


ORDER

IN THE MATTER OF THE NON-BIASED AND INCLUSIVE LANGUAGE PROJECT—
SUGGESTED AMENDMENTS

DATED at Olympia, Washington this 9th day of June, 2022.



Johnson, J.



González, C.J.



Gordon McCloud, J.



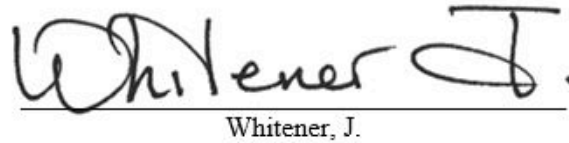
Madsen, J.



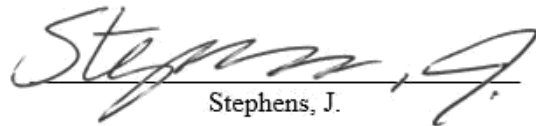
Yu, J.



Owens, J.



Whitener, J.



Stephens, J.

GR 3.1
SERVICE AND FILING BY AN ~~INMATE CONFINED IN AN~~
INSTITUTION INCARCERATED PERSON

(a) If an ~~inmate confined in an institution~~ incarcerated person 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) [Unchanged.]

(c) If an institution has a system designed for legal mail, the ~~inmate~~ incarcerated person 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~~ incarcerated person*], 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~~ incarcerated person files or serves the document under this rule, that period shall begin to run on the date the document is received by the party.

GR 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 that 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~~ their agents for inspection and audit, as to all funds received, disbursed, or in possession of said court.

GR 10
ETHICS ADVISORY COMMITTEE REGARDING
ADVISORY OPINIONS ON JUDICIAL CONDUCT

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

(b) - (c) [Unchanged.]

GR 12.4
WASHINGTON STATE BAR ASSOCIATION ACCESS TO
RECORDS

(a) – (g) [Unchanged.]

(h) Review of Records Decisions.

(1) [Unchanged.]

(2) *External Review.* A person who objects to a records review decision by the Bar's Executive Director may request review by the Records Request Appeals Officer (RRAO) for the Bar.

(A) – (B) [Unchanged.] The review will be informal and summary, but in the sole discretion of the RRAO may include the submission of briefs no more than 20 pages long and of oral arguments no more than 15 minutes long.

(C) Decisions of the RRAO are final unless, within 30 days of the issuance of the decision, a request for discretionary review of the decision is filed with the Supreme Court. If review is granted, review is conducted by the Chief Justice of the Washington Supreme Court or ~~his or her~~ their designee in accordance with procedures established by the Supreme Court. A designee of the Chief Justice shall be a current or former elected judge. The review proceeding shall be on the record, without additional briefing or argument unless such is ordered by the Chief Justice or ~~his or her~~ their designee.

(D) [Unchanged.]

(i) - (j) [Unchanged.]

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~~ their discretion during the pendency of such conditions or events.

(b) – (c) [Unchanged.]

GR 23
RULE FOR CERTIFYING PROFESSIONAL GUARDIANS
AND CONSERVATORS

(a) – (b) [Unchanged.]

(c) Certified Professional Guardian Board.

(1) – (6) [Unchanged.]

(7) *Conflict of Interest.* A Board member should self-disqualify ~~himself or herself~~ from making any decisions in a proceeding in which ~~his or her~~ their 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.

(8) – (9) [Unchanged.]

(d) – (i) [Unchanged.]

GR 26
MANDATORY CONTINUING JUDICIAL
EDUCATION

Preamble. [Unchanged.]

(a) [Unchanged.]

(b) Judicial College Attendance.

(1) [Unchanged.]

(2) A judicial officer who attended the Washington Judicial College during ~~his or her~~their term of office in a court of limited jurisdiction shall attend and complete the Washington Judicial College within twelve (12) months of any subsequent appointment or election to the Superior Court. A judicial officer who attended the Washington Judicial College during ~~his or her~~their term of office in the Superior Court shall attend and complete the Washington Judicial College within twelve (12) 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~~their 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) [Unchanged.]

(c) – (f) [Unchanged.]

GR 26 Standards
WASHINGTON STATE JUDICIAL EDUCATION
MANDATORY CONTINUING JUDICIAL EDUCATION STANDARDS

Section I: [Unchanged.]

Section II: General Standards for Continuing Judicial Education

1. Credit for Continuing Judicial Education (CJE)

During ~~his or her~~their three (3)-year reporting cycle, each judicial officer must complete forty-five (45) hours of CJE credits, six (6) of which are in the area of judicial ethics. This requirement may be met either by attending approved courses or completing other continuing judicial or legal education activity approved for credit by the CEC, as described below.

(a)– (e) [Unchanged.]

(f) A judicial officer may complete credits through other courses that directly aid the judicial officer in performing ~~his or her~~their specific judicial duties and are approved by the CEC.

2. – 4. [Unchanged.]

Section III: Program Accreditation

1. – 4. [Unchanged.]

5. Programs That Do Not Qualify

The following activities will not qualify for CJE credit:

(a) Continuing Professional Education courses that do **not** relate to substantive legal topics, statutory, constitutional or procedural issues that come before the judicial officer when performing ~~his or her~~their specific judicial duties;

(b) – (e) [Unchanged.]

6. [Unchanged.]

Section IV: - Section V: [Unchanged.]

GR 29
**PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED
JURISDICTION COURT DISTRICT**

(a) – (e) [Unchanged.]

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

(1) – (12) [Unchanged.]

(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 or her~~ their 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) – (l) [Unchanged.]

GR 30
ELECTRONIC FILING AND SERVICE

(a) – (c) [Unchanged.]

(d) Authentication of Electronic Documents.

(1) *Procedures*

(A) – (B) [Unchanged.]

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

(2) *Signatures*

(A) – (C) [Unchanged.]

(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~~their 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~~their 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) – (F) [Unchanged.]

(3) [Unchanged.]

(e) [Unchanged.]

GR 31.1
ACCESS TO ADMINISTRATIVE RECORDS

GENERAL PRINCIPLES

(a) – (b) [Unchanged.]

PROCEDURES FOR ADMINISTRATIVE RECORDS

(c) Procedures for Records Requests.

(1) **COURTS AND JUDICIAL AGENCIES TO ADOPT PROCEDURES.** Each court and judicial agency must adopt a policy implementing this rule and setting forth its procedures for accepting and responding to administrative records requests. The policy must include the designation of a public records officer and shall require that requests from the identified individual or, if an entity, an identified entity representative, be submitted in writing to the designated public records officer. Best practices for handling administrative records requests shall be developed under the authority of the Board for Judicial Administration.

COMMENT: When adopting policies and procedures, courts and judicial agencies will need to carefully consider many issues, including the extent to which judicial employees may use personally owned computers and other media devices to conduct official business and the extent to which the court or agency will rely on the individual employee to search ~~his or her~~ their personally owned media devices for documents in response to a records request. For judicial officers and their chambers staff, documents on personal media devices may still qualify as chambers records, see section (m) of this rule.

(2) – (7) [Unchanged.]

(d) – (o) [Unchanged.]

GR 33
REQUESTS FOR ACCOMMODATION BY PERSONS WITH
DISABILITIES

(a) [Unchanged.]

(b) Process for Requesting Accommodation.

(1) – (3) [Unchanged.]

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

(5) [Unchanged.]

(c)– (d) [Unchanged.]

(e) Denial. If a requested accommodation is denied, the court shall specify the reasons for the denial (including the reasons the proceeding cannot be continued without prejudice to a party). The court shall also ensure the person requesting the accommodation is informed of ~~his or her~~ their right to file a complaint under the Americans with Disabilities Act of 1990 with the United States Department of Justice Civil Rights Division.

Comments

[1] - [2] [Unchanged.]

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~~ their 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) [Unchanged.]

(3) An individual who is not represented by a QLSP (as that term is defined below) or an attorney working in conjunction with a QLSP 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~~ they are currently receiving assistance under a needs-based, means-tested assistance program such as the following:

(i) – (v) [Unchanged.]

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

(C) ~~his or her~~ their 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~~ them without the financial ability to pay the filing fees and other fees or surcharges for which a request for waiver is made; or

(D) [Unchanged.]

(4) – (5) [Unchanged.]

(b) [Unchanged.]

CJC APPLICATION

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

I. [Unchanged.]

II. PART-TIME JUDGE

(A) – (B) [Unchanged.]

(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~~ they 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.

Comments

[1] – [2] [Unchanged.]

III. JUDGE PRO TEMPORE

A judge pro tempore is not required to comply:

(A) – (C) [Unchanged.]

(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~~ they 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.

IV. [Unchanged.]

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~~ they are 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) – (4) [Unchanged.]

“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~~ they make 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~~ are 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~~ means a judge who serves on a continuing or periodic basis, but ~~are~~ who is 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~~ 12 cases or ~~twelve~~ 12 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, sibling, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

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.

Comments

[1] It is improper for a judge to use or attempt to use ~~his or her~~their 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~~their 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~~their personal business.

[2] – [4] [Unchanged.]

RULE 2.11
DISQUALIFICATION

(A) A judge shall self-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) – (2) [Unchanged.]

(3) The judge knows that ~~he or she~~ they, 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~~ have an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) – (6) [Unchanged.]

(B) – (C) [Unchanged.]

(D) A judge may self-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~~ their impartiality might reasonably be questioned. In making this determination the judge should consider:

(1) – (3) [Unchanged.]

Comments

[1] – [8] [Unchanged.]

RULE 2.12
SUPERVISORY DUTIES

(A) – (B) [Unchanged.]

Comments

[1] A judge is responsible for ~~his or her~~ their 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] [Unchanged.]

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~~their country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

Comment

[1] [Unchanged.]

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) – (B) [Unchanged.]

(C) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting ~~his or her~~ their 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) [Unchanged.]

Comments

[1] – [8] [Unchanged.]

RULE 3.8
APPOINTMENTS TO FIDUCIARY POSITIONS

(A) – (C) [Unchanged.]

(D) If a person who is serving in a fiduciary position becomes a judge, ~~he or she~~they must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

Comment

[1] [Unchanged.]

CJC 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~~ their 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) [Unchanged.]

Comment

[1] A judge may act pro se or on behalf of ~~his or her~~ their 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.

CJC 3.11
FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES

(A)-(C) [Unchanged.]

(D) As soon as practicable without serious financial detriment, the judge must self-divest ~~himself or herself~~ of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Comments

[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~~ their official title or appear in judicial robes in business advertising, or to conduct ~~his or her~~ their business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] [Unchanged.]

CJC 3.14
REIMBURSEMENT OF EXPENSES AND WAIVERS OF FEES OR CHARGES

(A)-(B) [Unchanged.]

Comments

[1]-[2] [Unchanged.]

[3] A judge must assure ~~himself or herself~~ themselves 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)-(h) [Unchanged.]

CJC 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)-(4) [Unchanged.]

(5) publicly self-identify ~~himself or herself~~ as a member or a candidate of a political organization, except

(a)-(b) [Unchanged.]

(6)-(12) [Unchanged.]

(B) [Unchanged.]

Comments

General Considerations

[1] [Unchanged.]

[2] When a person becomes a judicial candidate, this Canon becomes applicable to ~~his or her~~ their conduct.

Participation in Political Activities

[3]-[6] [Unchanged.]

Statements and Comments Made During a Campaign for Judicial Office

[7]-[8] [Unchanged.]

[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~~ them during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] [Unchanged.]

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

[11]-[12] [Unchanged.]

[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~~ their personal views.

[14]-[15] [Unchanged.]

Personal Solicitation of Campaign Funds

[16] [Unchanged.]

CJC 4.2
POLITICAL AND CAMPAIGN ACTIVITIES OF JUDICIAL
CANDIDATES IN PUBLIC ELECTIONS

(A) A judicial candidate* in a nonpartisan, public election* shall:

(1)-(2) [Unchanged.]

(3) review and approve the content of all campaign statements and materials produced by the candidate or ~~his or her~~ the judicial candidate's campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) [Unchanged.]

(B) A candidate for elective judicial office may:

(1) [Unchanged.]

(2) speak on behalf of ~~his or her~~ their candidacy through any medium, including but not limited to advertisements, ~~web sites~~ websites, or other campaign literature;

(3) [Unchanged.]

Comments

[1]-[5] [Unchanged.]

CJC 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~~their 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~~their campaign committee:

(1)-(3) [Unchanged.]

Comments

[1]-[2] [Unchanged.]

CJC 4.5
ACTIVITIES OF JUDGES WHO BECOME CANDIDATES FOR
NONJUDICIAL OFFICE

(A)-(B) [Unchanged.]

Comments

[1] [Unchanged.]

[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~~their candidacy, and prevents postcampaign 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.

DRJ 13
SUBSTITUTE PANEL

(a) [Unchanged.]

(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 self-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 self-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) [Unchanged.]

RULES OF PROFESSIONAL CONDUCT

FUNDAMENTAL PRINCIPLES OF PROFESSIONAL CONDUCT*

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. To understand this role, lawyers must comprehend the components of our legal system, and the interplay between the different types of professionals within that system. To fulfill this role lawyers must understand 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~~ that 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~~ their own conscience the touchstone against which to test the extent to which ~~his or her~~ their 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~~ that 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.

* 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.

RPC 1.0B
ADDITIONAL WASHINGTON TERMINOLOGY

(a)-(c) [Unchanged.]

(d) “Limited Practice Officer” or “LPO” denotes a person licensed in accordance with the procedures set forth in APR 12 and who has maintained ~~his or her~~ their certification in accordance with the rules and regulations of the Limited Practice Board.

(e) [Unchanged.]

Washington Comments (1-3)

[1]-[3] [Unchanged.]

RPC 1.2
SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN
CLIENT AND LAWYER

(a)-(f) [Unchanged.]

Comment

[1]-[13] [Unchanged.]

Additional Washington Comments (14-17)

[14]-[15] [Unchanged.]

[16] If a lawyer is unsure of the extent of ~~his or her~~ their 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]-[18] [Unchanged.]

RPC 1.6
CONFIDENTIALITY OF INFORMATION

(a)-(c) [Unchanged.]

Comments

[1]-[20] [Unchanged.]

Additional Washington Comments (21-28)

[21]-[27] [Unchanged.]

Other

[28] This Rule does not relieve a lawyer of ~~his or her~~ their obligations under Rule 5.4(b) of the Rules for Enforcement of Lawyer Conduct.

RPC 1.8
CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a)-(m) [Unchanged.]

Comment

[1]-[13] [Unchanged.]

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 by a lawyer 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~~ their 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]-[20] [Unchanged.]

Additional Washington Comments (21-31)

[21]-[23] [Unchanged.]

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~~ their 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.

[25]-[31] [Unchanged.]

RPC 1.10
IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a)-(d) [Unchanged.]

(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)-(2) [Unchanged.]

(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~~ their 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~~ their 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.

(f) [Unchanged.]

Comment

[1]-[8] [Unchanged.]

Additional Washington Comments [9-15]

[9] [Unchanged.]

[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~~ their 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]-[15] [Unchanged.]

RPC 1.13
ORGANIZATION AS CLIENT

(a)-(d) [Unchanged.]

(e) A lawyer who reasonably believes that ~~he or she has~~ they have 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)-(h) [Unchanged.]

Comment

[1]-[7] [Unchanged.]

[8] A lawyer who reasonably believes that ~~he or she has~~ they have 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.

[9]-[14] [Unchanged.]

Additional Washington Comments [15-16]

[15]-[16] [Unchanged.]

RPC 1.14
CLIENT WITH DIMINISHED CAPACITY

(a)-(c) [Unchanged.]

Comments

[1]-[9] [Unchanged.]

[10] **[Washington revision]** 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 legal practitioner involved the nature of ~~his or her~~ their 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.

RPC 1.18
DUTIES TO PROSPECTIVE CLIENT

(a)-(e) [Unchanged.]

Comment

[1]-[9] [Unchanged.]

Additional Washington Comments (10-13)

[10]-[12] [Unchanged.]

[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~~ they 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.

RPC 4.2
COMMUNICATION WITH PERSON REPRESENTED BY A LAWYER

[Unchanged.]

Comment

[1]-[6] [Unchanged.]

[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~~ their own lawyer, the consent by that lawyer 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]-[9] [Unchanged.]

Additional Washington Comments (10-12)

[10] [Unchanged.]

[11] **[Washington revision]** A person not otherwise represented by a lawyer 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~~ they are 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)).

[12] [Unchanged.]

RPC 4.3
DEALING WITH PERSON NOT REPRESENTED BY A LAWYER

[Unchanged.]

Comment

[1]-[2] [Unchanged.]

Additional Washington Comments (3-6)

[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~~ they are 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]-[6] [Unchanged.]

RPC 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)-(b) [Unchanged.]

Comment

[1] [**Washington revision**] Every lawyer, regardless of professional prominence or professional ~~work load~~ workload, 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~~ their 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 postconviction death penalty appeal cases.

[2]-[12] [Unchanged.]

Additional Washington Comments (13-16)

[13]-[16] [Unchanged.]

**RPC 8.4
MISCONDUCT**

It is professional misconduct for a lawyer to:

(a)-(h) [Unchanged.]

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act ~~which~~ that reflects disregard for the rule of law, whether the same be committed in the course of ~~his or her~~ their 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~~ them to do or cease doing an act ~~which~~ that ~~he or she~~ they ought in good faith to do or forbear;

(k) violate ~~his or her~~ their oath as an attorney;

(l)-(n) [Unchanged.]

Comment

[1]-[5] [Unchanged.]

Additional Washington Comments (6-8)

[6]-[8] [Unchanged.]

RPC 8.5
DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a)-(b) [Unchanged.]

(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~~their 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

[1]-[7] [Unchanged.]

Additional Washington Comments (8-13)

[8]-[9] [Unchanged.]

[10] Paragraph (c) does not prevent the exercise of disciplinary authority over (1) a judge or justice after ~~he or she has~~they have 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~~them as a lawyer and otherwise outside of ~~his or her~~their judicial capacity.

[11]-[13] [Unchanged.]

APR 8
NONMEMBER LAWYER LICENSES TO PRACTICE LAW

(a) [Unchanged.]

(b) Exception for Particular Action or Proceeding. A lawyer member in good standing of, and permitted to practice law in, the bar of any other state or territory of the United States or of the District of Columbia, or a lawyer who is providing legal services for no fee through a qualified legal services provider pursuant to rule 8(f), may appear as a lawyer in any action or proceeding only

(i) [Unchanged.]

(ii) in association with an active lawyer member of the Bar, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal. The requirement in (ii) is waived for a lawyer 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, or a Region Legal Service Office or a Defense Service Office, or as Special Victims' Counsel or Victims' Legal Counsel for any branch of the United States Armed Forces, located in the State of Washington.

(1)-(4) [Unchanged.]

(5) No member of the Bar shall lend ~~his or her~~their name for the purpose of, or in any way assist in, avoiding the effect of this rule.

(6) [Unchanged.]

(c)-(g) [Unchanged.]

APR 9
LICENSED LEGAL INTERNS

(a)-(e) [Unchanged.]

(f) Additional Obligations of Supervising Lawyer. Agreeing to serve as the supervising lawyer for a Licensed Legal Intern imposes certain additional obligations on the supervising lawyer. The failure of a supervising lawyer 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. In addition to the duties stated or implied above, the supervising lawyer:

(1)-(6) [Unchanged.]

(7) must meet with any Licensed Legal Intern ~~he/she is~~ they are supervising, in person or by telephone, a minimum of one time per week, to review cases being handled and to provide feedback on performance, to provide additional guidance and instruction, and to answer questions or issues raised by the Licensed Legal Intern;

(8)-(10) [Unchanged.]

(g) [Unchanged.]

(h) Term of Limited License. A limited license issued pursuant to this rule shall be valid, unless it is revoked or supervision is terminated, for a period of not more than 30 consecutive months, and in no case will it be valid if it has been more than 18 months since the Licensed Legal Intern graduated from law school or completed the APR 6 Law Clerk program.

(1)-(2) [Unchanged.]

(3) A Licensed Legal Intern must immediately cease performing any services under this rule and must cease holding ~~himself or herself~~ themselves out as a Licensed Legal Intern upon:

(A)-(E) [Unchanged.]

APR 12
LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

(a)-(e) [Unchanged.]

(f) Continuing License Requirements.

(1) [Unchanged.]

(2) *Financial Responsibility.* Each active limited practice officer shall submit to the LP Board proof of ability to respond in damages resulting from ~~his or her~~ their acts or omissions in the performance of services permitted under APR 12 in one of the following described manners.

A.-E. [Unchanged.]

(3)-(4) [Unchanged.]

(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~~ their customers or clients;

(2)-(5) [Unchanged.]

(h)-(l) [Unchanged.]

Comment

[1]-[2] [Unchanged.]

**APR 12
APPENDIX**

**LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL
CONDUCT (LPORPC)**

LPORPC 1.0 Terminology

The following definitions apply to all rules and regulations governing LPOs under APR 12 except only where a term is expressly differently defined for use in particular provisions of any rule or regulation.

(a)-(e) [Unchanged.]

(f) “Limited Practice Officer” or “LPO” means a person licensed in accordance with the procedures set forth in APR 12 and who has maintained ~~his or her~~ their certification in accordance with the rules and regulations of the Limited Practice Board.

(g)-(n) [Unchanged.]

Comment

[Unchanged.]

**LPORPC 1.2
DILIGENCE**

An LPO must act with reasonable diligence and promptness in the performance of ~~his or her~~ their duties, including the timely preparation of documents required to meet the closing date specified by the clients.

Comment

[Unchanged.]

LPORPC 1.6
DECLINING OR TERMINATING SERVICES

(a) An LPO shall decline to provide LPO services or, where LPO services have commenced, shall terminate LPO services if:

(1) [Unchanged.]

(2) The LPO's physical or mental condition materially impairs ~~his or her~~ their ability to provide LPO services;

(3)-(5) [Unchanged.]

(b) An LPO may refuse to provide LPO services for any other reason, including without limitation the following, if:

(1) A client persists in a course of action involving the LPO's services that the LPO reasonably believes is criminal or fraudulent or illegal, or that might require the LPO to exceed ~~his or her~~ their authority as an LPO;

(2)-(6) [Unchanged.]

(c) [Unchanged.]

Comment

[Unchanged.]

LPORPC 1.8
UNAUTHORIZED PRACTICE OF LAW

An LPO shall not:

(a) [Unchanged.]

(b) permit ~~his or her~~their name, signature stamp, or LPO number to be used by any other person;

(c) [Unchanged.]

(d) work as an LPO while on inactive status, or while ~~his or her~~their LPO certification is suspended or revoked for any cause.

Comment

[Unchanged.]

**LPORPC 1.10
MISCONDUCT**

It is professional misconduct for an LPO to:

(a)-(c) [Unchanged.]

(d) willfully disobey or violate a valid court order directing ~~him or her~~ them to do or cease doing an act ~~which he or she~~ that they ought in good faith to do or forbear;

(e) violate ~~his or her~~ their oath as an LPO;

(f)-(h) [Unchanged.]

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act that reflects disregard for the rule of law, whether the same be committed in the course of ~~his or her~~ their conduct as an LPO, 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.

Comment

[Unchanged.]

**APR 12 APPENDIX
RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT
(ELPOC)**

**ELPOC 2.3
LIMITED PRACTICE BOARD**

(a)-(b) [Unchanged.]

(c) Disqualification.

(1) A Board member should self-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)-(D) [Unchanged.]

(d)-(f) [Unchanged.]

ELPOC 2.8
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~~ their duties, or for any other cause, and to fill the resulting vacancy.

ELPOC 4.1
SERVICE OF PAPERS

(a) [Unchanged.]

(b) Methods of Service.

(1) *Service by Mail.*

(A)-(B) [Unchanged.]

(C) The address for service by mail is as follows:

(i) for the respondent, or ~~his or her~~ their attorney of record, the address in the answer, a notice of appearance, or any subsequent document filed by the respondent or ~~his or her~~ their attorney; or, in the absence of an answer, the respondent's address on file with the Association;

(ii) [Unchanged.]

(2) [Unchanged.]

(3) *Personal Service.* Personal service on a respondent is accomplished as follows:

(A) [Unchanged.]

(B) if the respondent cannot be found in Washington State, service may be made either by:

(i) [Unchanged.]

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at ~~his or her~~ their last known place of abode, office address maintained for the practice as an LPO, post office address, or address on file with the Association.

(C) [Unchanged.]

(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~~ incapacitated or incapable of conducting ~~his or her~~ their own affairs, service under sections (a) and (b) above must also be made on the guardian or guardian ad litem.

(d) [Unchanged.]

ELPOC 5.1
GRIEVANTS

(a)-(c) [Unchanged.]

(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~~ the grievant's possession, and witnesses' names and addresses;

(2)-(3) [Unchanged.]

ELPOC 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 LPO concerning ~~his or her~~ their conduct. An advisory letter may be issued by the discipline 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.

ELPOC 8.1
ACTION ON ADJUDICATION OF INCOMPETENCE

(a) Grounds. The Board must automatically transfer an LPO from active to disability inactive membership status upon receipt of a certified copy of the judgment, order, or other appropriate document demonstrating that the LPO:

(1) was found to be incapable of assisting in ~~his or her~~ their own defense in a criminal action;

(2) [Unchanged.]

(3) had a guardian (but not a limited guardian) appointed for ~~his or her person~~ themselves or their estate on a finding of incompetency; or

(b) Notice to LPO. The Board must forthwith notify the disabled LPO and ~~his or her~~ their 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.

ELPOC 8.3
DISABILITY PROCEEDINGS DURING THE COURSE OF DISCIPLINARY
PROCEEDINGS

(a) [Unchanged.]

(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~~ themselves in the disciplinary proceedings because of mental or physical incapacity;

(2)-(3) [Unchanged.]

(c) [Unchanged.]

(d) Procedure for Supplemental Proceedings.

(1)-(6) [Unchanged.]

(7) *Hearing Officer Decision.*

(A) Capacity To Defend and Practice as an LPO. If the hearing officer or panel finds that the respondent is capable of defending ~~himself or herself~~ themselves and has the mental and physical capacity to practice as an LPO, 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~~ themselves 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) [Unchanged.]

(8) [Unchanged.]

(e) [Unchanged.]

ELPOC 9.2
VOLUNTARY CANCELLATION IN LIEU OF REVOCATION

(a) Grounds. A respondent LPO who desires not to contest or defend against allegations of misconduct may, at any time before the answer in any disciplinary proceeding is due, voluntarily cancel ~~his or her~~their certification as an LPO in lieu of further disciplinary proceedings.

(b)-(g) [Unchanged.]

ELPOC 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 an LPO's conduct should have an impact on ~~his or her~~ their license to practice as an LPO.

(b)-(e) [Unchanged.]

ELPOC 11.12
DECISION OF BOARD

(a)-(b) [Unchanged.]

(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~~ their 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)-(h) [Unchanged.]

**ELPOC 12.6
BRIEFS**

(a) Brief Required. The party seeking review must file a brief stating ~~his or her~~ their objections to the Board's decision.

(b)-(g) [Unchanged.]

ELPOC 14.1

NOTICE TO CLIENTS IN WHICH LPO IS PROVIDING SERVICES; PROVIDING PROPERTY BELONGING TO CLIENTS IN WHICH LPO IS PROVIDING SERVICES

(a)-(c) [Unchanged.]

(d) Notice if Transferred to Disability Inactive Status. An LPO transferred to disability inactive status, or ~~his or her~~their guardian if one has been appointed, must give all notices required by section (c), except that the notices need not refer to disability.

ELPOC 14.2
LPO TO DISCONTINUE PRACTICE AS AN LPO

A revoked or suspended LPO, or an LPO transferred to disability inactive status, must not practice as an LPO after the effective date of the revocation, suspension, or transfer to disability inactive status, and also must take whatever steps are necessary to avoid any reasonable likelihood that anyone will rely on ~~him or her~~ them as an LPO. This rule does not preclude a revoked or suspended LPO, or an LPO transferred to disability inactive status, from disbursing assets held by the LPO to parties to transactions or other persons.

ELPOC 14.4
LPO TO KEEP RECORDS OF COMPLIANCE

When an LPO's certification has been revoked, suspended, or transferred to disability inactive status, the LPO must maintain written records of the various steps they have taken ~~by him or her~~ under this title, so that proof of compliance will be available in any subsequent proceeding.

APR 14
LIMITED PRACTICE RULE FOR FOREIGN LAW CONSULTANTS

(a)-(b) [Unchanged.]

(c) Procedure. The Bar shall approve or disapprove applications for admission of Foreign Law Consultants licenses. Additional proof of any facts stated in the application may be required by the Bar. 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 Bar may deny the application. Upon approval of the application by the Bar, the Bar shall recommend to the Supreme Court that the applicant be granted a license for the purposes herein stated. The Supreme Court may enter an order licensing to practice those applicants it deems qualified, conditioned upon such applicant's:

(1)-(2) [Unchanged.]

(3) Filing with the Bar in writing ~~his or her~~ their address in the State of Washington, or the name and address of ~~his or her~~ their registered agent as provided in APR 13, 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)-(5) [Unchanged.]

(6) In any way hold ~~himself or herself~~ themselves out as a member of the Bar of the State of Washington; or

(7) [Unchanged.]

(e) [Unchanged.]

(f) Continuing Requirements.

(1) [Unchanged.]

(2) *Report.* A Foreign Law Consultant shall promptly report to the Bar any change in ~~his or her~~ their status in any jurisdiction where ~~he or she is~~ they are admitted to practice law.

(g) [Unchanged.]

(h) Reciprocity. A Foreign Law Consultant applicant shall demonstrate that the country or jurisdiction from which ~~he or she applies~~ they apply does not impose, by any law, rule, or regulation, any requirements, limitations, restrictions, or conditions upon the admission of members of the Bar as Foreign Law Consultants in that foreign country or jurisdiction ~~which that~~ are significantly more limiting or restrictive than the requirements of this rule. The Supreme Court may deny a license 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.

APR 15
CLIENT PROTECTION FUND

(a)-(d) [Unchanged.]

(e) Restitution. A lawyer, LLLT, or LPO whose conduct results in payment to an applicant shall be liable to the Fund for restitution.

(1)-(4) [Unchanged.]

(5) Bar counsel assigned to the Client Protection Board may, in ~~his or her~~ the bar counsel's sole discretion, enter into an agreement with a lawyer, LLLT, or LPO for a reasonable periodic payment plan if the lawyer, LLLT, or LPO demonstrates in writing the present inability to pay assessed costs and expenses.

(A)-(B) [Unchanged.]

(6) [Unchanged.]

(f)-(i) [Unchanged.]

CLIENT PROTECTION FUND (APR 15) PROCEDURAL REGULATIONS

Regulations 1.- 5. [Unchanged.]

Regulation 6. Procedures

(a)-(b) [Unchanged.]

(c) Notification of lawyer, LLLT, or LPO. The lawyer, LLLT, or LPO, or ~~his or her~~ their 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, LLLT's, or LPO's address of record on file with the Bar is not current, then a copy of the application should be sent to the lawyer, LLLT, or LPO at any other address on file with the Bar. A copy of these Rules and Regulations shall be provided to the lawyer, LLLT, or LPO or representative.

(d)-(k) [Unchanged.]

Regulations 7.-15. [Unchanged.]

APR 19
LAWYER, LLLT, AND LPO SERVICES

(a)-(d) [Unchanged.]

(e) Professional Responsibility Program.

(1)-(3) [Unchanged.]

(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~~ their 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~~ their 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)~~ (ii) seeks an opinion about the ethical conduct of a person other than the inquirer; ~~or~~ (iii) seeks an opinion about the ethical propriety of the inquirer's past conduct.

(5)-(7) [Unchanged.]

(f) [Unchanged.]

APR 22.1
REVIEW OF APPLICATIONS

(a)-(b) [Unchanged.]

(c) Review By Bar Counsel. Upon receiving a referral from Bar admissions staff, Bar Counsel may conduct such further investigation as ~~he or she deems~~ they deem necessary. 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. Any investigation or inquiry into a health diagnosis, alcohol or drug dependence, or treatment for either must comply with subsections (e) and (f) of this Rule.

(d)-(f) [Unchanged.]

APR 23
CHARACTER AND FITNESS BOARD

(a)-(c) [Unchanged.]

(d) Vacancies. Vacancies in lawyer membership on the Character and Fitness Board and in the office of the chair and vice-chair shall be filled by the Board of Governors. Vacancies in community representative 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~~ they replace, and if that unexpired term is less than 24 months ~~he or she~~ they may be reappointed to a consecutive term.

(e)-(i) [Unchanged.]

APR 23.4
SERVICE

Unless otherwise agreed by the parties in writing, service of papers and documents shall be made by first class postage prepaid mail to the applicant's, or ~~his or her~~ their counsel's, last known address on record with the Bar. 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.

APR 24.1
HEARING PROCEDURE

(a)-(b) [Unchanged.]

(c) **Burden of Proof.** An applicant must establish by clear and convincing evidence that ~~he or she is~~ they are of good moral character and possesses the requisite fitness to practice law.

(d)-(e) [Unchanged.]

(f) **Independent Medical Examination.** An independent medical examination (IME) may be requested by the Character and Fitness Board only when a basis for an inquiry by the Character and Fitness Board exists under APR 22.1(e) and only after testimony and evidence presented at the hearing has failed to resolve the Character and Fitness Board's reasonable concerns regarding the applicant's ability to meet the essential eligibility requirements to practice law. If the applicant has not previously been requested to provide information under APR 22.1(f)(1), (2), and (3), the Character and Fitness Board shall provide the applicant with the opportunity to submit such information, within such reasonable timelines as the Character and Fitness Board shall establish, prior to requesting the ~~independent medical examination~~ IME.

(1)-(3) [Unchanged.]

(4) *Report.* The examining professional shall issue a written report of ~~his or her~~ their findings, which shall be provided to the applicant and ~~his or her~~ the applicant's counsel, Bar Counsel, and the Character and Fitness Board.

(5)-(6) [Unchanged.]

(g) [Unchanged.]

APR 28

LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A.-H. [Unchanged.]

I. Continuing Licensing Requirements

(1) [Unchanged.]

(2) *Financial Responsibility*. Each LLLT shall show proof of ability to respond in damages resulting from ~~his or her~~ their acts or omissions in the performance of services permitted under APR 28 by:

(a)-(c) [Unchanged.]

(3)-(4) [Unchanged.]

J.-O. [Unchanged.]

APR 28 APPENDIX
REGULATIONS OF THE APR 28 LIMITED LICENSE LEGAL TECHNICIAN BOARD

Regulations 1.-3. [Unchanged.]

Regulation 4. Limited Time Waivers

A. [Unchanged.]

B. Waiver Requirements and Applications. To qualify for the limited time waiver, an applicant shall pay the required fee, submit the required waiver application form, and provide proof, in such form and manner as the Bar requires, that ~~he/she has~~ they have:

1.-3. [Unchanged.]

C.-E. [Unchanged.]

Regulations 5.-10. [Unchanged.]

LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROFESSIONAL CONDUCT (LLLT RPC)

FUNDAMENTAL PRINCIPLES OF PROFESSIONAL CONDUCT FOR AN LLLT*

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. LLLTs, within the scope of their limited licenses to deliver legal services, also play a significant role. The fulfillment of the LLLT's role requires an understanding of their relationship with and function in our legal system. A consequent obligation of LLLTs is to maintain the highest standards of ethical conduct.

In fulfilling professional responsibilities, an LLLT may provide services consistent with the authorized scope of ~~his or her~~ their practice that require the performance of many difficult tasks. Not every situation that an LLLT may encounter can be foreseen, but fundamental ethical principles are always present as guidelines.

The Rules of Professional Conduct for LLLTs point the way for the LLLT who aspires to the highest level of ethical conduct, and provide standards by which to judge the transgressor. Each LLLT must find within ~~his or her~~ their own conscience the touchstone against which to test the extent to which ~~his or her~~ their 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, including LLLTs and the society that LLLTs serve, that should provide to an LLLT the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction.

* 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 LLLTs to strive for the highest possible degree of ethical conduct, and these Fundamental Principles should inform many of our decisions as LLLTs. 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.

LLLT RPC 1.2
SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY
BETWEEN CLIENT AND LLLT

(a)-(e) [Unchanged.]

(f) An LLLT shall not purport to act as an LLLT for any person or organization if the LLLT knows or reasonably should know that the LLLT is acting without the authority of that person or organization and beyond ~~his or her~~ the LLLT's authorized scope of practice, unless the LLLT is authorized or required to so act by law or a court order.

(g) [Unchanged.]

Comment

[1]-[8] [Unchanged.]

LLLT RPC 1.10
IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a)-(d) [Unchanged.]

(e) When the prohibition on representation under paragraph (a) is based on Rule 1.9(a) or (b) and arises out of the disqualified LLLT's association with a prior firm, no other LLLT in the firm shall knowingly represent a person in a matter in which that LLLT is disqualified unless:

(1)-(2) [Unchanged.]

(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 LLLT 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 LLLT serves on ~~his or her~~ their former firm and former client an affidavit attesting that the personally disqualified LLLT will not participate in the matter and will not discuss the matter or the representation with any other LLLT or employee of ~~his or her~~ their current firm, and attesting that during the period of the LLLT's personal disqualification those LLLTs, or employees who do participate in the matter will be apprised that the personally disqualified LLLT is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified LLLT. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The firm, the personally disqualified LLLT, 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.

(f) [Unchanged.]

Comment

[1] [Unchanged.]

LLLT RPC 5.5
UNAUTHORIZED PRACTICE OF LAW

(a)-(d) [Unchanged.]

Comment

[1] Lawyer RPC 5.5(a) expresses the basic prohibition on a legal practitioner practicing law in a jurisdiction where that individual is not specifically licensed or otherwise authorized to practice law. It reflects the general notion (enforced through criminal-legal prohibitions and other law) that legal services may ~~only~~ be provided only by those licensed to do so. This limitation on the ability to practice law is designed to protect the public against the rendition of legal services by unqualified persons. *See* Comment [2] to Lawyer RPC 5.5.

As applied to LLLTs, this principle should apply with equal force. An actively licensed LLLT should practice law as an LLLT only in a jurisdiction where ~~he or she is~~ they are licensed to do so, i.e., Washington State. An LLLT must not practice law in a jurisdiction where ~~he or she is~~ they are not authorized to do so. Unless and until other jurisdictions authorize Washington-licensed LLLTs to practice law, it will be unethical under this Rule for the LLLT to provide or attempt to provide legal services extraterritorially. Relatedly, it is unethical to assist anyone in activities that constitute the unauthorized practice of law in any jurisdiction. *See also* APR 28(H)(6) (prohibiting an LLLT from providing services to a client in connection with a legal matter in another state unless permitted by the laws of that state to perform the services for the client).

[2] Lawyer RPC 5.5(b) through (d) define the circumstances in which lawyers can practice in Washington despite being unlicensed here. For example, lawyers actively licensed elsewhere may provide services on a temporary basis in Washington in association with a lawyer admitted to practice here or when the lawyer's activities "arise out of or are reasonably related to the lawyer's practice in ~~his or her~~ their home jurisdiction." These provisions also recognize that certain non-Washington-licensed lawyers may practice here on more than a temporary basis (e.g., lawyers providing services authorized by federal law), and otherwise prohibit non-Washington-licensed lawyers from establishing a systematic and continuous presence in Washington for the practice of law.

These provisions are, at this time, unnecessary in the LLLT RPC because there are no limited licenses in other jurisdictions tantamount to Washington's LLLT rules and no need to authorize limited license practitioners in other jurisdictions to practice law in Washington, either temporarily or on an ongoing basis. For this reason, paragraphs (b) through (d) are reserved.

LLLT RPC 8.4 MISCONDUCT

It is professional misconduct for an LLLT to:

(a)-(h) [Unchanged.]

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act ~~which~~ that reflects disregard for the rule of law, whether the same be committed in the course of ~~his or her~~ their conduct as an LLLT, 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~~ them to do or cease doing an act ~~which he or she~~ that they ought in good faith to do or forbear;

(k) violate ~~his or her~~ their oath as an LLLT;

(l)-(o) [Unchanged.]

Comment

[1]-[4] [Unchanged.]

ELC 2.3
DISCIPLINARY BOARD

(a)-(g) [Unchanged.]

(h) Disqualification. A Board member should self-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:

(1)-(5) [Unchanged.]

(i)-(k) [Unchanged.]

ELC 2.5
HEARING OFFICERS

(a)-(c) [Unchanged.]

(d) Terms of Appointment. Appointment to the hearing officer list is for an initial period of two years, followed by periods of four years. Reappointment is in the discretion of the Supreme Court upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel. A hearing officer may continue to act in any matter assigned before ~~his or her~~ their term expires. On the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, the Supreme Court may remove a person from the list of hearing officers.

(e)-(h) [Unchanged.]

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, members of the Disciplinary Board, officers and members of the Board of Governors, and staff, attorneys, and judicial officers of the Supreme Court. Conflicts Review Officers also review grievances filed against persons who have been assigned cases as adjunct disciplinary or special disciplinary counsel, or appointed in disability matters pursuant to ELC 8.2(c)(2), at the time the grievance is filed. A Conflicts Review Officer performs other functions as set forth in these rules.

(1) *Authority.* The Conflicts Review Officer's duties are limited to performing the initial review of grievances covered by this Rule. A Conflicts Review Officer may, under rule 5.3(b), obtain the respondent lawyer's response to the grievance, if ~~he/she~~ they feels it is necessary to do so, in ~~his/her~~ their sole discretion. A Conflicts Review Officer may dismiss the grievance under rule 5.7(a), defer the investigation under rule 5.3(d), or assign the grievance to special disciplinary counsel for investigation under rules 2.8(b) and 5.3. If a grievant requests review of a dismissal under rule 5.7(b), the Conflicts Review Officer may either reopen the matter for investigation or refer it to a review committee under that rule.

(2) [Unchanged.]

(b)-(f) [Unchanged.]

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~~ their duties, or for any other cause, and to fill the resulting vacancy.

ELC 4.1
SERVICE OF PAPERS

(a) [Unchanged.]

(b) Methods of Service.

(1) *Service by Mail.*

(A)-(B) [Unchanged.]

(C) The address for service by mail is as follows:

(i) for the respondent, or ~~his or her~~ their attorney of record, the address in the answer, a notice of appearance, or any subsequent document filed by the respondent or ~~his or her~~ their attorney; or, in the absence of an answer, the respondent's address on file with the Association;

(ii)-(iv) [Unchanged.]

(2) [Unchanged.]

(3) *Personal Service.* Personal service on a respondent is accomplished as follows:

(A) [Unchanged.]

(B) if the respondent cannot be found in Washington State, service may be made either by:

(i) [Unchanged.]

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at ~~his or her~~ their last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Association, or to the respondent's resident agent whose name and address are on file with the Association under APR 5(f).

(C) [Unchanged.]

(c)-(d) [Unchanged.]

ELC 4.9
SERVICE AND FILING BY AN INCARCERATED PERSON ~~INMATE~~
~~CONFINED IN AN INSTITUTION~~

Service and filing of papers under these rules by an incarcerated person ~~inmate confined in an institution~~ will conform to the requirements of GR 3.1.

ELC 5.1
GRIEVANTS

(a)-(c) [Unchanged.]

(d) Duties. A grievant should do the following:

(1) give the person assigned to the grievance documents or other evidence in ~~his or her~~ the grievant's possession, and witnesses' names and addresses;

(2)-(3) [Unchanged.]

(e) [Unchanged.]

ELC 5.8
ADVISORY LETTER

(a) Grounds. An advisory letter may be issued by a review committee when:

(1) a respondent lawyer's conduct constitutes a violation, but does not warrant an admonition or sanction, but it appears appropriate to caution a respondent lawyer concerning ~~his or her~~ their conduct; or

(2) [Unchanged.]

(b)-(c) [Unchanged.]

ELC 8.1
ACTION ON ADJUDICATION OF INCOMPETENCY OR INCAPACITY

(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~~ their own defense in a criminal action;

(2) [Unchanged.]

(3) had a guardian (but not a limited guardian) appointed for ~~his or her person~~ themselves or their estate on a judicial finding of incapacity;

(4)-(5) [Unchanged.]

(b) Notice to Lawyer. The Association must forthwith notify the disabled lawyer and ~~his or her~~ their guardian or guardian ad litem, if any, 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.

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. Subject to rule 5.2, the respondent lawyer and ~~his or her~~ their guardian or guardian ad litem, if any, shall be provided with a complete copy of disciplinary counsel's report and shall be afforded a reasonable opportunity to respond prior to the review committee taking action on the report. 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)-(e) [Unchanged.]

ELC 8.3
DISABILITY PROCEEDINGS DURING COURSE OF DISCIPLINARY
PROCEEDINGS

(a) [Unchanged.]

(b) Purpose of Supplemental Proceedings. In a supplemental proceeding, the hearing officer determines if the respondent:

(1) is incapable of defending ~~himself or herself~~ themselves in the disciplinary proceedings because of mental or physical incapacity;

(2)-(3) [Unchanged.]

(c) [Unchanged.]

(d) Procedure for Supplemental Proceedings.

(1)-(6) [Unchanged.]

(7) *Hearing Officer Decision.*

(A) Capacity To Defend and Practice Law. If the hearing officer finds that the respondent is capable of defending ~~himself or herself~~ themselves and has the mental and physical capacity to practice law, the disciplinary proceedings resume.

(B) Capacity To Defend with Counsel. Regardless of the hearing officer's determination as to mental or physical capacity to practice law, if the hearing officer finds that the respondent is not capable of defending ~~himself or herself~~ themselves 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 an active member of the Association as counsel for the respondent in the disciplinary proceeding.

(C)-(D) [Unchanged.]

(8) [Unchanged.]

(e) [Unchanged.]

ELC 9.3
RESIGNATION IN LIEU OF DISCIPLINE

(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, or thereafter with disciplinary counsel's consent, resign ~~his or her~~ their 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 and a proposed resignation form. After receiving the statement and the declaration of costs, if any, the respondent may resign by signing and submitting to disciplinary counsel the resignation form prepared by disciplinary counsel, sworn to or affirmed under oath, that must include the following:

(1) [Unchanged.]

(2) Respondent's statement that ~~he or she is~~ they are aware of the alleged misconduct stated in disciplinary counsel's statement and that rather than defend against the allegations, ~~he or she~~ they wishes to permanently resign from membership in the Association.

(3)-(8) [Unchanged.]

(c)-(g) [Unchanged.]

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~~ the lawyer's license to practice law.

(b)-(e) [Unchanged.]

ELC 11.12
DECISION OF BOARD

(a)-(b) [Unchanged.]

(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~~their last brief, including a response or reply, under rule 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)-(g) [Unchanged.]

ELC 12.4
DISCRETIONARY REVIEW

(a)-(c) [Unchanged.]

(d) Subsequent Petition by Other Parties. If a timely petition for discretionary review is filed by the Respondent or disciplinary counsel, and the other party wants relief from the Board's decision, ~~he or she~~ they must file a petition for discretionary review with the Clerk within the later of:

(1)-(2) [Unchanged.]

(e)-(f) [Unchanged.]

ELC 12.6
BRIEFS

(a) Brief Required. The party seeking review must file a brief stating ~~his or her~~ their objections to the Board's decision.

(b)-(g) [Unchanged.]

ELC 14.1

NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY

(a)-(c) [Unchanged.]

(d) Notice if Transferred to Disability Inactive Status. A lawyer transferred to disability inactive status, or ~~his or her~~their guardian if one has been appointed, must give all notices required by subsection (c), except that while the notices need not refer to the specifics of the disability, the notice must advise that the lawyer has been transferred to disability inactive status.

(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~~their 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.

ELC 14.2
LAWYER TO DISCONTINUE PRACTICE

(a) Discontinue Practice. A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, resignation in lieu of disbarment or discipline, 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~~ them as a lawyer authorized to practice law.

(b) [Unchanged.]

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 they have taken ~~by him or her~~ under this title, so that proof of compliance will be available in any subsequent proceeding.

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)-(20) [Unchanged.]

(21) *Reputation as to Character.* Reputation of a person's character among ~~his~~their associates or in the community.

(22)-(23) [Unchanged.]

(b) [Unchanged.]

ER 1101
APPLICABILITY OF RULES

(a)-(b) [Unchanged.]

(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)-(3) [Unchanged.]

(4) *Applications for Protection Orders.* Protection order proceedings under Chapters 7.90, 7.92, 7.94, 10.14, 26.50, and 74.34 RCW. 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~~ they do not propose to consider.

(d) [Unchanged.]