



**Board of Governors Special Meeting & Retreat  
Held Virtually  
October 22, 2022**

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***WSBA Mission: To serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.***

**SPECIAL MEETING**

**9:00 AM DISCUSSION AND POTENTIAL ACTION RE WSBA'S SUPPORT OF PROPOSED CHANGES TO GR 9 ..... 2**

**RETREAT**

**10:00 AM Welcome & Introductions**  
*Purpose: Get to know each other, get present, have fun.*

**10:30 AM Break**

**10:40 AM Small Group Discussion & Report Out – Why set goals? How can we make our goals effective?**  
*Purpose: Develop a shared understanding of the value of setting goals and what effective and useful goals should look like for our group.*

**11:20 AM Review Survey Results & Discussion**  
*Purpose: Refine proposed goals in light of discussion of effective goals and add additional suggestions to the list.*

**12:00 PM Break for Lunch**

**1:00 PM Review Survey Results & Discussion (continued)**

**1:30 PM Prioritization Activity & Discussion**  
*Purpose: Narrow list of proposed goals.*

**2:15 PM Break**

**2:30 PM Small Group Discussions & Report Out – What does success look like for these goals?**  
*Purpose: Begin the process of articulating a vision of success for each prioritized goal*

**3:30 PM Wrap-up & Discussion of Next Steps**  
*Purpose: Clarify expectations and assign tasks.*

**4:00 PM Adjourn**

**WASHINGTON STATE**  
**BAR ASSOCIATION**

**TO:** WSBA Board of Governors  
**FROM:** Daniel D. Clark, President  
Terra Nevitt, Executive Director  
**DATE:** October 15, 2022  
**RE:** Request to sign GR 9 Cover Sheet for proposed changes to General Rule 9(f)(2)

**DISCUSSION AND POTENTIAL ACTION:** Provide guidance to Pres. Clark regarding WSBA's co-sponsorship of proposed changes to General Rule 9(f)(2), including approval of the GR 9 Cover Sheet to accompany the proposed change.

At the September 22-23, 2022, Board of Governors meeting, the Board voted to co-sponsor proposed changes to General Rule 9(f)(2) at the request of the DMCJA and SCJA. The proposed changes would modify the Washington Supreme Court's rulemaking process.

During the discussion at the September meeting, considering concerns raised by Chief Disciplinary Counsel Doug Ende, additional input was invited. That input has been provided and incorporated in part. In addition, the DMCJA and the SCJA has sought to involve WSBA in developing the GR 9 Cover Sheet that will accompany the rule as they indicated that they would. Finally, Pres. Clark and Executive Director Nevitt reached out to the Chief Justice of the Supreme Court and the co-chairs of the Court's Rules Committee to make them aware of WSBA's support of this proposal. As a result of these discussions, and having consulted with General Counsel, we believe it is appropriate to bring the matter back to the Board for further consideration with some additional information about the purposes of and context for this proposed change.

Specifically, we would seek the Board's direction on whether to sign-on the GR 9 Cover Sheet.

Please review the following additional information:

- Attachment 1 – Final GR 9 Cover Sheet and Proposed GR 9(f)(2)
- Attachment 2 – Redline of proposed changes to GR 9(f)(2)
- Attachment 3 – Doug Ende's Letter to Judge Goodwin
- Attachment 4 - GR 9 Meeting Materials for the September 22-23, 2022, Board of Governors Meeting
- Confidential Memo from General Counsel Shankland and Attachments, *available* [here](#).

**GR 9 COVER SHEET****Suggested Amendment to the  
WASHINGTON STATE GENERAL RULES (GR)****GR9: Supreme Court Rulemaking Procedure****Submitted by the Superior Court Judges' Association and  
District and Municipal Court Judges' Association****October 14, 2022**

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- A. **Name of Proponent:** Superior Court Judges' Association  
District and Municipal Court Judges' Association
- B. **Spokespersons:** Judge Jennifer Forbes, President  
Superior Court Judges' Association
- Commissioner Rick Leo, President  
District and Municipal Court Judges' Association

C. **Purpose:**

With the onset of COVID-19, emergency and permanent rule changes have been imposed at an increasingly high rate. Since March 2020, 68 Supreme Court orders, publishing one or more rules for comment, have been issued. Many substantively affect court authority and operations.

As currently adopted, GR 9(f)(2) contemplates forwarding proposed rules for consideration to the Washington State Bar Association, Superior Court Judges' Association, District and Municipal Court Judges' Association, and the Chief Presiding Judge of the Court of Appeals. Section (g)(3) requires all comments to proposed rule changes be submitted in writing. Finally, Section (i) provides a schedule for rule review and adoption and describes a four-month window in which interested parties have time to study rule changes and submit public comment.

Taken together, these elements of GR 9 suggest a foundational commitment to transparency, broad practitioner input, and deliberation. Nevertheless, the steep increase in rule amendments has reduced time for thoughtful consideration and input by court users – something the drafters of GR 9 likely could not have anticipated.<sup>1</sup>

Implicitly acknowledging that trial courts have an important voice in their operations, the framers of the Washington State Constitution vested superior courts with decision-making

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<sup>1</sup> GR 9 was originally adopted in 1982 and was updated in 1984 and 2000. Since the last update more than two decades ago Washington courts have taken increasing steps towards improved public transparency. (See, e.g. GR 31). Our Courts have also taken a vigorous approach to improving access to justice – resulting in a significant increase in the rule amendment process.

authority for statewide rules (superior courts judges, “shall . . . establish uniform rules for the government of the superior courts”).<sup>2</sup> Using similar language, GR 9(a), was adopted for the purpose of “necessary *governance* of court procedure and practice and to promote justice by ensuring a fair and expeditious process.”

As we describe the proposed amendments to GR 9, we ask the Supreme Court to consider the constitutionally guaranteed role of superior courts in statewide rulemaking and urge consideration of how each court relates to another. A high-functioning court system with clear roles and relationships is best positioned to serve court users and the general public. The amendments proposed here seek to further this important collaborative process intended by the Washington State Constitution and GR 9 to the mutual benefit of all justice system partners.

The proposed amendments to GR 9 represent the joint efforts of the Superior Court Judges’ Association, District and Municipal Court Judges’ Association, and Washington State Bar Association. The Board of each association has voted to approve the amendments to the rule on behalf of their respective organizations. Due to the limited time frame, the Washington State Bar Association did not have time to vote on approval of the cover sheet. The Board of Governors will meet later in October, and may or may not vote to submit a supplemental cover sheet at that time.

### **Committee Membership**

As rulemaking has grown more complex, the current GR 9 rulemaking process has resulted in increasing frustration among trial courts and justice system partners who do not feel that the current rules process provides sufficient opportunity to participate meaningfully in rulemaking. The results can be rules that are confusing and/or difficult to implement. Trial courts and justice system partners have articulated these concerns to the Court and now seek to codify and expand upon informal improvements that have been made.

Amendments proposed herein increase the membership of the Rules Committee to include judicial officers from each level of court operations and the bar. A majority of rules most significantly affect trial courts and those who practice there. The rulemaking process would be more efficient if, when a rule amendment is suggested, it is considered in the first instance by judicial officers and practitioners responsible for current operations at the court level affected.

Washington is an outlier in the role of judges and attorneys in its rulemaking process. The nearby states of Oregon, California, and Idaho all include judges and attorneys in their state Rules Committees. Across the country, non-centralized court systems also purposefully involve trial court judges in the rulemaking process. In one example, the Indiana Supreme Court convenes a Committee on Rules of Practice and Procedure, comprised of trial court judicial officers, attorneys, and an Indiana University School of Law professor. Proposed rule amendments are submitted to the Rules Committee for quarterly review and public comment. The Rules

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<sup>2</sup> Const. Art. IV. Section 24. In 1925, the Legislature further codified Supreme Court authority to make rules for all Washington courts, but was careful to provide that this grant of power “shall not be construed to deprive the superior courts of power to establish rules for their government supplementary to and not in conflict with the rules prescribed by the supreme court.” RCW 2.04.210.

Committee then “studies comments and submits a final draft of each proposal to the Court for consideration” with the Supreme Court retaining ultimate approval authority.<sup>3</sup>

Here in Washington, we have no such process. Before rules are published for review and comment, they may benefit from revisions initiated by the Rules Committee and coordinated with the rule proponents. If rules are strengthened at this early stage, each level of review thereafter creates less of a burden on the reviewing organization. It also is likely to decrease concerns raised by public comment as obvious confusion or problems have already been addressed. Further, where valid substantive comments are received, the Rules Committee must retain authority to determine when comments have merit, and make recommendations to adopt, amend, or reject a proposed rule accordingly.

### **Accessible Meetings**

With the rapid rise in rule changes, the rule adoption process cannot operate in a vacuum. The proceedings should be open to public view and welcome input. Under our proposal, the Supreme Court retains ultimate rulemaking authority. However, to maintain the respect of those governed by the rules, and to generate informed and constructive discussions around suggested and proposed rules, the Rules Committee should make its proceedings available for remote viewing to all court partners and public members who have an interest in rules governing their courts. Illinois,<sup>4</sup> Michigan,<sup>5</sup> and Maryland<sup>6</sup> are all examples of states that require public hearings by the Rules Committee or Supreme Court before adoption of rule amendments. We also ask that hearings held by the Supreme Court be open to the public.

### **Fiscal Notes**

Currently, there is no independent, objective analysis provided to the Supreme Court and justice system stakeholders on the financial implications of court rule amendments. Judicial Impact Fiscal Notes are a commonly used and well-understood tool used by the Administrative Office of the Courts (AOC) to convey fiscal impact to the Legislature regarding proposed legislation. Conferring with AOC before amending a rule will help the Rules Committee to better understand the potential scope of impact and allow for adjustments to the rule amendments that could reduce implementation costs to the trial courts.

### **Transparent Reasoning**

The public’s trust and confidence in the judiciary is rooted in open and transparent communication. Each day courts fulfill this duty by issuing written decisions that explain the reasons for court action. This role is no less important in the rule-making process – and we would argue that in establishing rules that will impact all justice system participants an open and transparent process brings on more significance. Without this, the justice system subjects itself to decreased perceptions of fairness. It also risks uneven implementation of rules if they are subject to differing interpretation and lack clearly stated objectives. Ad hoc advocacy to the Supreme

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<sup>3</sup> This was a valuable lesson learned by the Court Recovery Task Force which met for 2 years to address court operations during the COVID crisis. An explicit finding of the CRTF is that the high level of communication and *collaboration among system partners* resulting in more effective emergency orders and innovation at all levels.

<sup>4</sup> Illinois Supreme Court Administrative Order, MR No. 10549(a).

<sup>5</sup> Michigan Administrative Order No. 1997-11(B).

<sup>6</sup> Maryland Rule 16-701(f).

Court or the Rules Committee limits the ability of others to provide additional data or context, answer questions, and arrive at practical solutions before a rule is adopted. A process where advocacy occurs in a non-transparent manner is the antithesis of what courts should stand for. A resulting lack of confidence can diminish the overall esteem in which all courts are held.

With an inclusive and transparent rulemaking process, court users and stakeholders maintain confidence in their justice system.

**D. Hearing:** A hearing is requested for a meaningful discussion on issues raised.

**E. Expedited Consideration:** Due to the impact of amendments to this rule on all other court rules, expedited consideration is requested.

## GR 9 - SUPREME COURT RULEMAKING

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

- (1) The adoption and amendment of rules proceed in an orderly and uniform manner;
- (2) All interested persons and groups receive notice and an opportunity to express views regarding proposed rules;
- (3) There is adequate notice of the adoption and effective date of new and revised rules;
- (4) Proposed rules are necessary statewide;
- (5) Minimal disruption in court practice occurs by limiting the frequency of rule changes; ~~and~~
- (6) Rules of court are clear and definite in application, and
- (7) Public confidence in rulemaking is increased through transparency.

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

- (1) “Suggested rule” means a request for a rule change ~~or~~ a new rule that has been submitted to the ~~Supreme Court~~ Rules Committee, and a suggested rule amended by the Rules Committee.
- (2) “Proposed rule” means a suggested rule that the ~~Supreme Court~~ Rules Committee has ~~ordered published for public comment~~ referred to the Supreme Court for further action.
- (3) “Rules Committee” means the Supreme Court Rules Committee. Voting members of the Supreme Court Rules Committee shall be comprised of four Washington State Supreme Court Justices appointed by the Chief Justice, one judicial representative selected by the Washington State Court of Appeals, one judicial representative selected by the Superior Court Judges Association, one judicial representative selected by the District and Municipal Court Judges Association, and one attorney member selected by the Washington State Bar Association. Members shall serve three-year terms at the discretion of the appointing organization and may be re-appointed to successive terms. The names and positions of Rules Committee members shall be posted on the Supreme Court website.
- (4) “Supreme Court” means the full Washington State Supreme Court.
- (5) A “technical change” is one that corrects a clerical mistake or an error arising from oversight or omission.

- (c) Request for Notification. Any person or group may file a request with the ~~Supreme Court Rules Committee~~ to receive notice of a suggested rule. The request shall be in such form as designated by the Rules Committee. The request may be limited to certain kinds of rule changes. The request shall state the name and address of the person or group to whom the suggested rule is to be sent. Once filed, the request shall remain in effect until withdrawn by the requestor or rescinded for cause by the Rules Committee. ~~or unless notice sent by regular, first-class U.S. mail is returned for lack of a valid address.~~
- (d) Initiation of Rules Changes. Any person or group may submit to the ~~Supreme Court Rules Committee~~ a request to adopt, amend, or repeal a court rule. ~~The Supreme Court shall determine whether the request is clearly stated and in the form required by section (e) of this rule. If the Supreme Court determines that a request is unclear or does not comply with section (e), the Supreme Court may (1) accept the request notwithstanding its noncompliance, (2) ask the proponent to resubmit the request in the proper format, or (3) reject the request, with or without a written notice of the reason or reasons for such rejection.~~
- (e) Form for Submitting a Request to Change Rules.
- (1) The text of all suggested rules ~~should~~ shall be submitted on 8 1/2- by 11-inch line-numbered paper with consecutive page numbering and in an electronic form as may be specified by the Supreme Court. If the suggested rule affects an existing rule, deleted portions ~~should~~ shall be shown and stricken through; new portions ~~should~~ shall be underlined once.
  - (2) A suggested rule ~~should~~ shall be accompanied by a cover sheet and not more than 25 pages of supporting information, including letters, memoranda, minutes of meetings, research studies, or the like. The cover sheet ~~should~~ shall contain the following:
    - (A) Name of Proponent--the name of the person or group requesting the rule change;
    - (B) Spokesperson--a designation of the person who is knowledgeable about the proposed rule and who can provide additional information;
    - (C) Purpose--the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;
    - (D) Hearing--whether the proponent believes a public hearing is needed and, if so, why;
    - (E) Expedited Consideration--whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule, ~~notwithstanding the schedule set forth in section (i)~~ and, if so, why.



(f) Rules Committee Action on Consideration of Suggested Rules by Supreme Court.

- (1) Initial Considerations. ~~The Supreme Court~~ Rules Committee shall initially determine whether the suggested rule is clearly stated and in the form required by section (e) of this rule. If the Rules Committee determines that a request is unclear or does not comply with section (e), the Rules Committee may accept the request notwithstanding its noncompliance, ask the proponent to resubmit the request in the proper format, or reject the request for noncompliance with section (e).
- (2) The Rules Committee shall determine whether a suggested rule has merit and, whether it the suggested rule involves a significant or merely technical change, whether the suggested rule should be amended, and ~~A “technical change” is one which corrects a clerical mistake or an error arising from oversight or omission. The Supreme Court shall also initially determine whether the suggested rule should be considered under the schedule provided for in section (i) or should receive expedited consideration for the reason or reasons to be set forth in the transmittal form provided for in section (f)(2). The Supreme Court Rules Committee may consult with other persons or groups in making this these initial determinations.~~
- (3) Rules Deemed Without Merit. If the Rules Committee determines a suggested rule is without merit, the Rules Committee shall reject the suggested rule and shall notify the proponent in writing of the reason(s) for rejection.
- (4) Suggested Rules Amended by the Rules Committee. If the Rules Committee amends a suggested rule, the suggested rule shall be returned to the proponent who shall have 30 days to comment on the proposed amendment.
- (5) Notice to Interested Parties. After making its initial determination, and allowing time for comment on an amended suggested rule pursuant to section (f)(4), the ~~Supreme Court~~ Rules Committee shall forward each suggested rule and cover sheet, except those deemed “without merit”, along with a transmittal form setting forth such determinations, to ~~the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals for their consideration. The transmittal shall include the cover sheet and any additional information provided by the proponent. The Supreme Court shall also forward the suggested rule and cover sheet to any person or group that has filed a notice pursuant to section (c), and to any other person or group the Supreme Court Rules Committee believes may be interested. The transmittal form shall specify a deadline by which the recipients may comment on the suggested rule. in advance of any determination under section (f)(3) of this rule. If the Supreme Court determines that the suggested rule should receive expedited consideration, it shall so indicate on the transmittal form. The form may contain a brief statement of the reason or reasons for such consideration.~~
- (6) Fiscal Note. The Rules Committee may request a fiscal note from the Administrative Office of the Courts (AOC) for costs incurred by courts regarding the suggested rule.

~~(37) Action on Suggested Rules. Referral of Suggested Rules to Supreme Court. After the expiration of the deadline set forth in the transmittal form, the Rules Committee shall refer the suggested rule to the Supreme Court with a recommendation to either may reject the suggested rule, adopt a merely technical change without public comment, or order the suggested rule published for public comment, conduct a public hearing, and whether the suggested rule should receive expedited consideration.~~

(8) Rules Committee proceedings shall be available to the public to view remotely through TVW or similar remote viewing platform. The Rules Committee shall publish the dates and times of proceedings, and instructions to view the hearing remotely on such Internet sites as the Rules Committee may determine, including those of the Supreme Court and the Washington State Bar Association.

(g) Publication for Comment. Supreme Court Action on Proposed Rules

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

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

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

~~(C)(4)~~ If a comment includes a related suggested rule, it ~~should~~ shall be presented in the  
 format set forth in section (e).

~~(D)(5)~~ All comments received ~~will~~ shall be posted on the Supreme Court website and  
 kept on file in the office of the Clerk of the Supreme Court for public inspection and  
 copying.

(2) The Supreme Court may, in its discretion, hold a hearing on a proposed rule. If the  
Supreme Court orders a hearing, it shall set the time and place of the hearing and  
determine the manner in which the hearing will be conducted. The Supreme Court may  
also designate an individual or committee to conduct the hearing. The Supreme Court  
shall publish, on its website and the Washington State Bar Association website, the dates  
and times of hearings.

(3) After consideration of the recommendations from the Rules Committee, review of comments received during publication of the proposed rule, and testimony and other evidence presented in any hearing ordered by the Supreme Court, the Supreme Court may adopt, amend, or reject the proposed rule, or take such other action as the Supreme Court deems appropriate.

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

~~(1) After considering a suggested rule, or after considering any comments or written or oral testimony received regarding a proposed rule, the Supreme Court may adopt, amend, or reject rule change, or take such other action as the Supreme Court deems appropriate. Prior to action by the Supreme Court, the court may, in its discretion, hold a hearing on a proposed rule at a time and in a manner defined by the court. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing.~~

~~(2) Regarding action on a suggested rule:~~

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

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

~~(3) Regarding actions on proposed rules:~~

~~(1)~~(A) If the Supreme Court rejects a proposed rule, it ~~may~~ shall publish its reason or reasons for such rejection.

~~(2)~~(B) If the Supreme Court adopts a proposed rule, it ~~may~~ shall publish the rule along with the ~~purpose statement from the cover sheet.~~

~~(3)~~(C) If the Supreme Court amends and then adopts a proposed rule, it ~~may~~ shall publish the rule as amended along with a revised ~~purpose statement cover sheet.~~

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

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

## (i) Schedule for Review and Adoption of Rules.

- (1) In order to be published for comment in January, as provided in section (i)(2), a suggested rule must be received no later than ~~October 15~~ September 1 of the preceding year.
- (2) Proposed rules published for comment shall be published ~~for comment~~ in January of each year.
- (3) Comments must be received by April 30 of the year in which the proposed rule is published.
- (4) Proposed rules ~~published in January and~~ adopted by the Supreme Court shall be ~~republished~~ in July and shall take effect the following September 1.
- (5) All ~~suggested-proposed~~ rules will be considered pursuant to the schedule set forth in this section, unless the Supreme Court determines that exceptional circumstances justify more immediate action. The Supreme Court shall publish a statement identifying the exceptional circumstances relied upon to deviate from the normal schedule for review and publication with the Order to Publish for a proposed rule.
- (6) The Supreme Court, in consultation with the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals, shall develop a schedule for the periodic review of particular court rules. The schedule shall be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association.

## (j) Miscellaneous Provisions.

- (1) The Supreme Court may adopt, amend, or rescind a rule, or take any emergency action with respect to a rule without following the procedures set forth in this rule. Upon taking such action or upon adopting a rule outside of the schedule set forth in section (i) because of exceptional circumstances, the Supreme Court shall publish the rule in accordance with sections (g) or (h) as applicable and shall publish a statement with the adopted, amended, or rescinded rule identifying the exceptional circumstances and reasons supporting emergency action.
- (2) This rule shall take effect on September 1, ~~2000~~ 2023 and apply to all rules not yet adopted by the Supreme Court by that date.

[Adopted effective March 19, 1982; Amended effective September 1, 1984; September 1, 2000;  
Amended \_\_\_\_\_ ]

## GR 9 - SUPREME COURT RULEMAKING

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

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- (3) “Rules Committee” means the Supreme Court Rules Committee. Voting members of the Supreme Court Rules Committee shall be comprised of four Washington State Supreme Court Justices appointed by the Chief Justice, one judicial representative selected by the Washington State Court of Appeals, one judicial representative selected by the Superior Court Judges Association, one judicial representative selected by the District and Municipal Court Judges Association, and one attorney member selected by the Washington State Bar Association. Members shall serve three-year terms at the discretion of the appointing organization and may be re-appointed to successive terms. The names and positions of Rules Committee members shall be posted on the Supreme Court website.
- (4) “Supreme Court” means the full Washington State Supreme Court.
- (5) A “technical change” is one that corrects a clerical mistake or an error arising from oversight or omission.

- (c) Request for Notification. Any person or group may file a request with the Supreme Court Rules Committee to receive notice of a suggested rule. The request shall be in such form as designated by the Rules Committee. The request may be limited to certain kinds of rule changes. The request shall state the name and address of the person or group to whom the suggested rule is to be sent. Once filed, the request shall remain in effect until withdrawn by the requestor or rescinded for cause by the Rules Committee. ~~or unless notice sent by regular, first class U.S. mail is returned for lack of a valid address.~~
- (d) Initiation of Rules Changes. Any person or group may submit to the Supreme Court Rules Committee a request to adopt, amend, or repeal a court rule. ~~The Supreme Court shall determine whether the request is clearly stated and in the form required by section (e) of this rule. If the Supreme Court determines that a request is unclear or does not comply with section (e), the Supreme Court may (1) accept the request notwithstanding its noncompliance, (2) ask the proponent to resubmit the request in the proper format, or (3) reject the request, with or without a written notice of the reason or reasons for such rejection.~~
- (e) Form for Submitting a Request to Change Rules.
- (1) The text of all suggested rules ~~should~~ shall be submitted on 8 1/2- by 11-inch line-numbered paper with consecutive page numbering and in an electronic form as may be specified by the Supreme Court. If the suggested rule affects an existing rule, deleted portions ~~should~~ shall be shown and stricken through; new portions ~~should~~ shall be underlined once.
  - (2) A suggested rule ~~should~~ shall be accompanied by a cover sheet and not more than 25 pages of supporting information, including letters, memoranda, minutes of meetings, research studies, or the like. The cover sheet ~~should~~ shall contain the following:
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    - (B) Spokesperson--a designation of the person who is knowledgeable about the proposed rule and who can provide additional information;
    - (C) Purpose--the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;
    - (D) Hearing--whether the proponent believes a public hearing is needed and, if so, why;
    - (E) Expedited Consideration--whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule, notwithstanding the schedule set forth in section (i) and, if so, why.
- (f) Rules Committee Action on Consideration of Suggested Rules ~~by Supreme Court.~~
- (1) Initial Considerations. ~~The Supreme Court Rules Committee~~ shall initially determine whether the suggested rule is clearly stated and in the form required by section (e) of this rule. If the Rules Committee determines that a request is unclear or does not comply with section (e), the Rules Committee may accept the request notwithstanding its

noncompliance, ask the proponent to resubmit the request in the proper format, or reject the request for noncompliance with section (e).

- (2) The Rules Committee shall determine whether a suggested rule has merit and, whether it the suggested rule involves a significant or merely technical change, whether the suggested rule should be amended, and ~~A “technical change” is one which corrects a clerical mistake or an error arising from oversight or omission. The Supreme Court shall also initially determine whether the suggested rule should be considered under the schedule provided for in section (i) or should receive expedited consideration for the reason or reasons to be set forth in the transmittal form provided for in section (f)(2). The Supreme Court Rules Committee may consult with other persons or groups in making this these initial determinations.~~
- (3) Rules Deemed Without Merit. If the Rules Committee determines a suggested rule is without merit, the Rules Committee shall reject the suggested rule and shall notify the proponent in writing of the reason(s) for rejection.
- (4) Suggested Rules Amended by the Rules Committee. If the Rules Committee amends a suggested rule, the suggested rule shall be returned to the proponent who shall have 30 days to comment on the proposed amendment.
- (5) Notice to Interested Parties. After making its initial determination, and allowing time for comment on an amended suggested rule pursuant to section (f)(4), the Supreme Court Rules Committee shall forward each suggested rule and cover sheet, except those deemed “without merit”, along with a transmittal form setting forth such determinations, to the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals for their consideration. The transmittal shall include the cover sheet and any additional information provided by the proponent. The Supreme Court shall also forward the suggested rule and cover sheet to any person or group that has filed a notice pursuant to section (c), and to any other person or group the Supreme Court Rules Committee believes may be interested. The transmittal form shall specify a deadline by which the recipients may comment on the suggested rule. in advance of any determination under section (f)(3) of this rule. If the Supreme Court determines that the suggested rule should receive expedited consideration, it shall so indicate on the transmittal form. The form may contain a brief statement of the reason or reasons for such consideration.
- (6) Fiscal Note. The Rules Committee may request a fiscal note from the Administrative Office of the Courts (AOC) for costs incurred by courts regarding the suggested rule.
- (37) Action on Suggested Rules. Referral of Suggested Rules to Supreme Court. After the expiration of the deadline set forth in the transmittal form, the Rules Committee shall refer the suggested rule to the Supreme Court with a recommendation to either may reject the suggested rule, adopt a merely technical change without public comment, or order the suggested rule published for public comment, conduct a public hearing, and whether the suggested rule should receive expedited consideration.

- (8) Rules Committee proceedings shall be available to the public to view remotely through TVW or similar remote viewing platform. The Rules Committee shall publish the dates and times of proceedings, and instructions to view the hearing remotely on such Internet sites as the Rules Committee may determine, including those of the Supreme Court and the Washington State Bar Association.

(g) Publication for Comment. Supreme Court Action on Proposed Rules

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

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

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

(C)(4) If a comment includes a related suggested rule, it should shall be presented in the format set forth in section (e).

(D)(5) All comments received will shall be posted on the Supreme Court website and kept on file in the office of the Clerk of the Supreme Court for public inspection and copying.

- (2) The Supreme Court may, in its discretion, hold a hearing on a proposed rule. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing. The Supreme Court shall publish, on its website and the Washington State Bar Association website, the dates and times of hearings.
- (3) After consideration of the recommendations from the Rules Committee, review of comments received during publication of the proposed rule, and testimony and other evidence presented in any hearing ordered by the Supreme Court, the Supreme Court may adopt, amend, or reject the proposed rule, or take such other action as the Supreme Court deems appropriate.



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

~~(1) After considering a suggested rule, or after considering any comments or written or oral testimony received regarding a proposed rule, the Supreme Court may adopt, amend, or reject rule change, or take such other action as the Supreme Court deems appropriate. Prior to action by the Supreme Court, the court may, in its discretion, hold a hearing on a proposed rule at a time and in a manner defined by the court. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing.~~

~~(2) Regarding action on a suggested rule:~~

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

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

~~(3) Regarding actions on proposed rules:~~

~~(1)(A)~~ If the Supreme Court rejects a proposed rule, it ~~may~~ shall publish its reason or reasons for such rejection.

~~(2)(B)~~ If the Supreme Court adopts a proposed rule, it ~~may~~ shall publish the rule along with the ~~purpose statement from the~~ cover sheet.

~~(3)(C)~~ If the Supreme Court amends and then adopts a proposed rule, it ~~may~~ shall publish the rule as amended along with a revised ~~purpose statement~~ cover sheet.

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

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

(i) Schedule for Review and Adoption of Rules.

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

- (2) Proposed rules published for comment shall be published ~~for comment~~ in January of each year.
- (3) Comments must be received by April 30 of the year in which the proposed rule is published.
- (4) Proposed rules ~~published in January and~~ adopted by the Supreme Court shall be ~~republished~~ in July and shall take effect the following September 1.
- (5) All ~~suggested~~ proposed rules will be considered pursuant to the schedule set forth in this section, unless the Supreme Court determines that exceptional circumstances justify more immediate action. The Supreme Court shall publish a statement identifying the exceptional circumstances relied upon to deviate from the normal schedule for review and publication with the Order to Publish for a proposed rule.
- (6) The Supreme Court, in consultation with the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals, shall develop a schedule for the periodic review of particular court rules. The schedule shall be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association.

(j) Miscellaneous Provisions.

- (1) The Supreme Court may adopt, amend, or rescind a rule, or take any emergency action with respect to a rule without following the procedures set forth in this rule. Upon taking such action or upon adopting a rule outside of the schedule set forth in section (i) because of exceptional circumstances, the Supreme Court shall publish the rule in accordance with sections (g) or (h) as applicable and shall publish a statement with the adopted, amended, or rescinded rule identifying the exceptional circumstances and reasons supporting emergency action.
- (2) This rule shall take effect on September 1, ~~2000~~ 2023 and apply to all rules not yet adopted by the Supreme Court by that date.

[Adopted effective March 19, 1982; Amended effective September 1, 1984; September 1, 2000; Amended \_\_\_\_\_ ]

**WASHINGTON STATE**  
**BAR ASSOCIATION**  
Office of Disciplinary Counsel

Douglas J. Ende  
Chief Disciplinary Counsel  
Direct line: 206-733-5917  
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October 7, 2022

The Honorable Jeffrey D. Goodwin  
Snohomish County District Court S Division  
20520 68th Ave W  
Lynnwood, WA 98036-7457

Re: Draft of Suggested Amendment to GR 9

Dear Judge Goodwin:

On behalf of myself, WSBA General Counsel Julie Shankland, WSBA Associate Director of Regulatory Services Robert Henry, and the immediate past Chair of the WSBA Court Rules and Procedures Committee Isham Reavis, thank you for your presentation at the September 22, 2022 Board of Governors meeting regarding the draft amendments to General Rule (GR) 9, which the Board of Governors voted to co-sponsor with the primary drafters, the Superior Court Judges' Association and the District and Municipal Court Judges' Association. The purpose of the draft amendments—to increase public confidence and transparency in Washington State's court rulemaking process—is laudable and forward thinking. All three sponsoring associations have appropriately identified concerns with application of the preliminary rule-vetting process contemplated by GR 9(f)(2).

We further thank you for your invitation to hear further from the four of us regarding our thoughts about the draft, possible alternative approaches, and other potential GR 9 innovations prior to the GR 9(i)(1) submission deadline of October 15. We have met, conferred, and shared ideas that we believe are worthy of consideration by the co-sponsors and the Supreme Court. This letter compiles those perspectives for the present purpose of continuing the dialogue started at the September 22 Board meeting. Because time is short, our input and suggestions are in the condensed (but I hope not cryptic) form of a bulleted list set forth below. I am obliged to note that this list represents our thoughts and opinions as individuals with considerable rulemaking experience (and to some extent those of members of the Court Rules and Procedures Committee), but this is not an official position of the Washington State Bar Association or its Board of Governors.

Without further ado, here are our thoughts.



- Adding external judges and lawyers to the Supreme Court Rules Committee may not be the most effective means of increasing public confidence, transparency, and efficiency. As an alternative to the draft revision to GR 9(f)(2), a relatively unobtrusive approach to achieving the same end would be to require that all GR 9 cover sheets certify that input was asked for from and provided by, at a minimum, the Superior Court Judges' Association (SCJA), the District and Municipal Court Judges' Association (DMCJA), and the Washington State Bar Association (WSBA), with any such input appended to the GR 9 materials (even if that input is only "no comment"). This would provide the Supreme Court Rules Committee with the perspective of key stakeholders at the time the Committee determines what, if any, action to take on the suggested amendment. Additionally, this would allow a proponent to receive and consider key stakeholder input before sending the suggested amendment to the Court. In this scenario, any additional time required to procure stakeholder responses would occur prior to submission, rather than during the Court's rulemaking process.
- The current proposal seems likely to increase the total time required to enact a rule change. Given the timeline and schedule set forth in GR 9(i) (about 75 days between October 15 and January 1), it will be nearly impossible for the Committee to complete the contemplated amendment process and still maintain compliance with the established schedule. If the Court deems an amendment to a suggested rule appropriate, it would be more efficient for this to be accomplished during the comment period or after its expiration, still allowing for notification to the proponent to ensure alignment of the amendments with the intentions of the original drafter.
- The WSBA Court Rules and Procedures Committee (WSBA CRPC) performs the rules-review function set forth in the Schedule for Review published on the Supreme Court Rulemaking page of the Washington Courts website. Annually, the WSBA CRPC studies and develops suggested court rule amendments in accordance with that schedule. As written, the suggested GR 9 amendment risks devaluing the WSBA CRPC to one voice among many, rather than recognizing its established function as a key stakeholder and primary source of court rule amendments. The suggested GR 9 amendment should specifically include the WSBA CRPC in the pre-publication review of suggested rules. We propose that after the Supreme Court Rules Committee performs its initial review to determine if a suggested rule has merit, the WSBA CRPC be notified of the suggested rule and cover sheet and allowed opportunity for review and comment, before further action is taken on the suggested rule.
- It appears that the onus for ascertaining the suitability of expedited consideration in the proposal is placed on the Court, especially with the language stricken from current GR 9(f)(1) regarding the requirement that the proponent provide the reasons for a request for expedited consideration in the GR 9 coversheet. The rule should make it quite clear

that the proponent is required to state the reasons for a request for expedited consideration.

- Rulemaking stakeholders have, for decades, understood the term “proposed rule” to be synonymous with a rule ordered published for public comment by the Court. The change to GR 9(b)(2) would alter this longstanding assumption about basic GR 9 rulemaking terminology. We recommend retaining the current meaning of “proposed rule” (in contrast with “suggested rule”). Perhaps a third term for a matter referred by the Committee would be appropriate.
- New GR 9(f)(8) provides for public access through “remote viewing” only. If this is the intent, it should be absolutely clear in the rule that remote viewing is passive and not the equivalent of active presence and participation. In working with the Court in recent years, the WSBA has encountered many situations in which individuals insist that merely viewing a meeting via TVW is insufficient public access, and they sometimes pester WSBA and Supreme Court staff with demands to attend in person and participate.
- Similar to the preceding point about GR 9(f)(8) and public access, GR 9(h)(1) relating to hearings on proposed rules also refers to public access and “remote and/or in-person viewing.” Again, it would be prudent to spell out specifically what this access consists of, i.e., passive viewing only or in-person/remote attendance and participation.
- A suggested change to GR 9(g)(1) eliminates publication of proposed rules in the Washington Reports Advance Sheets. Those of us who have tracked historical records of rulemaking over years or decades have come to rely heavily on the Washington Reports Advance Sheets version as the most reliable and official record of the content of proposed rules. We recommend retaining this language and continuing publication of rules published for comment in the Advance Sheets.
- GR 9 was adopted in 1982 and has not been amended since 2000. In ensuing years, many of the Court’s internal processes and procedures regarding notification of proposed amendments and submission of comments have transitioned from paper processes to electronic transmissions. Any significant amendment to GR 9 at this juncture should update the rule throughout to acknowledge and embrace current practice and procedure and to ensure consistency with the Court’s electronic communications protocols and contemporary technologies.
- The proposal appears to shift much substantive decision-making in the rulemaking process away from the Court as a whole and instead to the Rules Committee. Consideration should be given to whether it is prudent for the Rules Committee to in effect be the ultimate decisionmaker on matters such as amendments to suggested rules.

We would welcome the opportunity to meet, answer questions, and brainstorm ideas for improvement to the GR 9 rulemaking process. Thank you again for your excellent presentation at the September 22 Board of Governors meeting and for your willingness to hear us out.

Sincerely,

A handwritten signature in black ink that reads "Douglas J. Ende". The signature is written in a cursive, flowing style.

Douglas J. Ende

Chief Disciplinary Counsel

cc: Daniel D. Clark, WSBA President  
Judge Brian M. Tollefson (ret.), WSBA Immediate Past President  
Terra K. Nevitt, WSBA Executive Director  
Julie A. Shankland, WSBA General Counsel  
Robert Henry, WSBA Associate Director, Regulatory Services Department  
Isham M. Reavis, Immediate Past Chair, WSBA Court Rules and Procedures Committee  
Paul M. Crisalli, Chair, WSBA Court Rules and Procedures Committee

# WASHINGTON STATE BAR ASSOCIATION

**TO:** WSBA Board of Governors  
**FROM:** Terra Nevitt, Executive Director  
**DATE:** September 15, 2022  
**RE:** Request to co-sponsor proposed changes to General Rule 9(f)(2)

**ACTION:** Approve request to co-sponsor proposed changes to General Rule 9(f)(2) re Communication Process Prior to Publishing Proposed Rule Changes for Comment

The Washington State Bar Association is requested to co-sponsor proposed changes to General Rule 9(f)(2), which outlines the communication process for proposed rule changes, prior to being published.

Attached, please find the proposed redline and clean versions of the rule, as well as a letter sent to the Washington State Supreme Court on April 27, 2022 outline the concerns that the proposed rule change is intended to address.

## Background

Over the last couple months, the DMCJA and the SCJA have engaged in extensive discussion about our state's rule making process and the need to ensure that all stakeholders have an opportunity to review and vet rules – and steps that might make the process more transparent. During this discussion, they also looked at how other states approach rule making. The product of this discussion is the attached draft proposed changes to GR 9.

DMCJA and SCJA's intention is to submit the proposed change formally during the GR 9(i) review and adoption schedule in early October and they would like the WSBA to be a co-sponsor. If WSBA is interested in co-sponsoring this proposed rule, DMCJA and SCJA have indicated a desire to include WSBA in further discussions of the GR 9 Coversheet that would accompany the rule.

## Legal Risk Analysis

Court rules and the process for proposing them clearly falls within GR 12 and Keller. GR 12.2(b)(3) states that the Washington State Bar Association may provide periodic reviews and recommendations concerning court rules and procedures. Improving court rules could be argued to involve both regulation of the practice of law and improving the quality of legal services provided to the people of the state.

The biggest changes are making the process transparent and creating a rules committee that includes people outside of the Justices. These changes do not appear to create legal concerns for the WSBA.

The proposed GR 9(b)(3) states "one attorney member selected by the Washington State Bar Association." There may be questions about whether this must be an active WSBA member, whether a member of the BOG can serve in the position, and whether, given the rule language, this could be a lifetime appointment. Allowing a BOG member to serve could create an interesting dynamic if that member voted inconsistently on the same rule proposal (before the BOG and before the Rules Committee). Perhaps the BOG would adopt its own policy related to this outside appointment if the rule is adopted.

#### WSBA FISCAL ANALYSIS

The proposed changes could result in some additional staff time to support the proposed process and dissemination of information through WSBA channels. GR 9 and this proposed amendment impose duties on the WSBA for notice on the website and in Bar News. It hard to know how much more staff time would be needed but work would entail posting more information than we do now with a possible increase in frequency. This work would likely be able to be covered with existing capacity until we have more experience in action.



## GR 9 - SUPREME COURT RULEMAKING

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

- (1) The adoption and amendment of rules proceed in an orderly and uniform manner;
- (2) All interested persons and groups receive notice and an opportunity to express views regarding proposed rules;
- (3) There is adequate notice of the adoption and effective date of new and revised rules;
- (4) Proposed rules are necessary statewide;
- (5) Minimal disruption in court practice occurs by limiting the frequency of rule changes; ~~and~~
- (6) Rules of court are clear and definite in application, and
- (7) Public confidence in rulemaking is increased through transparency.

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

- (1) “Suggested rule” means a request for a rule change ~~or~~, a new rule that has been submitted to the ~~Supreme Court Rules Committee~~, and a suggested rule amended by the Rules Committee.
- (2) “Proposed rule” means a suggested rule that the ~~Supreme Court Rules Committee~~ has ~~ordered published for public comment~~ referred to the Supreme Court for further action.
- (3) “Rules Committee” means the Supreme Court Rules Committee. Voting members of the Supreme Court Rules Committee shall be comprised of four Washington State Supreme Court Justices appointed by the Chief Justice, one judicial representative selected by the Washington State Court of Appeals, one judicial representative selected by the Superior Court Judges Association, one judicial representative selected by the District and Municipal Court Judges Association, and one attorney member selected by the Washington State Bar Association. Members shall serve three-year terms at the discretion of the appointing organization and may be re-appointed to successive terms. The names and positions of Rules Committee members shall be posted on the Supreme Court website.
- (4) “Supreme Court” means the full Washington State Supreme Court.
- (5) A “technical change” is one that corrects a clerical mistake or an error arising from oversight or omission.

- (c) Request for Notification. Any person or group may file a request with the ~~Supreme Court Rules Committee~~ to receive notice of a suggested rule. The request may be limited to certain kinds of rule changes. The request shall state the name and address of the person or group to whom the suggested rule is to be sent. Once filed, the request shall remain in effect until withdrawn or unless notice sent by regular, first-class U.S. mail is returned for lack of a valid address.
- (d) Initiation of Rules Changes. Any person or group may submit to the ~~Supreme Court Rules Committee~~ a request to adopt, amend, or repeal a court rule. ~~The Supreme Court shall determine whether the request is clearly stated and in the form required by section (e) of this rule. If the Supreme Court determines that a request is unclear or does not comply with section (e), the Supreme Court may (1) accept the request notwithstanding its noncompliance, (2) ask the proponent to resubmit the request in the proper format, or (3) reject the request, with or without a written notice of the reason or reasons for such rejection.~~
- (e) Form for Submitting a Request to Change Rules.
- (1) The text of all suggested rules ~~should~~ shall be submitted on 8 1/2- by 11-inch line-numbered paper with consecutive page numbering and in an electronic form as may be specified by the Supreme Court. If the suggested rule affects an existing rule, deleted portions ~~should~~ shall be shown and stricken through; new portions ~~should~~ shall be underlined once.
  - (2) A suggested rule ~~should~~ shall be accompanied by a cover sheet and not more than 25 pages of supporting information, including letters, memoranda, minutes of meetings, research studies, or the like. The cover sheet ~~should~~ shall contain the following:
    - (A) Name of Proponent--the name of the person or group requesting the rule change;
    - (B) Spokesperson--a designation of the person who is knowledgeable about the proposed rule and who can provide additional information;
    - (C) Purpose--the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;
    - (D) Hearing--whether the proponent believes a public hearing is needed and, if so, why;
    - (E) Expedited Consideration--whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule, notwithstanding the schedule set forth in section (i).
- (f) Rules Committee Action on ~~Consideration of Suggested Rules by Supreme Court.~~
- (1) Initial Considerations. ~~The Supreme Court Rules Committee shall initially determine whether the suggested rule is clearly stated and in the form required by section (e) of this rule. If the Rules Committee determines that a request is unclear or does not comply with section (e), the Rules Committee may accept the request notwithstanding its~~

noncompliance, ask the proponent to resubmit the request in the proper format, or reject the request for noncompliance with section (e).

- (2) The Rules Committee shall determine whether a suggested rule has merit and, whether it the suggested rule involves a significant or merely technical change<sup>1</sup> whether the suggested rule should be amended, and ~~A “technical change” is one which corrects a clerical mistake or an error arising from oversight or omission. The Supreme Court shall also initially determine whether the suggested rule should be considered under the schedule provided for in section (i) or should receive expedited consideration for the reason or reasons to be set forth in the transmittal form provided for in section (f)(2). The Supreme Court Rules Committee may consult with other persons or groups in making this these initial determinations.~~
- (3) Rules Deemed Without Merit. If the Rules Committee determines a suggested rule is without merit, the Rules Committee shall reject the suggested rule and shall notify the proponent in writing of the reason(s) for rejection.
- (4) Suggested Rules Amended by the Rules Committee. If the Rules Committee amends a suggested rule, the suggested rule shall be returned to the proponent who shall have 30 days to comment on the proposed amendment. Following the 30-day comment period, the Rules Committee shall reject the amended suggested rule pursuant to section (f)(3) or send notice to interested parties pursuant to section (f)(5).
- (5) Notice to Interested Parties. After making its initial determination, and allowing time for comment on an amended suggested rule pursuant to section (f)(4), the Supreme Court Rules Committee shall forward each suggested rule and cover sheet, except those deemed “without merit”, along with a transmittal form setting forth such determinations, to the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals for their consideration. The transmittal shall include the cover sheet and any additional information provided by the proponent. The Supreme Court shall also forward the suggested rule and cover sheet to any person or group that has filed a notice pursuant to section (c), and to any other person or group the Supreme Court Rules Committee believes may be interested. The transmittal form shall specify a deadline by which the recipients may comment on the suggested rule. in advance of any determination under section (f)(3) of this rule. If the Supreme Court determines that the suggested rule should receive expedited consideration, it shall so indicate on the transmittal form. The form may contain a brief statement of the reason or reasons for such consideration.
- (6) Fiscal Note. The Rules Committee may request a fiscal note from the Administrative Office of the Courts (AOC) for costs incurred by courts regarding the suggested rule.
- (37) Action on Suggested Rules. Referral of Suggested Rules to Supreme Court. After the expiration of the deadline set forth in the transmittal form, the Rules Committee shall refer the suggested rule to the Supreme Court with a recommendation to either may reject

the suggested rule, adopt a merely technical change without public comment, or order the suggested rule published for public comment.

- (8) Rules Committee proceedings shall be accessible to the public through remote viewing. The Rules Committee shall publish the dates and times of proceedings along with instructions to access the hearing for remote viewing on such Internet sites as the Rules Committee may determine, including those of the Supreme Court and the Washington State Bar Association.

(g) Publication for Comment.

- (1) If the Supreme Court orders that a proposed rule be published for public comment, the A proposed rule shall be published ~~for public comment~~ in such media of mass communication as the Supreme Court deems appropriate, including, but not limited to, ~~the Washington Reports Advance Sheets and the Washington State Register. The proposed rule shall also be posted on~~ such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association. The purpose statement required by section (e)(2)(C) shall be published along with the proposed rule. Publication of a proposed rule shall be announced in the Washington State Bar News.
- (2) Publication of a proposed rule in the Washington State Register shall not subject Supreme Court rule-making to the provisions of the Administrative Procedures Act.
- (3) All comments on a proposed rule shall be submitted in writing to the Supreme Court by the deadline set forth in section (i).
- (4) If a comment includes a related suggested rule, it ~~should~~ shall be presented in the format set forth in section (e).
- (5) All comments received ~~will~~ shall be posted on the Supreme Court website and kept on file in the office of the Clerk of the Supreme Court for public inspection and copying.

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

- (1) The Supreme Court may, in its discretion, hold a hearing on a proposed rule. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing. All hearings set by the Supreme Court pursuant to section (h)(1) of this rule shall be accessible to the public. The Supreme Court shall publish, on its website and the Washington State Bar Association website, the dates and times of hearings along with instructions to access the hearing for remote and/or in-person viewing.

(+2) After consideration of the recommendations from the Rules Committee, review of comments received during publication of the proposed rule, and testimony and other evidence presented in any hearing ordered by the Supreme Court, the Supreme Court ~~After considering a suggested rule, or after considering any comments or written or oral testimony received regarding a proposed rule, the Supreme Court may adopt, amend, or reject the proposed rule change, or take such other action as the Supreme Court deems appropriate, Prior to action by the Supreme Court, the court may, in its discretion, hold a hearing on a proposed rule at a time and in a manner defined by the court. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing.~~

(2) ~~Regarding action on a suggested rule:~~

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

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(3) ~~Regarding Actions on a Proposed Rules:~~

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

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

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

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- (5) All suggested rules will be considered pursuant to the schedule set forth in this section, unless the Supreme Court determines that exceptional circumstances justify more immediate action. The Supreme Court shall publish a statement identifying the exceptional circumstances relied upon to deviate from the normal schedule for review and publication with the Order to Publish for a proposed rule.
- (6) The Supreme Court, in consultation with the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals, shall develop a schedule for the periodic review of particular court rules. The schedule shall be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association.

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- (1) The Supreme Court may adopt, amend, or rescind a rule, or take any emergency action with respect to a rule without following the procedures set forth in this rule. Upon taking such action or upon adopting a rule outside of the schedule set forth in section (i) because of exceptional circumstances, the Supreme Court shall publish the rule in accordance with sections (g) or (h) as applicable and shall publish a statement with the adopted, amended, or rescinded rule identifying the exceptional circumstances and reasons supporting emergency action.
- (2) This rule shall take effect on September 1, 2023 and apply to all rules not yet adopted by the Supreme Court by that date.

[Adopted effective March 19, 1982; Amended effective September 1, 1984; September 1, 2000; Amended \_\_\_\_\_ ]

## GR 9 - SUPREME COURT RULEMAKING

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

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- (2) All interested persons and groups receive notice and an opportunity to express views regarding proposed rules;
- (3) There is adequate notice of the adoption and effective date of new and revised rules;
- (4) Proposed rules are necessary statewide;
- (5) Minimal disruption in court practice occurs by limiting the frequency of rule changes;
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**(b) Definitions.** As used in this rule, the following terms have these meanings:

- (1) “Suggested rule” means a request for a rule change, a new rule that has been submitted to the Rules Committee, and a suggested rule amended by the Rules Committee.
- (2) “Proposed rule” means a suggested rule that the Rules Committee has referred to the Supreme Court for further action.
- (3) “Rules Committee” means the Supreme Court Rules Committee. Voting members of the Supreme Court Rules Committee shall be comprised of four Washington State Supreme Court Justices appointed by the Chief Justice, one judicial representative selected by the Washington State Court of Appeals, one judicial representative selected by the Superior Court Judges Association, one judicial representative selected by the District and Municipal Court Judges Association, and one attorney member selected by the Washington State Bar Association. Members shall serve three-year terms at the discretion of the appointing organization and may be re-appointed to successive terms. The names and positions of Rules Committee members shall be posted on the Supreme Court website.
- (4) “Supreme Court” means the full Washington State Supreme Court.
- (5) A “technical change” is one that corrects a clerical mistake or an error arising from oversight or omission.

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

**(d) Initiation of Rules Changes.** Any person or group may submit to the Rules Committee a request to adopt, amend, or repeal a court rule.

**(e) Form for Submitting a Request to Change Rules.**

- (1) The text of all suggested rules shall be submitted on 8 1/2- by 11-inch line-numbered paper with consecutive page numbering and in an electronic form as may be specified by the Supreme Court. If the suggested rule affects an existing rule, deleted portions shall be shown and stricken through; new portions shall be underlined once.
- (2) A suggested rule shall be accompanied by a cover sheet and not more than 25 pages of supporting information, including letters, memoranda, minutes of meetings, research studies, or the like. The cover sheet shall contain the following:
  - (A) Name of Proponent--the name of the person or group requesting the rule change;
  - (B) Spokesperson--a designation of the person who is knowledgeable about the proposed rule and who can provide additional information;
  - (C) Purpose--the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;
  - (D) Hearing--whether the proponent believes a public hearing is needed and, if so, why;
  - (E) Expedited Consideration--whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule, notwithstanding the schedule set forth in section (i).

**(f) Rules Committee Action on Suggested Rules.**

- (1) Initial Considerations. The Rules Committee shall initially determine whether the suggested rule is clearly stated and in the form required by section (e) of this rule. If the Rules Committee determines that a request is unclear or does not comply with section (e), the Rules Committee may accept the request notwithstanding its noncompliance, ask the proponent to resubmit the request in the proper format, or reject the request for noncompliance with section (e).
- (2) The Rules Committee shall determine whether a suggested rule has merit, whether the suggested rule involves a significant or merely technical change, whether the suggested rule should be amended, and whether the suggested rule should be considered under the schedule provided for in section (i) or should receive expedited consideration. The Rules Committee may consult with other persons or groups in making these initial determinations.
- (3) Rules Deemed Without Merit. If the Rules Committee determines a suggested rule is without merit, the Rules Committee shall reject the suggested rule and shall notify the proponent in writing of the reason(s) for rejection.



- (4) Suggested Rules Amended by the Rules Committee. If the Rules Committee amends a suggested rule, the suggested rule shall be returned to the proponent who shall have 30 days to comment on the proposed amendment. Following the 30-day comment period, the Rules Committee shall reject the amended suggested rule pursuant to section (f)(3) or send notice to interested parties pursuant to section (f)(5).
- (5) Notice to Interested Parties. After making its initial determination, and allowing time for comment on an amended suggested rule pursuant to section (f)(4), the Rules Committee shall forward each suggested rule and cover sheet, except those deemed “without merit”, along with a transmittal form setting forth such determinations, to any person or group that has filed a notice pursuant to section (c), and to any other person or group the Rules Committee believes may be interested. The transmittal form shall specify a deadline by which the recipients may comment on the suggested rule.
- (6) Fiscal Note. The Rules Committee may request a fiscal note from the Administrative Office of the Courts (AOC) for costs incurred by courts regarding the suggested rule.
- (7) Referral of Suggested Rules to Supreme Court. After the expiration of the deadline set forth in the transmittal form, the Rules Committee shall refer the suggested rule to the Supreme Court with a recommendation to either reject the suggested rule, adopt a merely technical change without public comment, or order the suggested rule published for public comment.
- (8) Public Access to Rules Committee Proceedings. Rules Committee proceedings shall be accessible to the public through remote viewing. The Rules Committee shall publish the dates and times of proceedings along with instructions to access the hearing for remote viewing on such Internet sites as the Rules Committee may determine, including those of the Supreme Court and the Washington State Bar Association.

**(g) Publication for Comment.**

- (1) If the Supreme Court orders that a proposed rule be published for public comment, the proposed rule shall be published in such media of mass communication as the Supreme Court deems appropriate, including, but not limited to such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association. The purpose statement required by section (e)(2) shall be published along with the proposed rule. Publication of a proposed rule shall be announced in the Washington State Bar News.
- (2) Publication of a proposed rule in the Washington State Register shall not subject Supreme Court rulemaking to the provisions of the Administrative Procedures Act.
- (3) All comments on a proposed rule shall be submitted in writing to the Supreme Court by the deadline set forth in section (i).
- (4) If a comment includes a related suggested rule, it shall be presented in the format set forth in section (e).

- (5) All comments received shall be posted on the Supreme Court website and kept on file in the office of the Clerk of the Supreme Court for public inspection and copying.

**(h) Final Action by the Supreme Court on Proposed Rules, Publication, and Effective Date.**

- (1) The Supreme Court may, in its discretion, hold a hearing on a proposed rule. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing. All hearings set by the Supreme Court pursuant to section (h)(1) of this rule shall be accessible to the public. The Supreme Court shall publish, on its website and the Washington State Bar Association website, the dates and times of hearings along with instructions to access the hearing for remote and/or in-person viewing.
- (2) After consideration of the recommendations from the Rules Committee, review of comments received during publication of the proposed rule, and testimony and other evidence presented in any hearing ordered by the Supreme Court, the Supreme Court may adopt, amend, or reject the proposed rule, or take such other action as the Supreme Court deems appropriate,
- (3) Actions on Proposed Rules:
  - (A) If the Supreme Court rejects a proposed rule, it shall publish its reason or reasons for such rejection.
  - (B) If the Supreme Court adopts a proposed rule, it shall publish the rule along with the purpose statement from the cover sheet.
  - (C) If the Supreme Court amends and then adopts a proposed rule, it shall publish the rule as amended along with a revised purpose statement.
- (4) All adopted rules, or other final action by the Supreme Court for which this rule requires publication, shall be published in a July edition of the Washington Reports advance sheets and in the Washington State Register immediately after such action. The adopted rules or other Supreme Court final action shall be posted on the Internet sites of the Supreme Court and the Washington State Bar Association. An announcement of such publication shall be made in the Washington State Bar News.
- (5) All adopted rules shall become effective as provided in section (i) unless the Supreme Court determines that a different effective date is necessary.

**(i) Schedule for Review and Adoption of Rules.**

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

- (3) Comments must be received by April 30 of the year in which the proposed rule is published.
- (4) Proposed rules published in January and adopted by the Supreme Court shall be republished in July and shall take effect the following September 1.
- (5) All suggested rules will be considered pursuant to the schedule set forth in this section, unless the Supreme Court determines that exceptional circumstances justify more immediate action. The Supreme Court shall publish a statement identifying the exceptional circumstances relied upon to deviate from the normal schedule for review and publication with the Order to Publish for a proposed rule.
- (6) The Supreme Court, in consultation with the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals, shall develop a schedule for the periodic review of particular court rules. The schedule shall be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association.

**(j) Miscellaneous Provisions.**

- (1) The Supreme Court may adopt, amend, or rescind a rule, or take any emergency action with respect to a rule without following the procedures set forth in this rule. Upon taking such action or upon adopting a rule outside of the schedule set forth in section (i) because of exceptional circumstances, the Supreme Court shall publish the rule in accordance with sections (g) or (h) as applicable and shall publish a statement with the adopted, amended, or rescinded rule identifying the exceptional circumstances and reasons supporting emergency action.
- (2) This rule shall take effect on September 1, 2023. and apply to all rules not yet adopted by the Supreme Court by that date.

[Adopted effective March 19, 1982; Amended effective September 1, 1984; September 1, 2000; Amended \_\_\_\_\_]



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April 27, 2022

Honorable Steve González  
Honorable Charles W. Johnson  
Honorable Mary I. Yu  
Supreme Court Rules Committee  
C/O Clerk of the Supreme Court  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0929

**VIA EMAIL**

RE: GR 9(f)(2) Vetting Process for Rules Changes Prior to Publishing for Comment

Dear Chief Justice González, Justice Yu, Justice Johnson, and Rules Committee Members:

Over the past several years, the adoption of rules proposals has become increasingly complex. While there are a wide variety of factors that have contributed to that complexity, we believe there are three main factors at play. The first is the COVID-19 pandemic and the collateral impacts on our courts. The second factor is the increasingly wide range of groups and individuals suggesting rules amendments and new rules. The final factor impacting complexity is the lack of participation of the Superior Court Judges' Association (SCJA), District and Municipal Court Judges' Association (DMCJA), and Washington State Bar Association (WSBA) in the preliminary vetting process for rules changes prior to publishing for comment as required by GR 9(f)(2).

With regard to the pandemic, trial courts and court users have responded admirably adopting remote hearings and health and safety protocols during this pandemic, and it is understandable that a number of proposals have been presented. With regard to the variety of entities proposing rules changes, the diversity of suggestions and opinions is a valuable resource for trial courts.

The concern we bring to your attention is the absence of involvement of SCJA, DMCJA, and WSBA, in the preliminary vetting process of proposed rules required by GR (9)(f)(2). In bypassing the requirements of the rule, the Supreme Court Rules Committee is missing the opportunity to refine rules proposals and correct substantive challenges before proposed rules are sent for comment. This is particularly important where rules submissions are coming from individuals and groups without substantial experience in drafting rules. Our organizations all have rules committees with extensive drafting expertise.<sup>1</sup>

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<sup>1</sup> In addition to WSBA's Court Rules Committee, other WSBA entities are allowed to comment on a proposed rule change under certain circumstances if that WSBA entity's position has been approved through WSBA's Comment Policy.

Several recent rules proposals illustrate the need to continue involving our associations in the preliminary vetting. CrR /CrRLJ 3.4 have proven to be very challenging for trial courts to implement and the result has been a patchwork of approaches. Had we been involved earlier, prior to the rule going out for comment, many of the challenges in implementation could have been addressed. The proposed amendments to CrR /CrRLJ 7.8 and the proposed amendments to GR 11.3 are two additional examples of the need to involve our associations in vetting prior to comment. Rule 7.8 poses unique challenges to Courts of Limited Jurisdiction and the proposed amendments to GR 11.3 pose significant concerns for trial courts. These rule concerns affect the public's view of the justice system and impact the experience of court users.

We request the opportunity to meet with you and members of the Supreme Court Rules Committee to further discuss facilitating GR 9(f)(2) related communication.

Sincerely,



Judge Charles D. Short  
DMCJA President



Judge Rachelle E. Anderson  
SCJA President

Honorable Brian Tollefson  
WSBA President

Cc: Presiding Chief Judge George B. Fearing, Court of Appeals

### WSBA MISSION

The Washington State Bar Association's mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

### WSBA GUIDING PRINCIPLES

The WSBA will operate a well-managed association that supports its members and advances and promotes:

- **Access to the justice system.**  
*Focus: Provide training and leverage community partnerships in order to enhance a culture of service for legal professionals to give back to their communities, with a particular focus on services to underserved low and moderate income people.*
- **Diversity, equality, and cultural understanding throughout the legal community.**  
*Focus: Work to understand the lay of the land of our legal community and provide tools to members and employers in order to enhance the retention of minority legal professionals in our community.*
- **The public's understanding of the rule of law and its confidence in the legal system.**  
*Focus: Educate youth and adult audiences about the importance of the three branches of government and how they work together.*
- **A fair and impartial judiciary.**
- **The ethics, civility, professionalism, and competence of the Bar.**

### MISSION FOCUS AREAS

#### Ensuring Competent and Qualified Legal Professionals

- Cradle to Grave
- Regulation and Assistance

#### Promoting the Role of Legal Professionals in Society

- Service
- Professionalism

### PROGRAM CRITERIA

- Does the Program further either or both of WSBA's mission-focus areas?
- Does WSBA have the competency to operate the Program?
- As the mandatory bar, how is WSBA uniquely positioned to successfully operate the Program?
- Is statewide leadership required in order to achieve the mission of the Program?
- Does the Program's design optimize the expenditure of WSBA resources devoted to the Program, including the balance between volunteer and staff involvement, the number of people served, the cost per person, etc?

### 2016 – 2018 STRATEGIC GOALS

- Equip members with skills for the changing profession
- Promote equitable conditions for members from historically marginalized or underrepresented backgrounds to enter, stay and thrive in the profession
- Explore and pursue regulatory innovation and advocate to enhance the public's access to legal services

## WSBA Strategic Goals

**Approved April 16, 2021**

Goal 1: To provide relevant and valuable resources to help all of its members achieve professional excellence and success, in service to their clients and public, and to champion justice.

- Evaluate, improve and expand member services programs.
- Enhance member awareness and increase member engagement in member benefits and services provided by WSBA.
- Increase member engagement with the WSBA

Goal 2: To uphold and elevate the standard of honor, respect and integrity among WSBA members in order to improve public confidence in the legal profession.

Goal 3: To promote access to justice and improve public confidence, trust and respect of members of the public in our legal system and bar association.

- Advocate for a uniform court system.
- Advocate for reforms in the law to ensure justice for clients and the public.
- Design and implement a rural practice program which brings more legal professionals to serve rural communities.
- Explore avenues to increase pro bono and low bono services by members.

Goal 4: To promote diversity, equity and inclusion in the legal system and profession

- Regularly evaluate and improve the culture, policies, procedures and practices of the WSBA so members from communities who have been systemically oppressed can enter, stay and thrive in the legal profession.
- Partner with various stakeholders such as Minority Bar Associations and others to promote diversity, equity and inclusion within the profession.
- Provide resources and training that will assist WSBA leaders members, and staff to examine their work through an equity lens and advance diversity, equity and inclusion.

Goal 5: To manage the business of the State Bar Association in a prudent, efficient and cost-efficient manner.

- Explore business practices that will maximize efficiency, productivity and enhance WSBA services to the members and the public
- Explore cash reserves and investment strategies
- Explore alternative opportunities for office space as we move to a more remote work environment.

Goal 6: Foster an organizational environment and culture that demonstrates a commitment to staff and embodies the organizational mission and stated values of the WSBA.

- Examine and implement recommendations from the Climate Survey to address the culture
- Engage in ongoing assessments to foster an environment that promotes and values employee feedback and input.
- Provide opportunities for the Board of Governors to increase communication and collaboration with the WSBA Executive Team and WSBA employees.