 502
ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVER

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) Disclosure Made in a Washington Proceeding or to a Washington Office or Agency; Scope of a Waiver. When the disclosure is made in a Washington proceeding or to a Washington office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in any proceeding only if:

(1) the waiver is intentional;

(2) the disclosed and undisclosed communications or information concern the same subject matter; and

(3) they should, in fairness, be considered together.

(b) Inadvertent Disclosure. When made in a Washington proceeding or to a Washington office or agency, the disclosure does not operate as a waiver in any proceeding if:

(1) the disclosure is inadvertent;

(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following CR 26(b)(6).

(c) Disclosure Made in a Non-Washington Proceeding. When the disclosure is made in a non-Washington proceeding and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in a Washington proceeding if the disclosure:

(1) would not be a waiver under this rule if it had been made in a Washington proceeding; or

(2) is not a waiver under the law of the jurisdiction where the

disclosure occurred.

(d) Controlling Effect of a Court Order. A Washington court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court-in which event the disclosure is also not a waiver in any other proceeding.

(e) Controlling Effect of a Party Agreement. An agreement on the effect of disclosure in a Washington proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) Definitions. In this rule:

(1) "attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications; and

(2) "work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

[Adopted effective September 1, 2010]

RULE ER 601
GENERAL RULE OF COMPETENCY

Every person is competent to be a witness except as otherwise provided by statute or by court rule.

[Adopted effective April 2, 1979.]

Comment 601

[Deleted effective September 1, 2006.]

RULE ER 602
LACK OF PERSONAL KNOWLEDGE

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

[Amended effective September 1, 1992.]

Comment 602

[Deleted effective September 1, 2006.]

RULE ER 603
OATH OR AFFIRMATION

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

[Amended effective September 1, 1992.]

Comment 603

[Deleted effective September 1, 2006.]

RULE ER 604
INTERPRETERS

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

[Amended effective September 1, 1992.]

Comment 604

[Deleted effective September 1, 2006.]

RULE ER 605
COMPETENCY OF JUDGE AS WITNESS

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

[Adopted effective April 2, 1979.]

Comment 605

[Deleted effective September 1, 2006.]

RULE ER 606
COMPETENCY OF JUROR AS WITNESS

A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

[Amended effective September 1, 1992.]

Comment 606

[Deleted effective September 1, 2006.]

RULE ER 607
WHO MAY IMPEACH

The credibility of a witness may be attacked by any party, including the party calling the witness.

[Amended effective September 1, 1992.]

Comment 607

[Deleted effective September 1, 2006.]

RULE ER 608
EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

(a) Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of reputation, but subject to the limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

[Amended effective September 1, 1992.]

Comment 608

[Deleted effective September 1, 2006.]

RULE ER 609
IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

(a) General Rule. For the purpose of attacking the credibility of a witness in a criminal or civil case, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness but only if the crime (1) was punishable by death or imprisonment in excess of 1 year under the law under which the witness was convicted, and the court determines that the probative value of admitting this evidence outweighs the prejudice to the party against whom the evidence is offered, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of 1 year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a finding of guilt in a juvenile offense proceeding of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

[Amended effective September 1, 1988

Comment 609

[Deleted effective September 1, 2006.]

RULE ER 610
RELIGIOUS BELIEFS OR OPINIONS

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

[Amended effective September 1, 1992.]

Comment 610

[Deleted effective September 1, 2006.]

RULE 611
MODE AND ORDER OF INTERROGATION AND PRESENTATION

(a) Control by Court. The court shall exercise reasonable

control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross Examination. Cross examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

[Amended effective September 1, 1992.]

Comment 611

[Deleted effective September 1, 2006.]

RULE 612
WRITING USED TO REFRESH MEMORY

If a witness uses a writing to refresh memory for the purpose of testifying, either: while testifying, or before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires.

[Amended effective September 1, 1992.]

Comment 612

[Deleted effective September 1, 2006.]

RULE ER 613
PRIOR STATEMENTS OF WITNESSES

(a) Examining Witness Concerning Prior Statement. In the examination of a witness concerning a prior statement made by the witness, whether written or not, the court may require that the statement be shown or its contents disclosed to the witness at that time, and on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

[Amended effective September 1, 1992.]

Comment 613

[Deleted effective September 1, 2006.]

RULE ER 614
CALLING AND INTERROGATION OF WITNESSES
BY COURT

(a) Calling by Court. The court may, on its own motion where necessary in the interests of justice or on motion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party; provided, however, that in trials before a jury, the court's questioning must be cautiously guarded so as not to constitute a comment on the evidence.

(c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

[Adopted effective April 2, 1979.]

Comment 614

[Deleted effective September 1, 2006.]

RULE ER 615
EXCLUSION OF WITNESSES

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be reasonably necessary to the presentation of the party's cause.

[Amended effective September 1, 1992.]

Comment 615

[Deleted effective September 1, 2006.]

RULE ER 701
OPINION TESTIMONY BY LAY WITNESSES

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of rule 702.

[Amended effective September 1, 1992; September 1, 2004.]

Comment 701

[Deleted effective September 1, 2006.]

RULE ER 702
TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

[Adopted effective April 2, 1979.]

Comment 702

[Deleted effective September 1, 2006.]

RULE ER 703
BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

[Amended effective September 1, 1992.]

Comment 703

[Deleted effective September 1, 2006.]

RULE ER704
OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inferences otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

[Adopted effective April 2, 1979.]

Comment 704

[Deleted effective September 1, 2006.]

RULE ER 705
DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

[Amended effective September 1, 1992.]

Comment 705

[Deleted effective September 1, 2006.]

RULE ER 706
COURT APPOINTED EXPERTS

(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross examination by each party, including a party calling the witness.

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of Appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' Experts of Own Selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

[Amended effective September 1, 1992.]

Comment 706

[Deleted effective September 1, 2006.]

RULE ER 801
DEFINITIONS

The following definitions apply under this article:
(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements Which Are Not Hearsay. A statement is not hearsay if--

(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement, and the statement is (i) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (ii) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (iii) one of identification of a person made after perceiving the person; or

(2) Admission by Party-Opponent. The statement is offered against a party and is (i) the party's own statement, in either an individual or a representative capacity or (ii) a statement of which the party has manifested an adoption or belief in its truth, or (iii) a statement by a person authorized by the party to make a statement concerning the subject, or (iv) a statement by the party's agent or servant acting within the scope of the authority to make the statement for the party, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

[Amended effective September 1, 1992.]

Comment 801

[Deleted effective September 1, 2006.]

RULE ER 802
HEARSAY RULE

Hearsay is not admissible except as provided by these rules, by other court rules, or by statute.

[Adopted effective April 2, 1979.]

Comment 802

[Deleted effective September 1, 2006.]

RULE ER 803
HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

(a) Specific Exceptions. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind,

emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of Regularly Conducted Activity. (Reserved. See RCW 5.45.)

(7) Absence of Entry in Records Kept in Accordance With RCW 5.45. Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of RCW 5.45, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public Records and Reports. (Reserved. See RCW 5.44.040.)

(9) Records of Vital Statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of Religious Organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, Baptismal, and Similar Certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, tattoos, engravings on urns, crypts, or tombstones, or the like.

(14) Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office.

(15) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in Ancient Documents. Statements in a document in existence 20 years or more whose authenticity is established.

(17) Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation Concerning Personal or Family History. Reputation among members of a person's family by blood, adoption,

or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of a person's personal or family history.

(20) Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to Character. Reputation of a person's character among his associates or in the community.

(22) Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of 1 year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal case for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to Personal, Family, or General History, or Boundaries. Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(b) Other Exceptions. (Reserved.)

[Amended effective September 1, 1992.]

Comment 803

[Deleted effective September 1, 2006.]

RULE 804
HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) Testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subsection (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

(6) A declarant is not unavailable as a witness if the exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. In a trial for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. In a criminal case, a

statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History. (i) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (ii) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the others family as to be likely to have accurate information concerning the matter declared.

(5) Other Exceptions. (Reserved.)

[Amended effective September 1, 1992.]

Comment 804

[Deleted effective September 1, 2006.]

RULE ER 805
HEARSAY WITHIN HEARSAY

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

[Adopted effective April 2, 1979.]

Comment 805

[Deleted effective September 1, 2006.]

RULE 806
ATTACKING AND SUPPORTING CREDIBILITY
OF DECLARANT

When a hearsay statement, or a statement defined in rule 801(d)(2)(iii), (iv), or (v), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross examination.

[Amended effective September 1, 1992.]

Comment 806

[Deleted effective September 1, 2006.]

RULE ER 807
CHILD VICTIMS OR WITNESSES

(Reserved. See RCW 9A.44.120.)

[Adopted effective September 1, 1988.]

Comment 807

[Deleted effective September 1, 2006.]

RULE ER 901
REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of Witness With Knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert Opinion on Handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by Court or Expert Witness. Comparison by the court or by expert witnesses with specimens which have been authenticated.

(4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (i) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (ii) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public Records or Reports. (Reserved. See RCW 5.44 and CR 44.)

(8) Ancient Documents or Data Compilation. Evidence that a document or data compilation, in any form, (i) is in such condition as to create no suspicion concerning its authenticity, (ii) was in a place where it, if authentic, would likely be, and (iii) has been in existence 20 years or more at the time it is offered.

(9) Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods Provided by Statute or Rule. Any method of authentication or identification provided by statute or court rule.

[Adopted effective April 2, 1979.]

Comment 901

[Deleted effective September 1, 2006.]

RULE ER 902
SELF-AUTHENTICATION

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(a) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(b) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in section (a), having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) Foreign Public Documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (1) of the executing or attesting person, or (2) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United

States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(d) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with section (a), (b), or (c) of this rule or complying with any applicable law, treaty or convention of the United States, or the applicable law of a state or territory of the United States.

(e) Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(f) Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.

(g) Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(h) Acknowledged Documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(i) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(j) Presumptions Created by Law. Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.

[Amended effective August 27, 1980; September 1, 1988; September 1, 1992.]

Comment 902

[Deleted effective September 1, 2006.]

RULE ER 903
SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

[Adopted effective April 2, 1979.]

Comment 903

[Deleted effective September 1, 2006.]

RULE ER 904
ADMISSIBILITY OF DOCUMENTS

(a) Certain Documents Admissible. In a civil case, any of the following documents proposed as exhibits in accordance with section (b) of this rule shall be deemed admissible unless objection is made under section (c) of this rule:

(1) A bill, report made for the purpose of treatment, chart, record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead or billhead;

(2) A bill for drugs, medical appliances or other related expenses on a letterhead or billhead;

(3) A bill for, or an estimate of, property damage on a letterhead or billhead. In the case of an estimate, the party intending to offer the estimate shall forward a copy to the adverse party with a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part and attach a copy of the receipted bill showing the items of repair and amounts paid;

(4) A weather or traffic signal report, or standard United States government table;

(5) A photograph, x-ray, drawing, map, blueprint or similar documentary evidence;

(6) A document not specifically covered by any of the foregoing provisions but relating to a material fact and having equivalent circumstantial guaranties of trustworthiness, the admission of which would serve the interests of justice.

(b) Notice. Any party intending to offer a document under this rule must serve on all parties a notice, no less than 30 days before trial, stating that the documents are being offered under Evidence Rule 904 and shall be deemed authentic and admissible without testimony or further identification, unless objection is served within 14 days of the date of notice, pursuant to ER 904(c). The notice shall be accompanied by (1) numbered copies of the documents and (2) an index, which shall be organized by document number and which shall contain a brief description of the document along with the name, address and telephone number of the document's author or maker. The notice shall be filed with the court. Copies of documents that accompany the notice shall not be filed with the court.

(c) Objection to Authenticity or Admissibility. Within 14 days of notice, any other party may serve on all parties a written objection to any document offered under section (b), identifying each document to which objection is made by number and brief description.

(1) If an objection is made to a document on the basis of authentication, and if the court finds that the objection was made without reasonable basis, the offering party shall be entitled to an award of expenses and reasonable attorney fees incurred as a result of the required proof of authentication as to each such document determined to be authentic and offered as an exhibit at the time of trial.

(2) If an objection is made to a document on the basis of admissibility, the grounds for the objection shall be specifically set forth, except objection on the grounds of relevancy need not be made until trial. If the court finds that the objection was made without reasonable basis and the document is admitted as an exhibit at trial, the court may award the offering party any expenses incurred and reasonable attorney fees.

(d) Effect of Rule. This rule does not restrict argument or proof relating to the weight to be accorded the evidence submitted, nor does it restrict the trier of fact's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties.

[Adopted effective September 18, 1992; amended effective October 29, 1993; January 27, 1998.]

RULE 1001
DEFINITIONS

For purposes of this article the following definitions are applicable:

(a) Writings and Recordings. "Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) Photographs. "Photographs" include still photographs, X-ray films, videotapes, and motion pictures.

(c) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

(d) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

[Amended effective August 27, 1980.]

Comment 1001

[Deleted effective September 1, 2006.]

RULE 1002
REQUIREMENT OF ORIGINAL

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by rules adopted by the Supreme Court of this state or by statute.

Comment 1002

[Deleted effective September 1, 2006.]

RULE 1003
ADMISSIBILITY OF DUPLICATES

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Comment 1003

[Deleted effective September 1, 2006.]

RULE 1004
ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(a) Original Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(b) Original Not Obtainable. No original can be obtained by any available judicial process or procedure; or

(c) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(d) Collateral Matters. The writing, recording, or photograph is not closely related to a controlling issue.

Comment 1004

[Deleted effective September 1, 2006.]

RULE 1005
PUBLIC RECORDS

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Comment 1005

[Deleted effective September 1, 2006.]

RULE ER 1006
SUMMARIES

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Comment 1006

[Deleted effective September 1, 2006.]

RULE 1007
TESTIMONY OR WRITTEN ADMISSION OF PARTY

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

Comment 1007

[Deleted effective September 1, 2006.]

RULE 1008
FUNCTIONS OF COURT AND JURY

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 104. However, when an issue is raised (1) whether the asserted writing ever existed, or (2) whether another writing, recording, or photograph produced at the trial is the original, or (3) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Comment 1008

[Deleted effective September 1, 2006.]

ER RULE 1101
APPLICABILITY OF RULES

(a) Courts Generally. Except as otherwise provided in section (c), these rules apply to all actions and proceedings in the courts of the state of Washington. The terms "judge" and "court" in these rules refer to any judge of any court to which these rules apply or any other officer who is authorized by law to hold any hearing to which these rules apply.

(b) Law With Respect to Privilege. The law with respect to privileges applies at all stages of all actions, cases, and proceedings.

(c) When Rules Need Not Be Applied. The rules (other than with respect to privileges, the rape shield statute and ER 412)) need not be applied in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

(2) Grand Jury. Proceedings before grand juries and special inquiry judges.

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; detainer proceedings under RCW 9.100; preliminary determinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; contempt proceedings in which the court may act summarily; habeas corpus proceedings; small claims court; supplemental proceedings under RCW 6.32; coroners' inquests; preliminary determinations in juvenile court; juvenile court hearings on declining jurisdiction; disposition, review, and permanency planning hearings in juvenile court; dispositional determinations related to treatment for alcoholism, intoxication, or drug addiction under RCW 70.96A; and dispositional determinations under the Civil Commitment Act, RCW 71.05.

(4) Applications for Protection Orders. Protection order proceedings under RCW 7.90, 10.14 , 26.50 and 74.34. Provided when a judge proposes to consider information from a criminal or civil database, the judge shall disclose the information to each party present at the hearing; on timely request, provide each party with an opportunity to be heard; and, take appropriate measures to alleviate litigants' safety concerns. The judge has discretion not to disclose information that he or she does not propose to consider.

(d) Arbitration Hearings. In a mandatory arbitration hearing under RCW 7.06, the admissibility of evidence is governed by MAR 5.3.

[Amended September 2, 1999; January 2, 2008; September 1, 2008, September 1, 2010]

Comment 1101

[Deleted effective September 1, 2006]

RULE 1102
AMENDMENTS

(RESERVED)

RULE 1103
TITLE

These rules may be known and cited as the Washington Rules of Evidence. ER is the official abbreviation.

[Effective April 2, 1979.]