THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO THE GENERAL RULES; THE CODE OF JUDICIAL CONDUCT; THE DISCIPLINE RULES FOR JUDGES; THE BOARD FOR JUDICIAL ADMINISTRATION RULES; THE RULES OF PROFESSIONAL CONDUCT; THE ADMISSION AND PRACTICE RULES; THE RULES FOR ENFORCEMENT OF LAWYER CONDUCT; THE JUDICIAL INFORMATION SYSTEM COMMITTEE RULES; AND THE RULES OF EVIDENCE	**O R D E R** NO. 25700-A-1375

The Identifying Biased or Non-Inclusive Language in Court Rules Project, having recommended the suggested amendments to the General Rules; the Code of Judicial Conduct; the Discipline Rules for Judges; the Board for Judicial Administration Rules; the Rules of Professional Conduct; the Admission and Practice Rules; the Rules for Enforcement of Lawyer Conduct; the Judicial Information System Committee Rules; and the Rules of Evidence, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2022.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2022. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 5th day of October, 2021.

For the Court

González, C.J.

GENERAL RULE 9
RULE AMENDMENT COVER SHEET

Suggested Amendments to the General Rules; the Code of Judicial Conduct; the Discipline Rules for Judges; the Rules of Professional Conduct; the Admission to Practice Rules (LPO RPC, ELPOC); the Rules for Enforcement of Lawyer Conduct; and the Rules of Evidence: [GR 3.1, 5, 10, 12.4, 21, 22, 23, 26, 29, 30, 31.1, 33, 34; CJC II, III, 1.3 Comment, 2.11, 2.12 Comment, 3.4, 3.7, 3.8, 3.11, 3.14, 4.1, 4.1 Comment, 4.2, 4.4, 4.5; DRJ 13; APR 8, 9, 12, 14, 15, 15 Regulation, 19, 22.1, 23, 24.1, 25.2, 28, 28 Regulation; LPO RPC Terminology, 1.2; 1.6, 1.8, 1.10; ELPOC 2.3, 2.8, 4.1, 5.1, 5.7, 8.1, 8.3, 9.2, 10.14, 11.12, 12.6, 314.1, 14.2, 14.4; LLLT RPC Fundamental Principles, 1.2, 1.10, 5.5 Comment, 8.4; RPC Fundamental Principles, 1.0, 1.2 Comment, 1.6 Comment, 1.8 Comment, 1.10 Comment, 1.13, 1.13 Comment, 1.14 Comment, 1.18 Comment, 4.2 Comment, 4.3 Comment, 6.1 Comment, 8.4, 8.5, 8.5 Comment; ELC 2.3, 2.5, 2.7, 2.10, 4.1, 4.9 Title and Rule, 5.1, 5.8, 8.1, 8.2, 8.3, 9.3, 10.14, 11.14, 12.4, 12.6, 14.1, 14.2, 14.4; ER 803; 1101].

1. **Proponent:** Consortium to Address Biased and Non-Inclusive Language in Court Rules (Justice Mary Yu; QLaw, the LGBTQ+ Bar Association of Washington; and students from Seattle University School of Law)

2. **Spokesperson & Contact Info:** Madeline Pfeiffer, mpfeiffer@seattleu.edu; Gabriel Neuman, neumang@seattleu.edu; Laura Del Villar, Lauradelvill@seattleu.edu

3. **Purpose of Proposed Rule Amendment:** To identify biased and non-inclusive language in the court rules and to replace such language with neutral word(s) or re-write the rule utilizing neutral language that does not change the substantive meaning of the rule.

4. **Is Expedited Consideration Requested?** No, the proposed changes are not time-sensitive.

5. **Is a Public Hearing Recommended?** No

GR 3.1

SERVICE AND FILING BY AN INCARCERATED ~~INDIVIDUAL~~PERSON~~?~~
~~**INMATE CONFINED IN AN INSTITUTION**~~

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

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

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

DECLARATION

I, [*name of incarcerated ~~individual~~person~~inmate~~*], declare that, on [*date*], I deposited the foregoing [*name of document*], or a copy thereof, in the internal mail system of [*name of institution*] and made arrangements for postage, addressed to: [*name and address of court or other place of filing*]; [*name and address of parties or attorneys to be served*].

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

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

_____

[*signature*]

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

[Adopted effective September 1, 2006.]

AUDITS

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

[Adopted effective February 8, 1977.]

GR 10
ETHICS ADVISORY COMMITTEE REGARDING ADVISORY OPINIONS ON JUDICIAL CONDUCT

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

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

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

[Adopted effective September 1, 1983; Amended effective November 11, 1983; May 25, 1984; April 25, 2017.]

GR 12.4
WASHINGTON STATE BAR ASSOCIATION ACCESS TO RECORDS

(a) Policy and Purpose. It is the policy of the Washington State Bar Association to facilitate access to Bar records. A presumption of public access exists for Bar records, but public access to Bar records is not absolute and shall be consistent with reasonable expectations of personal privacy, restrictions in statutes, restrictions in court rules, or as provided in court orders or protective orders issued under court rules. Access shall not unduly burden the business of the Bar.

(b) Scope. This rule governs the right of public access to Bar records. This rule applies to the Washington State Bar Association and its subgroups operated by the Bar including the Board of Governors, committees, task forces, commissions, boards, offices, councils, divisions, sections, and departments. This rule also applies to boards and committees under GR 12.3 administered by the Bar. A person or entity entrusted by the Bar with the storage and maintenance of Bar records is not subject to this rule and may not respond to a request for access to Bar records, absent express written authority from the Bar or separate authority in rule or statute to grant access to the documents.

(c) Definitions.

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

(2) "Bar record" means any writing containing information relating to the conduct of any Bar function prepared, owned, used, or retained by the Bar regardless of physical form or characteristics. Bar records include only those records in the possession of the Bar and its staff or stored under Bar ownership and control in facilities or servers. Records solely in the possession of hearing officers, non-Bar staff members of boards, committees, task forces, commissions, sections, councils, or divisions that were prepared by the hearing officers or the members and in their sole possession, including private notes and working papers, are not Bar records and are not subject to public access under this rule. Nothing in this rule requires the Bar to create a record that is not currently in possession of the Bar at the time of the request.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation in paper, digital, or other format.

(d) Bar Records--Right of Access.

(1) The Bar shall make available for inspection and copying all Bar records, unless the record falls within the specific exemptions of this rule, or any other state statute (including the Public Records Act, chapter 42.56 RCW) or federal statute or rule as they would be applied to a public agency, or is made confidential by the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, the Admission to Practice Rules and associated regulations, the Rules for Enforcement of Limited Practice Officer Conduct, General Rule 25, court orders or protective orders issued under those rules, or any other state or federal statute or rule. To the extent required to prevent an unreasonable invasion of personal privacy interests or threat to safety or by the above-referenced rules, statutes, or orders, the Bar shall delete identifying details in a manner consistent with those rules, statutes, or orders when it makes available or

publishes any Bar record; however, in each case, the justification for the deletion shall be explained in writing.

(2) In addition to exemptions referenced above, the following categories of Bar records are exempt from public access except as may expressly be made public by court rule:

(A) Records of the personnel committee, and personal information in Bar records for employees, appointees, members, or volunteers of the Bar to the extent that disclosure would violate their right to privacy, including home contact information (unless such information is their address of record), Social Security numbers, driver's license numbers, identification or security photographs held in Bar records, and personal data including ethnicity, race, disability status, gender, and sexual orientation. Membership class and status, bar number, dates of admission or licensing, addresses of record, and business telephone numbers, facsimile numbers, and electronic mail addresses (unless there has been a request that electronic mail addresses not be made public) shall not be exempt, provided that any such information shall be exempt if the Executive Director approves the confidentiality of that information for reasons of personal security or other compelling reason, which approval must be reviewed annually.

(B) Specific information and records regarding

(i) internal policies, guidelines, procedures, or techniques, the disclosure of which would reasonably be expected to compromise the conduct of disciplinary or regulatory functions, investigations, or examinations;

(ii) application, investigation, and hearing or proceeding records relating to lawyer, Limited Practice Officer, or Limited License Legal Technician admissions, licensing, or discipline, or that relate to the work of ELC 2.5 hearing officers, the Board of Bar Examiners, the Character and Fitness Board, the Law Clerk Board, the Limited Practice Board, the MCLE Board, the Limited License Legal Technician Board, the Practice of Law Board, or the Disciplinary Board in conducting investigations, hearings or proceedings; and

(iii) the work of the Judicial Recommendation Committee and the Hearing Officer selection panel, unless such records are expressly categorized as public information by court rule.

(C) Valuable formulae, designs, drawings, computer source code or object code, and research data created or obtained by the Bar.

(D) Information regarding the infrastructure, integrity, and security of computer and telecommunication networks, databases, and systems.

(E) Applications for licensure by the Bar and annual licensing forms and related records, including applications for license fee hardship waivers and any decision or determinations on the hardship waiver applications.

(F) Requests by members for ethics opinions to the extent that they contain information identifying the member or a party to the inquiry.

Information covered by exemptions will be redacted from the specific records sought. Statistical information not descriptive of any readily identifiable person or persons may be disclosed.

(3) Persons Who Are Subjects of Records.

(A) Unless otherwise required or prohibited by law, the Bar has the option to give notice of any records request to any member or third party whose records would be included in the Bar's response.

(B) Any person who is named in a record, or to whom a record specifically pertains, may present information opposing the disclosure to the applicable decision maker.

(C) If the Bar decides to allow access to a requested record, a person who is named in that record, or to whom the records specifically pertains, has a right to initiate review or to participate as a party to any review initiated by a requester. The deadlines that apply to a requester apply as well to a person who is a subject of a record.

(e) Bar Records--Procedures for Access.

(1) *General Procedures*. The Bar Executive Director shall appoint a Bar staff member to serve as the public records officer to whom all records requests shall be submitted. Records requests must be in writing and delivered to the Bar public records officer, who shall respond to such requests within 30 days of receipt. The Washington State Bar Association must implement this rule and adopt and publish on its website the public records officer's work mailing address, telephone number, fax number, and e-mail address, and the procedures and fee schedules for accepting and responding to records requests by the effective date of this rule. The Bar shall acknowledge receipt of the request within 14 days of receipt, and shall communicate with the requester as necessary to clarify any ambiguities as to the records being requested. Records requests shall not be directed to other Bar staff or to volunteers serving on boards, committees, task forces, commissions, sections, councils, or divisions.

(2) *Charging of Fees*.

(A) A fee may not be charged to view Bar records.

(B) A fee may be charged for the photocopying or scanning of Bar records according to the fee schedule established by the Bar and published on its web site.

(C) A fee not to exceed $30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.

(f) Extraordinary Requests Limited by Resource Constraints. If a particular request is of a magnitude or burden on resources that the Bar cannot fully comply within 30 days due to constraints on time, resources, and personnel, the Bar shall communicate this information to the requester along with a good faith estimate of the time needed to complete the Bar's response. The Bar must attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the Bar's response, which may include a schedule of installment responses. If the Bar and requester are unable to reach agreement, the Bar shall respond to the extent practicable, clarify how and why the response differs from the request, and inform the requester that it has completed its response.

(g) Denials. Denials must be in writing and shall identify the applicable exemptions or other bases for denial as well as a written summary of the procedures under which the requesting party may seek further review.

(h) Review of Records Decisions.

(1) *Internal Review*. A person who objects to a record decision or other action by the Bar's public records officer may request review by the Bar's Executive Director.

(A) A record requester's petition for internal review must be submitted within 90 days of the Bar's public records officer's decision, on such form as the Bar shall designate and make available.

(B) The review proceeding is informal, summary, and on the record.

(C) The review proceeding shall be held within five working days. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

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

(A) The requesting party's request for review of the Executive Director's decision must be deposited in the mail and postmarked or delivered to the Bar not later than 30 days after the issuance of the decision, and must be on such form as the Bar shall designate and make available.

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

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

(D) The RRAO shall be appointed by the Board of Governors. The Bar may reimburse the RRAO for all necessary and reasonable expenses incurred in the completion of these duties, and may provide compensation for the time necessary for these reviews at a level established by the Board of Governors.

(i) Monetary Awards Not Allowed. Attorney fees, costs, civil penalties, or fines may not be awarded under this rule.

(j) Effective Date of Rule.

GR 20
SECURITY IN HANDLING COURT EXHIBITS

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

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

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

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

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

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

GR 21
EMERGENCY COURT CLOSURE

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

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

of the Administrator for the Courts shall be followed as soon as practicable with a written statement outlining the condition or event necessitating such action and the length of such closure.

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

[Adopted effective October 19, 1999.]

GR 22
ACCESS TO FAMILY LAW AND GUARDIANSHIP COURT RECORDS

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

(b) Definition and Construction of Terms.

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

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

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

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

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

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

Comment

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

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

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

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

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

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

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

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

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

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

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

Comment

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

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

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

(A) Parenting evaluations;

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

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

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

(E) Sexual abuse evaluations; and

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

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

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

(i) Materials or information reviewed;

(ii) Individuals contacted;

(iii) Tests conducted or reviewed; and

(iv) Conclusions and recommendations.

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

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

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

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

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

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

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

When a judicial officer proposes to consider information from a JIS database relevant to the placement of a child in a parenting plan, the judicial officer shall either orally disclose on the record or disclose the relevant information in written form to each party present at the hearing and, on timely request, provide any party an opportunity to be heard regarding that information.

The judicial officer has discretion not to disclose information that ~~he or she does~~they do not propose to consider. The judicial officer may restrict secondary dissemination of written unredacted JIS database information not available to the public.

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

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

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

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

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

Comment

See comment to (d)(3) above.

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

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

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

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

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

(A) Parties of record as to their case.

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

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

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

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

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

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

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

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

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

GR 23
RULE FOR CERTIFYING PROFESSIONAL GUARDIANS

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

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

(c) Certified Professional Guardian Board.

(1) *Establishment*.

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

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

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

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

(2) *Duties and Powers*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) *Leave of Absence*. The Board may adopt regulations specifying that a Board member who is the subject of a disciplinary investigation by the Board must take a leave of absence from the Board. A Board member may not continue to serve as a member of the Board if the Board or Supreme Court has imposed a final disciplinary sanction on the Board member.

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

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

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

(i) Be at least 18 years of age;

(ii) Be of sound mind;

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

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

(v) The experience required by this rule is experience in which the applicant has developed skills that are transferable to the provision of guardianship services and must include

decisionmaking or the use of independent judgment for the benefit of others, not limited to incapacitated persons, in the area of legal, financial, social services or healthcare or other disciplines pertinent to the provision of guardianship services;

(vi) Have completed the mandatory certification training.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Guardian Disclosure Requirements.

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

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

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

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

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

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

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

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

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

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

(h) Ethics Advisory Opinions.

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

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

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

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

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

GR 26
MANDATORY CONTINUING JUDICIAL EDUCATION

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

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

(b) **Judicial College Attendance.**

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

(2) A judicial officer who attended the Washington Judicial College during ~~his or her~~their term of office in a court of limited jurisdiction shall attend and complete the Washington Judicial College within twelve (12) months of any subsequent appointment or election to the Superior Court. A judicial officer who attended the Washington Judicial College during ~~his or her~~their term of office in the Superior Court shall attend and complete the Washington Judicial College within twelve (12) months of any subsequent appointment or election as a judicial officer in a court of limited jurisdiction. A judicial officer who attended the Washington Judicial College during ~~his or her~~their term of office in a superior court or court of limited jurisdiction and is subsequently appointed or elected to an appellate court position is not required to attend the Washington Judicial College.

(3) A judicial officer of a District Court, Municipal Court, Superior Court, or an appellate court, who has been a judicial officer at the time of the adoption of this rule for less than four (4) years but has not attended the Washington Judicial College, shall attend and complete the Washington Judicial College program within twelve (12) months of the adoption of this rule.

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

(d) Compliance Report. Each judicial officer shall file a report with the Administrative Office of the Courts (AOC) on or before January 31 each year in such form as the Administrative Office of the Courts shall prescribe concerning the judicial officer's progress toward the continuing judicial education requirements of sections (a) and (b) of this rule during the previous

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

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

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

[Adopted effective July 1, 2002; Amended effective November 26, 2002; December 31, 2003; December 31, 2007; January 1, 2013; December 8, 2015.]

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

Section I: Organization and Administration

1. Supreme Court

The Supreme Court is the rule-making authority for the integrated judicial branch of government in Washington.

2. Board for Judicial Administration (BJA)

The Board for Judicial Administration provides policy review and program leadership for the courts at large, including recommending rules to the Supreme Court that improve the judicial branch of government in our state.

3. Court Education Committee (CEC)

The Court Education Committee is a standing committee of the BJA and assists the Supreme Court and the BJA in developing educational policies and standards for the court system. The CEC provides budget and appropriation support, monitors the quality of educational programs, coordinates in-state and out-of-state educational programs and services, recommends changes in policies and standards, and approves guidelines for accrediting training programs.

4. Mandatory Continuing Judicial Education (MCJE)

The responsibilities of the CEC will be to:

(a) Administer General Rule (GR) 26;

(b) Establish operating procedures consistent with this rule;

(c) Report annually to the Supreme Court and publicly release names of judicial officers who have not complied with the rule.

5. Administrative Office of the Courts (AOC)

(a)*Administrative Office the Courts.* Under the direction of the Supreme Court and CEC, the (AOC) shall develop guidelines for the implementation of the standards, and shall develop, administer, and coordinate judicial education programs throughout the state. The AOC will also track and monitor attendance at continuing judicial education programs accredited by the CEC.

(b)*Office of Trial Court Services and Judicial Education.* The Judicial Education Unit of AOC shall work with the CEC educational committees of the judicial associations and other ad hoc groups to prepare and implement judicial education programs. The unit shall coordinate all CEC judicial education programs, provide staff for the CEC, and evaluate educational programs. Further, the Judicial Education Unit staff shall provide support and assistance to judicial advisory committees in the planning, development, implementation, and evaluation of education programs consistent with established standards and requirements for judicial education.

AOC shall maintain the official transcript for each judicial officer based on: (1) attendance records at all CEC accredited education programs; (2) the attendance records of accredited sponsors based on their submissions; and (3) the individual education reports. Based on that official record, AOC will report annually to the Supreme Court.

Section II: General Standards for Continuing Judicial Education

1. Credit for Continuing Judicial Education (CJE)

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

(a) At least thirty (30) hours, of which at least four (4) hours are in the area of judicial ethics, must be completed by attending accredited courses. "Attending" is defined as (1) presenting for, or being present in the audience at, an accredited CJE course when and where the course is being presented; (2) presenting for, or participating through an electronic medium in, an accredited CJE course at the time the course is being presented; or (3) participating through an electronic medium in an accredited CJE course that has been prerecorded, but for which faculty are available to answer questions while the course is being presented.

(b) Up to fifteen (15) hours, of which up to two (2) hours are in the area of judicial ethics, may be completed through self-study by listening to, or watching, pre-recorded accredited CJE courses. Judicial officers completing credits by self-study must report them to the AOC.

(c) Up to fifteen (15) hours, of which up to two (2) hours are in the area of judicial ethics, may be completed through teaching at accredited CJE courses and/or publishing legal writing. A judicial officer may complete up to three (3) hours of teaching credits for each hour of presentation. Credits for published legal writing must be approved by the CEC. Judicial officers completing credits by teaching or writing must report them to the AOC.

(d) Up to three (3) hours may be completed by visits to correctional and similar institutions. Judicial officers completing credits by institutional visits must report them to the AOC.

(e) Judicial officers may attend a combination of approved local, state, or national programs.

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

2. Carry-Over

If a judicial officer completes more than forty-five (45) such credit hours in a three (3)-year reporting period, up to fifteen (15) hours of excess credits may be carried forward and applied to the judicial officer's education requirement for the following three (3)-year reporting period. The fifteen (15) credit hours that may be carried forward may include two (2) credit hours toward the ethics requirement.

3. Judicial College Attendance

Each judicial officer shall attend and complete the Washington Judicial College program within twelve (12) months of initial appointment or election to the judicial office.

4. Credit Calculation

Credit is calculated on the basis of one (1) credit for each sixty (60) minutes of actual subject presentation/participation, not including introductions, overviews, closing remarks, presentation during meals, or keynote addresses unless clearly identified in the agenda as a substantive legal presentation.

Section III: Program Accreditation

1. Washington State Judicial Branch Sponsors

Attendance at any education program sponsored by the following shall be presumed to meet standards and be accredited:

(a) Washington State Supreme Court,

(b) Administrative Office of the Courts,

(c) Judicial education programs of Court Education Committee (CEC),

(d) Court of Appeals (COA),

(e) Superior Court Judges' Association (SCJA),

(f) District and Municipal Court Judges Association (DMCJA),

(g) Minority and Justice Commission,

(h) Commission on Gender and Justice.

2. Other Judicial Education Sponsors

Attendance at any education program sponsored by the following shall be presumed to meet standards and be accredited:

(a) The National Judicial College in Reno, including the University of Nevada Masters and PhD in Judicial Studies and Web-based programs.

(b) American Academy of Judicial Education,

(c) New York University's Appellate Judges Seminar,

(d) University of Virginia's Master of Laws in the Judicial Process (LLM),

(e) The National Center for State Courts (NCSC) programs such as those sponsored by the American Judges Association, the Institute for Court Management, National Council of Probate Judges, and the National Association of Women Judges,

(f) Programs approved for Tuition Assistance by CEC,

(g) The Judicial Division of the American Bar Association (ABA),

(h) The Judicial Divisions of all National Bar Associations:

1. National Asian Pacific Bar Association,

2. National Bar Association,

3. Hispanic National Bar Association.

3. Other Continuing Professional Education Programs

To receive credit for attending or serving as faculty at a program sponsored by an organization other than those listed above, a judicial officer may file with the AOC an agenda of the program, which will be submitted to the CEC for possible accreditation. Courses approved by the Washington State Bar Association for continuing legal education credits that deal with substantive legal topics, statutory, constitutional, or procedural issues that come before the judicial officer will usually qualify for CJE.

4. Basis for Accreditation of Courses

Courses will be approved based upon their content. An approved course shall have significant intellectual or practical content relating to the duties of the judicial officer.

Definitions. The course shall constitute an organized program of learning dealing with matters directly relating to the judicial officer's duties, including but not limited to substantive legal topics, statutory, constitutional and procedural issues that come before

(a)The judicial officer; judicial ethics or professionalism, anti-bias and diversity training, and substance abuse prevention training.

(b)*Factors in Evaluating.* Factors which should be considered in evaluating a course include:

(1) The topic, depth, and skill level of the material;

(2) The level of practical and/or academic experience or expertise of the presenters or faculty;

(3) The intended audience;

(4) The quality of the written, electronic, or presentation materials, which should be of high quality, readable, carefully prepared and distributed to all attendees at or before the course is presented.

5. Programs That Do Not Qualify

The following activities will not qualify for CJE credit:

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

(b) Teaching a legal subject to non-lawyers in an activity or course that would not qualify those attending for CJE/CLE credit;

(c) Jury duty;

(d) Judging or participating in law school or mock trial competitions;

(e) Serving on professional (judicial or legal) committees/associations;

6. Appeals

A judicial officer may appeal the denial of program accreditation by the CEC. The appeal may be in the form of a letter addressed to the Chair of the BJA that outlines the basis for the judicial officer's request. The Chair of the BJA shall notify the judicial officer in writing of its decision to sustain or overrule the decision of the CEC.

Section IV: Responsibilities

1. Sponsors of Accredited Programs

It is the responsibility of the Washington State judicial branch sponsors of a judicial education program to report judicial officer attendance and credits for all approved CJE courses to the AOC.

2. Individuals

(a) It is the responsibility of **individual judicial officers** to file a report of their attendance when it is less than the full program provided, for programs sponsored by Washington State Judicial Branch entities.

(b) It is the responsibility of the judicial officer to request accreditation for attendance for programs of other judicial educational sponsors (see Section 4.2. list of sponsors).

(c) It is the responsibility of the **individual judicial officers** to submit requests for accreditation for other continuing professional education programs, credit for teaching, published judicial legal writing, or self-study to the AOC which shall present those to the CEC for review and determination.

3. Deadline

Absent exigent circumstances, sponsors and individual judicial officers must report attendance within 30 days after completion of a CJE activity.

Section V: Certification

1. Compliance

The AOC will send out a reminder of the end-of-the-year reporting requirement via judicial officers Listservs each year in August. The AOC, by January 1, will provide a progress report to every judicial officer of the programs they have attended during the previous calendar year. After reviewing that progress report, judicial officers must either:

(a) Confirm it as an accurate record of their progress toward compliance with the rule, or;

(b) Provide additional information on programs attended with accompanying documentation and;

(c) File that report with the AOC on or before January 31 each year. If a judicial officer does not respond by January 31, their credits will be confirmed by default.

AOC shall publish a report with the names of all judicial officers who do not fulfill the requirements of sections (a) and (b) of GR 26. The AOC report shall be disseminated by means that may include, but are not limited to, publishing on the Washington Courts Internet Web site, publishing the information as part of any voter's guide produced by or under the direction of the AOC, and releasing the information in electronic or printed form to media organizations throughout Washington State.

The report will include the names of all judicial officers who fail to obtain the requisite number of education credits during their three-year reporting period, or the requirements of Judicial College attendance.

2. Three-Year Reporting Periods

Three-year reporting periods will be created as follows:

(a) Group 1 are those judicial officers present as of January 1, 2003, and those who begin service every subsequent third year: 2006, 2009, 2012, 2015, 2018, 2021, 2024, 2027, 2030, etc.;

(b) Group 2 are those judicial officers who begin service in 2004, 2007, 2010, 2013, 2016, 2019, 2022, 2025, 2028, 2031, etc.;

(c) Group 3 are those judicial officers who begin service in 2005 and every subsequent third year: 2008, 2011, 2014, 2017, 2020, 2023, 2026, 2029, 2032, etc.

The three-year reporting period for each new judicial officer begins on January 1 nearest their appointment or election.

3. Delinquency

GR 28
JURY SERVICE POSTPONEMENT, EXCUSAL, AND DISQUALIFICATION

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

(b) Delegation of Authority to Postpone, Excuse, or Disqualify.

(1) The judges of a court may delegate to court staff and county clerks their authority to disqualify, postpone, or excuse a potential juror from jury service under RCW 2.36.100. The judges of a court may not delegate to court staff and county clerks their authority to excuse a potential juror for unfitness under RCW 2.36.110.

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

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

(c) Grounds for Postponement of Service.

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

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

(d) Grounds for Excusal from Service.

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

(e) Grounds for Disqualification of Potential Jurors. [Reserved. See RCW 2.36.070.]

[Adopted effective October 1, 2002.]

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

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

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

If the judges of a district fail or refuse to elect a Presiding Judge, the Supreme Court shall appoint the Presiding Judge and Assistant Presiding Judge.

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

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

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

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

Commentary

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

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

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

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

Commentary

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

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

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

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

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

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

(4) Develop and coordinate statistical and management information;

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

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

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

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

Commentary

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

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

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

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

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

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

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

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

Commentary

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

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

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

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

Commentary

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

- It would create many "Presiding Judge Rules" all of which are different.

- It could subject some municipal and district court judges to pressure from their executive and/or legislative authority to relinquish authority over areas such as budget and personnel.

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

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

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

Commentary

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

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

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

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

(k) Employment Contracts. A part-time judicial officer may contract with a municipal or county authority for salary and benefits. The employment contract shall not contain provisions which conflict with this rule, the Code of Judicial Conduct or statutory judicial authority, or which would create an impropriety or the appearance of impropriety concerning the judge's activities. The employment contract should acknowledge the court is a part of an independent branch of government and that the judicial officer or court employees are bound to act in accordance with the provisions of the Code of Judicial Conduct and Washington State Court rules. A part-time judicial officer's employment contract shall comply with GR 29(k) and contain the following provisions, which shall not be contradicted or abrogated by other provisions within the contract.

(l) Required Provisions of a Part-Time Judicial Officer Employment Contract.

(1) *Term of Office and Salary*. The judge's term of office shall be four years, as provided in RCW 3.50.050. The judge's salary shall be fixed by ordinance in accordance with RCW 3.50.080, and the salary shall not be diminished during the term of office.

(2) *Judicial Duties*. The judge shall perform all duties legally prescribed for a judicial officer according to state law, the requirements of the Code of Judicial Conduct, and Washington State court rules.

(3) *Judicial Independence and Administration of the Court*. The court is an independent branch of government. The judge shall supervise the daily operations of the court and all personnel assigned to perform court functions in accordance with the provisions of GR 29(e) and (f), and RCW 3.50.080. Under no circumstances should judicial retention decisions be made on the basis of a judge's or a court's performance relative to generating revenue from the imposition of legal financial obligations.

(4) *Termination and Discipline*. The judge may only be admonished, reprimanded, censured, suspended, removed, or retired during the judge's term of office only upon action of the Washington State Supreme Court, as provided in article IV, section 31 of the Washington State Constitution.

[Adopted effective April 30, 2002; Amended effective May 5, 2009; February 1, 2021.]

GR 30
ELECTRONIC FILING AND SERVICE

(a) Definitions.

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

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

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

(4) "Electronic signature" is an electronic image of the handwritten signature or other electronic sound, symbol, or process, of an individual; attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record, including but not limited to "/s/ [name of signatory]".

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

Comment

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

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

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

Comment

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

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

(4) A court may adopt a local rule that mandates electronic filing by attorneys and/or electronic service of documents on attorneys for parties of record, provided that the attorneys are not additionally required to file paper copies except for those documents set forth in (b)(2). Electronic service may be made either through an electronic transmission directly from the court (where available) or by a party's attorney. Absent such a local rule, parties may electronically

serve documents on other parties of record only by agreement. The local rule shall not be inconsistent with this rule and the Electronic Filing Technical Standards, and the local rule shall permit paper filing and/or service upon a showing of good cause. Electronic filing and/or service should not serve as a barrier to access.

Comment

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

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

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

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

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

(d) Authentication of Electronic Documents.

(1) *Procedures*

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

Comment

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

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

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

(2) *Signatures*

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

s/John Attorney State
Bar Number 12345
ABC Law Firm
123 South Fifth Avenue
Seattle, WA 98104

Telephone: (206) 123-4567
Fax: (206) 123-4567
E-mail: John.Attorney@lawfirm.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Filing fees, electronic filing fees.

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

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

[Adopted effective September 1, 2003; Amended effective December 4, 2007; September 1, 2011; December 9, 2014; February 1, 2021.]

GR 31.1
ACCESS TO ADMINISTRATIVE RECORDS

GENERAL PRINCIPLES

(a) Policy and Purpose. Consistent with the principles of open administration of justice as provided in article I, section 10 of the Washington State Constitution, it is the policy of the judiciary to facilitate access to administrative records. A presumption of access applies to the judiciary's administrative records. Access to administrative records, however, is not absolute and shall be consistent with exemptions for personal privacy, restrictions in statutes, restrictions in court rules, and as required for the integrity of judicial decision-making. Access shall not unduly burden the business of the judiciary.

(b) Overview of Public Access to Judicial Records. There are three categories of judicial records.

(1) Case records are records that relate to in-court proceedings, including case files, dockets, calendars, and the like. Public access to these records is governed by GR 31, which refers to these records as "court records," and not by this GR 31.1. Under GR 31, these records are presumptively open to public access, subject to stated exceptions.

(2) Administrative records are records that relate to the management, supervision, or administration of a court or judicial agency. A more specific definition of "administrative records" is in section (i) of this rule. Under section (j) of this rule, administrative records are presumptively open to public access, subject to exceptions found in sections (j) and (*l*) of this rule.

(3) Chambers records are records that are controlled and maintained by a judge's chambers. A more specific definition of this term is in section (m) of this rule. Under section (m), chambers records are not open to public access.

PROCEDURES FOR ADMINISTRATIVE RECORDS

(c) Procedures for Records Requests.

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

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

GR 33
REQUESTS FOR ACCOMMODATION BY PERSONS WITH DISABILITIES

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

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

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

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

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

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

(b) Process for Requesting Accommodation.

(1)*Requests*. Requests for aids, modifications, and services will be addressed promptly and in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101-12213) and the Washington State Law Against Discrimination (ch. 49.60 RCW), with the objective of ensuring equal access to courts, court programs, and court proceedings.

(2)*Timing*. Requests should be made in advance whenever possible, to better enable the court to address the needs of the individual.

(3)*Local Procedures Allowed*. Local procedures not inconsistent with this rule are encouraged. Informal practices are appropriate when an accommodation is clearly needed and can be easily provided.

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

(5)*Content*. The request shall include a description of the accommodation sought, along with a statement of the disability necessitating the accommodation. The court may require the person requesting accommodation to provide additional information about the qualifying disability to help assess the appropriate accommodation. Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated "SEALED MEDICAL AND HEALTH INFORMATION" and such information shall be accessible only to the court and the person requesting accommodation unless otherwise expressly ordered.

(c) Consideration and Decision.

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

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101-12231), chapter 49.60 RCW, and other similar local, state, and federal laws;

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

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

(2) *Determination*. A request for accommodation may be denied only if:

(A) the person requesting application has failed to satisfy the substantive requirements of this rule; or

(B) the court is unable to provide the requested accommodation on the date of the proceeding and the proceeding cannot be continued without significant prejudice to a party; or

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

(D) the requested accommodation would create an undue financial or administrative burden for the court; or would fundamentally alter the nature of the court service, program, or activity under (i) or (ii):

(i) An accommodation may be denied based on a fundamental alteration or undue burden only after considering all resources available for the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(ii) If a fundamental alteration or undue burden would result from fulfilling the request, the court shall nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the court.

(d) Decision. The court shall, in writing or on the record, inform the person requesting an accommodation that the request for accommodation has been granted or denied, in whole or in part, and the nature and scope of the accommodation to be provided, if any. A written decision shall be entered in the proceedings file, if any, in which case the court shall determine whether or not the decision should be sealed. If there are no proceedings filed the decision shall be entered in the court's administrative files, with the same determination about filing under seal.

(e) Denial. If a requested accommodation is denied, the court shall specify the reasons for the denial (including the reasons the proceeding cannot be continued without prejudice to a party). The court shall also ensure the person requesting the accommodation is informed of ~~his or~~

~~her~~their right to file a complaint under the Americans with Disabilities Act of 1990 with the United States Department of Justice Civil Rights Division.

Comments

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

[2]Supplemental informal procedures for handling accommodation requests may be less onerous for both applicants and court administration. Courts are strongly encouraged to adopt an informal grievance process for public applicants whose requested accommodation is denied. [Adopted effective September 1, 2007; Amended effective December 28, 2010; September 1, 2014.]

GR 34 WAIVER OF COURT AND CLERK'S FEES AND CHARGES IN CIVIL MATTERS ON THE BASIS OF INDIGENCY

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

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

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

Comment

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

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

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

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

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

(iii) Federal Supplemental Security Income (SSI);

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

(v) Food Stamp Program (FSP); or

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

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

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

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

(5) As used in this rule, "qualified legal services provider" means those legal services providers that meet the definition of APR 1(e)(8).

Comment

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

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

[Adopted effective December 28, 2010; Amended effective April 21, 2020.]

GR 35
OFFICIAL CERTIFIED SUPERIOR COURT TRANSCRIPTS

(a) Definitions.

(1) "Authorized transcriptionist" means a person approved by a Superior Court to prepare an official verbatim report of proceedings of an electronically recorded court proceeding in that court.

(2) "Certified court reporter" means a person who meets the standards outlined in RCW

Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

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

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

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

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

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

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

[Adopted effective January 1, 2011.]

CJC APPLICATION

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

I. APPLICABILITY OF THIS CODE

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

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

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

Comments

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

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

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

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

II. PART-TIME JUDGE

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

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

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

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

(C) When a person who has been a part-time judge is no longer a part-time judge, that person may act as a lawyer in a proceeding in which ~~he or she~~they [GN1]served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to the Rules of Professional Conduct.

Comments

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

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

III. JUDGE PRO TEMPORE

A judge pro tempore is not required to comply:

(A) except while serving as a judge, with Rule 1.2 (Promoting Confidence in the Judiciary), Rule 2.4 (External Influences on Judicial Conduct), Rule 2.10 (Judicial Statements on Pending and Impending Cases); Rule 3.1 (Extrajudicial Activities in General); Rule 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) or 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); or

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

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

(D) When a person who has been a judge pro tempore is no longer a judge pro tempore, that person may act as a lawyer in a proceeding in which ~~he or she~~they [GN2]served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to the Rules of Professional Conduct.

VI. TIME FOR COMPLIANCE

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

Comment

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

[Adopted effective January 1, 2011; Amended effective June 23, 2015.]

CJC TERMINOLOGY

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

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

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

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

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

"**Domestic partner**" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom ~~he or she~~they are ~~[GN3]is~~ legally married. See Rules 2.11, 2.13, 3.13, and 3.14.

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

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

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

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

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

See Rules 1.3 and 2.11.

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

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

"**Impartial**," "**impartiality**," and "**impartially**" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open

mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

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

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

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

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

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

"**Judicial candidate**" means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as ~~he or she~~[GN4]they make~~s~~ a public announcement of candidacy, declare~~s~~ or file~~s~~ as a candidate with the election or appointment authority, authorize~~s~~ or, where permitted, engage~~s~~ in solicitation or acceptance of contributions or support, or ~~is~~ are nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.

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

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

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

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

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

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

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

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

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

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

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

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

"**Third degree of relationship**" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, sibling[PM5], brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11. [GN6]

[Adopted effective January 1, 2011.]

CJC CANON 1

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

RULE 1.1. Compliance with the Law

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

Comments

See Scope [6].

RULE 1.2. Promoting Confidence in the Judiciary

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

Comments

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

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

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

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

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

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

RULE 1.3. Avoiding Abuse of the Prestige of Judicial Office

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

Comments

[1] It is improper for a judge to use or attempt to use ~~his or her~~their [GN7]position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to ~~his or her~~their [GN8]judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting ~~his or her~~their [GN9]personal business.

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

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

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this

(A) A judge shall disqualify ~~himself or herself~~themself [GN10]in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that ~~he or she~~[GN11]them, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) [Reserved.]

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer or a material witness in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge disqualified by the terms of Rule 2.11(A)(2) or Rule 2.11(A)(3) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all

agree in writing or on the record that the judge's relationship is immaterial or that the judge's economic interest is de minimis, the judge is no longer disqualified, and may participate in the proceeding. When a party is not immediately available, the judge may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

(D) A judge may disqualify ~~himself~~ themself ~~or~~ [GN12]~~herself~~ if the judge learns by means of a timely motion by a party that an adverse party has provided financial support for any of the judge's judicial election campaigns within the last six years in an amount that causes the judge to conclude that his or her impartiality might reasonably be questioned. In making this determination the judge should consider:

(1) the total amount of financial support provided by the party relative to the total amount of the financial support for the judge's election,

(2) the timing between the financial support and the pendency of the matter, and

(3) any additional circumstances pertaining to disqualification.

Comments

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions in Washington, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

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

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

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

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

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

[7] [Reserved.]

[8] [Reserved.]

RULE 2.12. Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act with fidelity and in a diligent manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comments

[1] A judge is responsible for ~~his or her~~their [GN13]own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13. Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially* and on the basis of merit; and

(2) shall avoid nepotism and unnecessary appointments.

(B) A judge shall not appoint a lawyer to a position under circumstances where it would be reasonably to be interpreted to be quid pro quo for campaign contributions or other favors, unless:

(1) the position is substantially uncompensated;

(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or

(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1. Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge; except activities expressly allowed under this code. This rule does not apply to national or state military service;

(C) participate in activities that would undermine the judge's independence,* integrity,* or impartiality;*

(D) engage in conduct that would be coercive; or

(E) make extrajudicial or personal use of court premises, staff, stationery, equipment, or other resources, except for incidental use permitted by law.

Comments

[1] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system. To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination.

[3] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

[4] Before speaking or writing about social or political issues, judges should consider the impact of their statements under Canon 3.

RULE 3.2. Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting in a matter involving the judge's, the judge's marital community's, or the judge's domestic partnership's legal or economic interests, or those of members of the judge's immediate family residing in the judge's household, or when the judge is acting in a fiduciary* capacity. In engaging in such activities, however, judges must exercise caution to avoid abusing the prestige of judicial office.

Comments

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

RULE 3.3. Acting as a Character Witness

A judge shall not act as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Comments

[1] A judge who, without being subpoenaed, acts as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to act as a character witness.

[2] This rule does not prohibit judges from writing letters of recommendation in nonadjudicative proceedings pursuant to Rule 1.3 comments [2] and [3].

RULE 3.4. Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice. A judge may represent ~~his or her~~their [GN14]country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

RULE 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(A) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds, or volunteering services or goods at fundraising events as long as the situation could not reasonably be deemed coercive;

(B) soliciting* contributions* for such an organization or entity, but only from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;

(C) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting ~~his or her~~their [GN15]title to be used in connection with an event of such an organization or entity, but if the event serves a fundraising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice;

(D) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(1) will be engaged in proceedings that would ordinarily come before the judge; or

(2) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Comments

[1] The activities permitted by Rule 3.7 generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fundraising purpose, does not constitute a violation of paragraph (C). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fundraising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fundraising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

[6] A judge may not directly solicit funds, except as permitted under Rule 3.7(B), however a judge may assist a member of the judge's family in their charitable fundraising activities if the procedures employed are not coercive and the sum is de minimis.

[7] [Reserved.]

[8] A judge may provide leadership in identifying and addressing issues involving equal access to the justice system; developing public education programs; engaging in activities to promote the fair administration of justice; and convening, participating, or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.

[9] A judge may endorse or participate in projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.

RULE 3.8. Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary* position, such as executor, administrator, trustee, guardian, attorney-in-fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, ~~he or she~~they [GN16]must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

Comment

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9. Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions in a private capacity unless authorized by law.*

Comments

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is authorized by law.

[2] Retired, part-time, or pro tempore judges may be exempt from this section. (See Application.)

RULE 3.10. Practice of Law

(A) A judge shall not practice law. A judge may act pro se or on behalf of his or her marital community or domestic partnership and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family member's lawyer in any adjudicative forum.

(B) This rule does not prevent the practice of law pursuant to national or state military service.

Comment

[1] A judge may act pro se or on behalf of his or her marital community or domestic partnership in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

RULE 3.11. Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family.*

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

(D) As soon as practicable without serious financial detriment, the judge must divest ~~himself or herself~~themself [GN17]of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Comments

[1] Judges are generally permitted to engage in financial activities, subject to the requirements of this Rule and other provisions of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use ~~his or her~~their [GN18]official title or appear in judicial robes in business advertising, or to conduct ~~his or her~~their [GN19]business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] There is a limit of not more than one (1) year allowed to comply with Rule 3.11(D). (See Application Part IV.)

RULE 3.12. Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law* unless such acceptance would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

Comments

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,* or other family member of a judge residing in the judge's household,* but that incidentally benefit the judge.

(9) gifts incident to a public testimonial;

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal, or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

Comments

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits. Acceptance of any gift or thing of value may require reporting pursuant to Rule 3.15 and Washington law.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at belowmarket interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

RULE 3.14. Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law,* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge.

Comments

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code and Washington law.

[3] A judge must assure ~~himself or herself~~themself [GN20]that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding source(s) is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

RULE 3.15. Reporting Requirements

A judge shall make such financial disclosures as required by law.

[Adopted effective January 1, 2011.]

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

RULE 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law,* or by Rules 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), and 4.4 (Campaign Committees), a judge or a judicial candidate* shall not:

(1) act as a leader in, or hold an office in, a political organization;*

(2) make speeches on behalf of a political organization or nonjudicial candidate;

(3) publicly endorse or oppose a nonjudicial candidate for any public office, except for participation in a precinct caucus limited to selection of delegates to a nominating convention for the office of President of the United States pursuant to (5) below.

(4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a nonjudicial candidate for public office;

(5) publicly identify ~~himself or herself~~themself [GN21]as a member or a candidate of a political organization, except

(a) as required to vote, or

(b) for participation in a precinct caucus limited to selection of delegates to a nominating convention for the office of President of the United States.

(6) [Reserved.]

(7) personally solicit* or accept campaign contributions other than through a campaign committee authorized by Rule 4.4, except for members of the judge's family or individuals who have agreed to serve on the campaign committee authorized by Rule 4.4 and subject to the requirements for campaign committees in Rule 4.4(B).

(8) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others except as permitted by law;

(9) use court staff, facilities, or other court resources in a campaign for judicial office except as permitted by law;

(10) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;

(11) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or

(12) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

Comments

GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to ~~his or her~~their [GN22]conduct.

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Therefore, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for nonjudicial public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for judicial office. See Rule 4.2(B)(2).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or judicial candidate publicly endorsing nonjudicial candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they are using the prestige of the their judicial office to endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, is not prohibited by paragraphs (A)(2) or (A)(3) and is allowed by Paragraphs (A)(2) and (A)(5). Because Washington uses a caucus system for selection of delegates to the nominating conventions of the major political parties for the office of President of the United States, precluding judges and judicial candidates from participating in these caucuses would eliminate their ability to participate in the selection process for Presidential nominations. Accordingly, Paragraph (A)(3) and (5) allows judges and judicial candidates to participate in precinct caucuses, limited to selection of delegates to a nominating convention for

the office of President of the United States. This narrowly tailored exception from the general rule is provided for because of the unique system used in Washington for nomination of Presidential candidates. If a judge or a judicial candidate participates in a precinct caucus, such person must limit participation to selection of delegates for various candidates.

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(10) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(10), (A)(11), or (A)(12), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(11), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against ~~him or her~~them [GN23]during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(11) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(12) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to ~~his or her~~their [GN24]personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(12) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(12), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do respond to questionnaires should post the questionnaire and their substantive answers so they are accessible to the general public. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

PERSONAL SOLICITATION OF CAMPAIGN FUNDS

[16] Judicial candidates should be particularly cautious in regard to personal solicitation of campaign funds. This can be perceived as being coercive and an abuse of judicial office. Accordingly, a general prohibition on personal solicitation is retained with a narrowly tailored exception contained in Paragraph (A)(7) for members of the judge's family and those who have agreed to serve on the judge's campaign committee. These types of individuals generally have a close personal relationship to the judicial candidate and therefore the concerns of coercion or abuse of judicial office are greatly diminished. Judicial candidates should not use this limited exception as a basis for attempting to skirt the general prohibition against solicitation of campaign contributions.

RULE 4.2. Political and Campaign Activities of Judicial Candidates in Public Elections

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

(1) Act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fundraising laws and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or ~~his or her~~their [GN25]campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.

(B) A candidate for elective judicial office may:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of ~~his or her~~their [GN26]candidacy through any medium, including but not limited to advertisements, web sites, or other campaign literature;

(3) seek, accept, or use endorsements from any person or organization.

Comments

[1] Paragraphs (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1.

[2] Despite paragraph (B), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A) paragraphs (4), (10), and (12).

[3] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations on behalf of their own candidacy or that of another judicial candidate.

[4] In endorsing or opposing another candidate for judicial office, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

[5] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively.

RULE 4.3. Activities of Candidates for Appointive Judicial Office

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization.

Comment

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(12).

RULE 4.4. Campaign Committees

(A) A judicial candidate* subject to public election* may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that ~~his or her~~[GN27]their campaign committee complies with applicable provisions of this Code and other applicable law.*

(B) A judicial candidate subject to public election shall direct ~~his or her~~their [GN28]campaign committee:

(1) to solicit and accept only such campaign contributions* as are reasonable, in any event not to exceed, in the aggregate amount allowed as provided for by law;

(2) not to solicit contributions for a candidate's current campaign more than 120 days before the date when filing for that office is first permitted and may accept contributions after the election only as permitted by law; and

(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with the Public Disclosure Commission all reports as required by law.

Comments

[1] Judicial candidates are generally prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(7). This Rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

RULE 4.5. Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law* to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

Comments

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote ~~his or her~~their [GN29]candidacy, and prevents postcampaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

SUBSTITUTE PANEL

(a) Generally. If a justice of the Supreme Court is the subject of commission discipline or recommendation for retirement that is reviewed by the Supreme Court, a substitute panel of nine judges shall be selected as provided in this rule to serve as justices pro tempore to consider the commission decision.

(b) Selection of Justices Pro Tempore. The presiding chief judge of the Court of Appeals shall be one member of the substitute panel and shall be the chief justice pro tempore unless the judge disqualifies ~~himself or herself~~themself [GN1]or is otherwise disqualified by section (c). The clerk of the Supreme Court shall select the balance of the justices pro tempore by lot from all remaining active Court of Appeals judges. If there are fewer than nine judges of the Court of Appeals who are not disqualified, the panel shall be completed by the clerk by selecting by lot from the active superior court judges until a full panel of nine justices pro tempore has been selected.

(c) Disqualification. A judge may disqualify ~~himself or herself~~themself [GN2]without cause. No judge who has served as a master or a member of the commission in the particular proceeding or who is otherwise disqualified may serve on the substitute panel. No judge against whom a formal charge is pending before the commission shall serve on the panel.

(d) Chief Justice Pro Tempore. If the presiding chief judge of the Court of Appeals is not a member of the substitute panel, the substitute panel shall select one of its members to serve as chief justice pro tempore.

[Adopted effective May 14, 1982; Amended effective December 10, 2013.]

APR 8
NONMEMBER LAWYER LICENSES TO PRACTICE LAW

(a) In General. Lawyers admitted to the practice of law in any state or territory of the United States or the District of Columbia or in any foreign jurisdiction, who do not meet the qualifications stated in APR 3, may engage in the limited practice of law in this state as provided in this rule. Lawyers permitted or licensed to practice law under this rule are not members of the Bar.

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

(i) with the permission of the court or tribunal in which the action or proceeding is pending, and

(ii) in association with an active lawyer member of the Bar, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal. The requirement in (ii) is waived for a lawyer who is a full-time active duty military officer serving in the office of a Staff Judge Advocate of the United States Army, Air Force, Navy, Marines, or Coast Guard, or a Region Legal Service Office or a Defense Service Office, or as Special Victims' Counsel or Victims' Legal Counsel for any branch of the United States Armed Forces, located in the State of Washington.

(1) An application to appear as such a lawyer shall be made by written motion to the court or tribunal before whom the action or proceeding is pending, in a form approved by the Bar, which shall include certification by the lawyer seeking permission under this rule and the associated Washington lawyer that the requirements of this rule have been complied with, and shall state the date on which the fee and any mandatory assessment required in part (2) were paid, or state that the fee and assessment were waived pursuant to part (2). The motion shall be heard by the court or tribunal after such notice to the Bar and payment of fees and assessments as required in part (2) below, unless waived pursuant to part (2), and to adverse parties as the court or tribunal shall direct. Payment of the required fee and assessment shall be necessary only upon a lawyer's first application to any court or tribunal in the same case. The court or tribunal shall enter an order granting or refusing the motion, and, if the motion is refused, the court or tribunal shall state its reasons.

(2) The lawyer making the motion shall submit a copy of the motion to the Bar accompanied by

(A) a nonrefundable fee in each case in an amount equal to the license fee required of active lawyer members of the Bar, and

(B) the Client Protection Fund assessment as required of active lawyer members of the Bar.

(3) Payment of the fee and assessment shall be necessary only upon a lawyer's first motion to any court or tribunal in the same case. The associated Washington lawyer shall be jointly responsible for payment of the fee and assessment. The fee and assessment shall be waived for:

(A) a lawyer providing legal services for no fee through a qualified legal services provider pursuant to rule 8(f),

(B) a lawyer rendering service for no fee in either a bar association or governmentally sponsored legal services organization or in a public defender's office or similar program providing legal services to indigents and only in that capacity, or

(C) a lawyer who is a full-time active duty military officer serving in the office of a Staff Judge Advocate of the United States Army, Air Force, Navy, Marines, or Coast Guard, or a Region Legal Service Office or as Special Victims' Counsel or Victims' Legal Counsel for any branch of the United States Armed Forces, located in the State of Washington, and who is not receiving any compensation from clients in addition to the military pay to which they are already entitled.

(4) The Bar shall maintain a public record of all motions for permission to practice pursuant to this rule.

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

(6) *Exception for Indian Child Welfare Cases*. A member in good standing of, and permitted to practice law in, the bar of any other state or territory of the United States or of the District of Columbia may appear as a lawyer in an action or proceeding, and shall not be required to comply with the association of counsel and fee and assessment requirements of subsection (b) of this rule, if the applicant establishes to the satisfaction of the Court that:

(A) The applicant seeks to appear in a Washington court for the limited purpose of participating in a "child custody proceeding" as defined by RCW 13.38.040, pursuant to the Washington State Indian Child Welfare Act, ch.13.38 RCW, or by 25 U.S.C. § 1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901*et seq*.;

(B) The applicant represents an "Indian tribe" as defined by RCW 13.38.040 or 25 U.S.C. § 1903;

(C) The Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and participate in the state court proceeding and affirming that under tribal law (i) the child is a member or (ii) the child is eligible for membership and the biological parent of the child is a member; and

(D) The applicant has provided, or will provide within (7) days of appearing on the case, written notice to the Washington State Bar of their appearance in the case. Such written notice shall be by providing in writing the following information: the cause number and name of the case; the attorney's name, employer, and contact information; and the bar number and jurisdiction of the applicant's license to practice law.

(c) Exception for Indigent Representation. A member in good standing of the bar of another state or territory of the United States or of the District of Columbia, who is eligible to apply for admission as a lawyer under APR 3 in this state, while rendering service in either a bar association or governmentally sponsored legal services organization or in a public defender's office or similar program providing legal services to indigents and only in that capacity, may, upon application and approval, practice law and appear as a lawyer before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations:

(1) Application to practice under this rule shall be made to the Bar, and the applicant shall be subject to the Rules for Enforcement of Lawyer Conduct and to the Rules of Professional Conduct.

(2) In any such matter, litigation, or administrative proceeding, the applicant shall be associated with an active lawyer member of the Bar, who shall be the lawyer of record and responsible for the conduct of the matter, litigation, or administrative proceeding.

(3) The applicant shall either apply for and take the first available lawyer bar examination after the date the applicant was granted authorization to practice under this rule, or already have filed an application for admission by motion or Uniform Bar Exam (UBE) score transfer.

(4) The applicant's authorization to practice under this rule (i) may be terminated by the Supreme Court at any time with or without cause, or (ii) shall be terminated automatically for failure to take or pass the required lawyer bar examination, or (iii) shall be terminated for failure to become an active lawyer member of the Bar within 60 days of the date the lawyer bar examination results are made public, or (iv) shall be terminated automatically upon denial of the application for admission, or (v) in any event, shall be terminated within 1 year from the original date the applicant was authorized to practice law in this state under this rule.

(d) [Reserved.]

(e) [Reserved.]

(f) Exception for House Counsel. A lawyer admitted to the practice of law in any jurisdiction may apply to the Bar for a limited license to practice law as in-house counsel in this state when the lawyer is employed in Washington as a lawyer exclusively for a profit or not for profit corporation, including its subsidiaries and affiliates, association, or other business entity, that is not a government entity, and whose lawful business consists of activities other than the practice of law or the provision of legal services. The lawyer shall apply by:

(i) filing an application in the form and manner that may be prescribed by the Bar;

(ii) presenting satisfactory proof of (I) admission to the practice of law and current good standing in any jurisdiction and (II) good moral character and fitness to practice;

(iii) filing an affidavit from an officer, director, or general counsel of the applicant's employer in this state attesting to the fact the applicant is employed as a lawyer for the employer, including its subsidiaries and affiliates, and the nature of the employment conforms to the requirements of this rule;

(iv) paying the application fees required of lawyer applicants for admission under APR 3; and

(v) furnishing whatever additional information or proof that may be required in the course of investigating the applicant.

(1) Upon approval of the application by the Bar, the lawyer shall take the Oath of Attorney, pay the current year's annual license fee and any mandatory assessments required of active lawyer members. The Bar shall transmit its recommendation to the Supreme Court which may enter an order granting the lawyer a license to engage in the limited practice of law under this section.

(2) The practice of a lawyer licensed under this section shall be limited to practice exclusively for the employer, including its subsidiaries and affiliates, furnishing the affidavit required by the rule and shall not include (i) appearing before a court or tribunal as a person admitted to practice law in this state, and (ii) offering legal services or advice to the public, or (iii) holding oneself out to be so engaged or authorized.

(3) All business cards and employer letterhead used by a lawyer licensed under this section shall state clearly that the lawyer is licensed to practice in Washington as in-house counsel.

(4) A lawyer licensed under this section shall pay to the Bar an annual license fee in the maximum amount required of active lawyer members and any mandatory assessments required of active lawyer members of the Bar.

(5) The practice of a lawyer licensed under this section shall be subject to the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, and to all other laws and rules governing lawyers admitted to the active practice of law in this state. Jurisdiction shall continue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(6) The lawyer shall promptly report to the Bar a change in employment, a change in admission or license status in any jurisdiction where the applicant has been admitted to the practice of law, or the commencement of any formal disciplinary proceeding in any jurisdiction where the applicant has been admitted to the practice of law.

(7) The limited license granted under this section shall be automatically terminated when employment by the employer furnishing the affidavit required by this rule is terminated, the lawyer has been admitted to the practice of law pursuant to any other provision of the APR, the lawyer fails to comply with the terms of this rule, the lawyer fails to maintain current good standing in at least one other jurisdiction where the lawyer has been admitted to the practice of law, or on suspension or disbarment for discipline in any jurisdiction where the lawyer has been admitted to the practice of law. If a lawyer's employment is terminated but the lawyer, within three months from the last day of employment, is employed by an employer filing the affidavit required by (iii), the license shall be reinstated.

(8) A lawyer admitted in another United States jurisdiction and authorized to provide legal services under this Rule may provide legal services in this jurisdiction for no fee through a

Bar qualified legal services provider, as that term is defined in APR 1. If such services involve representation before a court or tribunal, the lawyer shall seek permission under APR 8(b) and any fees for such permission shall be waived. The prohibition against compensation in this paragraph shall not prevent a qualified legal services provider from reimbursing a lawyer authorized to practice under this rule for actual expenses incurred while rendering legal services under this pro bono exception. In addition, a qualified legal services provider shall be entitled to receive all court awarded attorney's fees for pro bono representation rendered by the lawyer.

(g) [Reserved.]

[Adopted effective February 12, 1965; Amended effective May 20, 1966; March 10, 1971; July 9, 1982; September 1, 1984; October 11, 1985; September 1, 1998; March 9, 1999; March 5, 2002; October 1, 2002; December 24, 2002; June 24, 2003; November 25, 2003; September 1, 2004; September 1, 2006; January 1, 2007, May 6, 2008; September 1, 2009; January 1, 2014; September 1, 2015; September 1, 2017; December 5, 2017; September 1, 2018; April 21, 2020.]

APR 9 LICENSED LEGAL INTERNS

(a) Purpose. Supervised professional practice plays an important role in the development of competent lawyers and expands the capacity of the Bar to provide quality legal services while protecting the interests of clients and the justice system. This rule authorizes supervised professional practice by qualified law students, enrolled law clerks, and recent graduates of approved law schools when they are licensed pursuant to this rule to engage in the limited practice of law as "Licensed Legal Interns." The license granted pursuant to this rule is a limited license, based in part on recognition of the role practice experience plays in developing the competence of aspiring lawyers and in part on the fact that the Licensed Legal Intern will be supervised by an experienced lawyer. Persons granted such a limited license and their supervising lawyers must comply with the obligations and limitations set forth in these rules.

(b) Eligibility. To be eligible to apply to be a Licensed Legal Intern, an applicant must have arranged to be supervised by a qualifying lawyer and:

(1) Be a student duly enrolled and in good academic standing at an approved law school who has:

(A) successfully completed not less than two-thirds of a prescribed 3-year course of study or five-eighths of a prescribed 4-year course of study, and

(B) obtained the written approval of the law school's dean or a person designated by such dean and a certification by the dean or designee that the applicant has met the educational requirements; or

(2) Be an enrolled law clerk who:

(A) is certified by Bar staff to be in compliance with the provisions of APR 6 and to have successfully completed not less than five-eighths of the prescribed 4-year course of study; and

(B) has the written approval of the primary tutor; or

(3) Be a graduate of an approved law school who has not been admitted to the practice of law in any state or territory of the United States or the District of Columbia, provided that the application is made within nine months of graduation.

(c) Qualifications To Be a Supervising Lawyer. Except in the sections regarding the application for issuance of a limited license pursuant to this rule, references in this rule to "supervising lawyer" include both the supervising lawyer named in the application materials and on the Licensed Legal Intern identification card, and any other lawyer from the supervising lawyer's office who meets the qualifications of a supervising lawyer and who performs the duties of a supervising lawyer. A supervising lawyer must be an active lawyer member in good standing of the Bar, who has been actively engaged in the practice of law in the State of Washington or in any state or territory of the United States or the District of Columbia for at least the 3 years immediately preceding the date of the application, who has not been disbarred or subject to a disciplinary suspension in any jurisdiction within the previous 10 years and does not have a disciplinary proceeding pending or imminent, and who has not received a disciplinary sanction of any kind within the previous 3 years.

(d) Application. The applicant must submit an application on a form provided by the Bar and signed by both the applicant and the supervising lawyer.

(1) The applicant and the supervising lawyer must fully and accurately complete the application, and they have a continuing duty to correct and update the information on the application while it is pending and during the term of the limited license. Every applicant and supervising lawyer must cooperate in good faith with any investigation by promptly furnishing written or oral explanations, documents, releases, authorizations, or other information reasonably required by the Bar. Failure to cooperate fully or to appear as directed or to furnish additional information as required shall be sufficient reason for the Bar to recommend denial or termination of the license.

(2) The application must include:

(A) all requested information about the applicant and the Supervising Lawyer;

(B) the required certification from the law school (or confirmation from the Bar, for APR 6 Law Clerks) that the applicant has the required educational qualifications; and

(C) certifications in writing under oath by the applicant and the supervising lawyer(s) that they have read, are familiar with, and will abide by this rule and the Rules of Professional Conduct.

(3) Full payment of any required fees must be submitted with the application. The fees shall be set by the Board of Governors subject to review by the Supreme Court.

(4) Bar staff shall review all applications to determine whether the applicant and the supervising lawyer have the necessary qualifications, and whether the applicant possesses the requisite good moral character and fitness to engage in the limited practice of law provided for in this rule. Bar staff may investigate any information contained in or issues raised by the application that reflect on the factors contained in APR 21-24, and any application that reflects one or more of the factors set forth in APR 21 shall be referred to Bar Counsel for review.

(5) Bar Counsel may conduct such further investigation as appears necessary, and may refer to the Character and Fitness Board for hearing any applicant about whom there is a substantial question whether the applicant possesses the requisite good moral character and fitness to practice law as defined in APR 20. Such hearing shall be conducted as provided in APR 20-24.3. Bar Counsel may require any disclosures and conditions of the applicant and supervising lawyer that appear reasonably necessary to safeguard against unethical conduct by the applicant during the term of the limited license. No decision regarding the good moral character and fitness to practice of an applicant made in connection with an application for licensing pursuant to this rule is binding on the Bar or Character and Fitness Board at the time an applicant applies for admission to practice law and membership in the Bar, and such issues may be reinvestigated and reconsidered by Bar staff, Bar Counsel, and the Character and Fitness Board.

(6) The Supreme Court shall issue or refuse the issuance of a limited license for a Licensed Legal Intern. The Supreme Court's decision shall be forwarded to the Bar, which shall inform the applicant of the decision.

(7) Upon Supreme Court approval of an applicant, the Bar shall send to the applicant, in care of the supervising lawyer's mailing address on record with the Bar, a letter confirming approval by the Supreme Court and a Licensed Legal Intern identification card. An applicant must not perform the duties of a Licensed Legal Intern before receiving the confirming letter and identification card.

(8) Once an application is accepted and approved and a license is issued, a Licensed Legal Intern is subject to the Rules of Professional Conduct and the Rules for Enforcement of Lawyer Conduct and to all other laws and rules governing lawyers admitted to the Bar of this state, and is personally responsible for all services performed as a Licensed Legal Intern. Any offense that would subject a lawyer admitted to practice law in this state to suspension or disbarment may be punished by termination of the Licensed Legal Intern's license, or suspension or forfeiture of the Licensed Legal Intern's privilege of taking the lawyer bar examination and being admitted to practice law in this state.

(9) A Licensed Legal Intern may have up to two supervising attorneys in different offices at one time. A Licensed Legal Intern may submit an application for approval to add a supervising attorney in another office or to change supervising attorneys any time within the term of the limited license. When a Licensed Legal Intern applies to add a supervising attorney in another office, the Intern must notify both the current supervising attorney and the proposed new supervising attorney in writing about the application, and both the current and the new supervising attorney must approve the addition and certify that such concurrent supervision will not create a conflict of interest for the Licensed Legal Intern. The qualifications of the new supervising attorney will be reviewed by Bar staff who may approve or deny the supervisor. The Licensed Legal Intern will be notified of approval or denial of the new supervising attorney as described above and must not perform the duties of a licensed legal intern before receiving a new confirming letter containing notification of approval and a new identification card.

(e) Scope of Practice, Prohibitions, and Limitations. In addition to generally being permitted to perform any duties that do not constitute the practice of law as defined in GR 24, a Licensed Legal Intern shall be authorized to engage in the limited practice of law only as authorized by the provisions of this rule.

(1) A Licensed Legal Intern may engage in the following activities without the presence of the supervising attorney:

(A) Advise or negotiate on behalf of a person referred to the Licensed Legal Intern by the supervising lawyer;

(B) Prepare correspondence containing legal advice to clients or negotiating on behalf of clients, pleadings, motions, briefs, or other documents. All such correspondence, pleadings, motions, and briefs must be reviewed and signed by the supervising attorney, as well as any other documents requiring the signature of a lawyer. On any correspondence or legal document signed by the Licensed Legal Intern, the Licensed Legal Intern's signature shall be followed by the title "Licensed Legal Intern" and the Licensed Legal Intern's identification number;

(C) Present to the court ex parte and agreed orders signed by the supervising lawyer, except as otherwise provided in these rules;

(D) After a reasonable period of in-court supervision or supervision while practicing before an administrative agency, which shall include participating with the supervising lawyer in at least one proceeding of the type involved before the same tribunal and being observed by the supervising lawyer while handling one additional proceeding of the same type before the same tribunal:

(i) Represent the State or the respondent in juvenile court in misdemeanor and gross misdemeanor cases;

(ii) Try hearings, nonjury trials, or jury trials, in courts of limited jurisdiction;

(iii) Represent a client in any administrative adjudicative proceeding for which nonlawyer representation is not otherwise permitted.

(2) In any proceeding in which a Licensed Legal Intern appears before the court, the Licensed Legal Intern must advise the court of the Intern's status and the name of the Intern's supervising lawyer.

(3) A Licensed Legal Intern may participate in Superior Court and Court of Appeals proceedings, including depositions, only in the presence of the supervising lawyer or another lawyer from the same office.

(4) A Licensed Legal Intern must not receive payment directly from a client for the Intern's services. A Licensed Legal Intern may be paid for services by the Intern's employer, and the employer may charge for the services provided by the Licensed Legal Intern as may be appropriate.

(5) A Licensed Legal Intern must not try any motion or case or negotiate for or on behalf of any client unless the client is notified in advance of the status as a Licensed Legal Intern and of the identity and contact information of the Licensed Legal Intern's supervising lawyer.

(6) A Licensed Legal Intern must not perform any of the actions permitted by this rule on behalf of or under the supervision of any lawyer other than the supervising lawyer or another lawyer employed in the same office who is qualified for such supervision under this rule.

(7) For purposes of the attorney-client privilege, a Licensed Legal Intern shall be considered a subordinate of the lawyer providing supervision for the Intern.

(f) Additional Obligations of Supervising Lawyer. Agreeing to serve as the supervising lawyer for a Licensed Legal Intern imposes certain additional obligations on the supervising lawyer. The failure of a supervising lawyer to comply with the duties set forth in this rule shall be grounds for disciplinary action pursuant to the Rules for Enforcement of Lawyer Conduct. In addition to the duties stated or implied above, the supervising lawyer:

(1) must provide training to all Licensed Legal Interns supervised by the supervising lawyer, regarding the Rules of Professional Conduct and how they relate to the limited practice of the Licensed Legal Intern. Such training may be waived if the supervising lawyer otherwise determines that the Licensed Legal Intern has previously received such training and the supervising lawyer deems such training sufficient for the limited practice that will be supervised;

(2) must direct, supervise, and review all of the work of the Licensed Legal Intern and shall assume personal professional responsibility for any work undertaken by the Licensed Legal Intern while under the lawyer's supervision;

(3) must ensure that all clients to be represented by the Licensed Legal Intern are informed of the intern's status as a Licensed Legal Intern in advance of the representation;

(4) must review and sign all correspondence providing legal advice to clients and all pleadings, motions, briefs, and other documents prepared by the Licensed Legal Intern and ensure that they comply with the requirements of this rule, and must sign the document if it is prepared for presentation to a court;

(5) must take reasonable steps to ensure that the Licensed Legal Intern is adequately prepared and knowledgeable enough to be able to handle any assigned matters performed outside the supervising lawyer's presence, but need not be present in the room while the Licensed Legal Intern is performing such duties unless such presence is specifically required by this rule;

(6) must supervise no more than:

(a) one Licensed Legal Intern at any one time if the supervising lawyer is in private practice not otherwise described below;

(b) four Licensed Legal Interns at any one time if the supervising lawyer is employed by a recognized institution of legal aid, legal assistance, public defense, or similar programs furnishing legal assistance to indigents, or by the legal departments of a state, county, or municipality; or

(c) 10 Licensed Legal Interns at any one time if the supervising lawyer is a full-time clinical supervising lawyer or a member of the faculty of an approved law school for a clinical course offered by the law school where such course has been approved by its dean and is directed by a member of its faculty and is conducted within institutions or legal departments described in the section above or within the law school, provided that a supervising lawyer attends all adversarial proceedings conducted by the legal interns;

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

(8) must inform the Bar staff promptly if circumstances arise that cause the supervising lawyer to have concern about the good moral character or fitness to practice of a Licensed Legal Intern supervised by that lawyer, and cooperate in any investigation that may follow such a report;

(9) may terminate supervision of a Licensed Legal Intern under this rule at any time, with or without good cause, and must promptly notify the Bar staff of the effective date of the termination and the reasons for the termination;

(10) may be terminated as a supervising lawyer at the discretion of the Bar, and when so terminated, must take steps to ensure that any Licensed Legal Intern previously supervised by the supervising lawyer ceases to perform duties or hold him/herself out as though supervised by the supervising lawyer.

(g) Additional Obligations and Limitations. The following additional general obligations and limitations apply:

(1) A judge or administrative hearing officer may exclude a Licensed Legal Intern from active participation in a case in the interest of orderly administration of justice or for the protection of a litigant or witness. In such case, a continuance shall be granted to secure the attendance of the supervising lawyer, who must assume personal responsibility for that matter.

(2) A Licensed Legal Intern or the supervising lawyer must notify the Bar staff promptly if the supervising lawyer named on a Licensed Legal Intern's identification card terminates supervision of the Licensed Legal Intern, and such Licensed Legal Intern is prohibited from performing any of the actions described in these rules unless and until a change of supervising lawyer has been approved and a new identification card issued.

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

(1) The approval given to a law student by the law school dean or the dean's designee or to a law clerk by the tutor may be withdrawn at any time by mailing notice to that effect to the Bar, and must be withdrawn if the student ceases to be duly enrolled as a student prior to graduation, takes a leave of absence from the law school or from the clinical program for which the limited license was issued, or ceases to be in good academic standing, or if the APR 6 law clerk ceases to comply with APR 6. When the approval is withdrawn, the Licensed Legal Intern's license must be terminated promptly.

(2) A limited license is granted at the sufferance of the Supreme Court and may be revoked at any time upon the court's own motion, or upon the motion of the Bar, in either case with or without cause.

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

(A) the termination for any reason of the Intern's limited license under this rule;

(B) the termination of the supervision for any reason or the upon the resignation of the Intern's supervising lawyer;

(C) the suspension or termination by the Bar of the supervising lawyer's status as a supervising lawyer;

(D) the withdrawal of approval of the Intern pursuant to this rule; or

(E) the failure of the supervising lawyer to maintain qualification to be a supervising lawyer under the terms of this rule.

[Adopted effective February 12, 1965; Amended effective June 4, 1970; May 21, 1971; February 29, 1972; December 31, 1973; December 31, 1976; January 1, 1977; January 1, 1979; January 1, 1981; November 2, 1981; September 1, 1984; October 1, 1985; October 11, 1985; November 29, 1991; September 1, 1994; June 2, 1998; October 1, 2002; January 1, 2014; September 1, 2017.]

APR 10

[RESERVED]

[Adopted effective March 10, 1971; text deleted and rule number reserved effective September 1, 1984.]

[Originally effective February 12, 1965; Regulation 116 amended effective May 2, 2000; deleted effective January 1, 2009.]

Regulation 117. Out-of-State Compliance (Deleted)

[Originally effective February 12, 1965; Regulation 117 amended effective May 2, 2000; deleted effective January 1, 2009. Regulation 107 amended effective February 5, 2013.]

APR 12 LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

(a) Purpose. The purpose of this rule is to authorize certain persons to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions and to prescribe the conditions of and limitations upon such activities.

(b) Limited Practice Board.

(1) *Composition*. The Limited Practice Board (referred to herein as the "LP Board") shall consist of nine members appointed by the Supreme Court. Not less than four of the members of the LP Board must be lawyers admitted to the practice of law in the State of Washington. Four members of the LP Board must be business representatives, one each of the following four industries: escrow, lending, title insurance, and real estate. Appointments shall be for 3-year staggered terms. No member of the LP Board may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year. The Supreme Court shall designate one of the members of the LP Board as chairperson.

(2) *Duties and Powers.*

(A) LPO Examination. The LP Board shall work with the Bar and others as necessary to create, maintain, and grade an LPO examination for admission to practice law under this rule. The examination shall consist of such questions as the LP Board may select on such subjects as may be listed by the Board and approved by the Supreme Court.

(B) Grievances and discipline. The LP Board's involvement in the investigation, hearing and appeal procedures for handling complaints of persons aggrieved by the failure of limited practice officers to comply with the requirements of this rule and of the Limited Practice Officer Rules of Professional Conduct shall be as established in the Rules for Enforcement of Limited Practice Officer Conduct (ELPOC).

(C) Approval of Forms. The LP Board shall approve standard forms for use by limited practice officers in the performance of legal services authorized by this rule.

(D) Rules. The LP Board shall propose to the Supreme Court amendments to these rules as may appear necessary to implement and carry out the provisions of this rule.

(3) *Expenses of the Board*. Members of the LP Board shall not be compensated for their services. For their actual reasonable and necessary expenses incurred in the performance of their duties, they shall be reimbursed according to the Bar's expense policies.

(4) *Administration*. The administrative support to the LP Board shall be provided by the Bar. All notices and filings required by these rules, including applications for admission as a Limited Practice Officer, shall be sent to the headquarters of the Bar.

(c) [Reserved.]

(d) Scope of Practice Authorized by Limited Practice Rule. Notwithstanding any provision of any other rule to the contrary, a person licensed as a limited practice officer under this rule may select, prepare, and complete documents in a form previously approved by the LP Board for use by others in, or in anticipation of, closing a loan, extension of credit, sale, or other transfer of interest in real or personal property. Such documents shall be limited to deeds, promissory notes, guaranties, deeds of trust, reconveyances, mortgages, satisfactions, security agreements, releases, Uniform Commercial Code documents, assignments, contracts, real estate excise tax affidavits, bills of sale, and powers of attorney. Other documents may be from time to time approved by the LP Board.

(e) Conditions Under Which Limited Practice Officers May Prepare and Complete Documents. Limited practice officers may render services authorized by this rule only under the following conditions and with the following limitations:

(1) *Agreement of the Clients*. Prior to the performance of the services, all clients to the transaction shall have agreed in writing to the basic terms and conditions of the transaction. In the case of a power of attorney prepared in anticipation of a transaction, the principal(s) and attorney(s)-in-fact shall have provided the limited practice officer consistent written instructions for the preparation of the power of attorney.

(2) *Disclosures to the Clients*. The limited practice officer shall advise the clients of the limitations of the services rendered pursuant to this rule and shall further advise them in writing:

(A) that the limited practice officer is not acting as the advocate or representative of either of the clients;

(B) that the documents prepared by the limited practice officer will affect the legal rights of the clients;

(C) that the clients' interests in the documents may differ;

(D) that the clients have a right to be represented by lawyers of their own selection; and

(E) that the limited practice officer cannot give legal advice as to the manner in which the documents affect the clients.

The written disclosure must particularly identify the documents selected, prepared, and/or completed by the limited practice officer and must include the name, signature, and number of the limited practice officer.

(f) Continuing License Requirements.

(1) *Continuing Education*. Each active limited practice officer must complete a minimum number of credit hours of continuing education, as prescribed by APR 11.

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

A. Submit an individual policy for Errors and Omissions insurance in the amount of at least $100, 000;

B. Submit an Errors and Omissions policy of the employer or the parent company of the employer who has agreed to provide coverage for the LPO's ability to respond in damages in the amount of at least $100, 000;

C. Submit the LPO's audited financial statement showing the LPO's net worth to be at least $200,000;

D. Submit an audited financial statement of the employer or other surety who agrees to respond in damages for the LPO, indicating net worth of $200,000 per each limited practice officer employee up to and including five, and an additional $100,000 per each limited practice officer employee over five, who may be subject to the jurisdiction of the Limited Practice Board; or

E. Submit proof of indemnification by the limited practice officer's government employer.

Each active LPO shall certify annually continued financial responsibility in the form and manner as prescribed by the Bar. Each LPO shall notify the Bar of any cancellation or lapse in coverage. When an LPO is demonstrating financial responsibility by (1) an endorsement on the employer's Errors and Omissions insurance policy or (2) submission on the employer's audited financial statement accompanied by the Certificate of Financial Responsibility, the Bar shall notify the employer when the LPO's status changes from Active to another status or when the LPO is no longer admitted to practice.

(3) *License Fees and Assessments*. Each limited practice officer must pay the annual license fee established by the Board of Governors, subject to review by the Supreme Court, and any mandatory assessments as ordered by the Supreme Court. .Provisions in the Bar's Bylaws regarding procedures for assessing and collecting lawyer license fees and late fees, and regarding deadline, rebates, apportionment, fee reductions, and exemption, and other issues relating to fees and assessment, shall also apply to LPO license fees and late fees. Failure to pay may result in suspension from practice pursuant to APR 17.

(4) *Trust Account*. Each active limited practice officer shall certify annually compliance with rules 1.12A and 1.12B of the LPO Rules of Professional Conduct. Such certification shall be filed in the form and manner as prescribed by the Bar and shall include the bank where each account is held and the account number. Failure to certify may result in suspension from practice pursuant to APR 17.

(g) Existing Law Unchanged. This rule shall in no way expand, narrow, or affect existing law in the following areas:

(1) The fiduciary relationship between a limited practice officer and ~~his or her~~their customers or clients;

(2) Conflicts of interest that may arise between the limited practice officer and a client or customer;

(3) The right to act as one's own attorney under the pro se exception to the unauthorized practice of law including but not limited to the right of a lender to prepare documents conveying or granting title to property in which it is taking a security interest;

(4) The lack of authority of a limited practice officer to give legal advice without being licensed to practice law;

(5) The standard of care which a limited practice officer must practice when carrying out the functions permitted by this rule.

(h) Treatment of Funds Received Incident to the Closing of Real or Personal Property Transactions. Persons admitted to practice under this rule shall comply with LPORPC 1.12A and B regarding the manner in which they identify, maintain, and disburse funds received incidental to the closing of real and personal property transactions, unless they are acting pursuant to APR 12(g)(3).

(i) Confidentiality and Public Records.

(1) GR 12.4 shall apply to access to LP Board records.

(j) Inactive Status. An LPO may request transfer to inactive status after being admitted. An LPO on inactive status is required to pay an annual license fee as established by the Board of Governors and approved by the Supreme Court. An LPO on inactive status is not required to meet the financial responsibility requirements or the MCLE requirements.

(k) Reinstatement to Active Status. An LPO on inactive status or suspended from practice may return to active status by filing an application and complying with the procedures set forth for lawyer members of the Bar in the Bar's Bylaws.

(l) Voluntary Resignation. Any LPO may request to voluntarily resign the LPO license by notifying the Bar in such form and manner as the Bar may prescribe. If there is a disciplinary investigation or proceeding then pending against the LPO, or if the LPO has knowledge that the filing of a grievance of substance against such LPO is imminent, resignation is permitted only under the provisions of the applicable disciplinary rules. An LPO who resigns the LPO license cannot practice law in Washington in any manner, unless they are licensed or authorized to do so by the Supreme Court.

Comment

[1] Comment re APR 12(d)

Powers of attorney authorizing a person to negotiate and sign documents in anticipation of, or in the closing of, a transaction are included in the documents limited practice officers are authorized to prepare. Such documents may include, but are not limited to, purchase and sale agreements for real or personal property, loan agreements, and letters of intent.

[2] Comment re LPO Professional Standard Of Care

APR 13 SIGNING OF PLEADINGS AND OTHER PAPERS; ADDRESS OF RECORD; ELECTRONIC MAIL ADDRESS; NOTICE OF CHANGE OF ADDRESS, TELEPHONE NUMBER, OR NAME; RESIDENT AGENT

(a) Signing of Pleadings and Other Papers. All pleadings and other papers signed by a lawyer, LLLT, or LPO and filed with a court shall include the lawyer's, LLLT's, or LPO's Bar number in the signature block. The law department of a municipality, county, or state, public defender organization or law firm is authorized to make an application to the Administrative Office of the Courts for an office identification number. An office identification number may be assigned by the Administrative Office of the Courts upon a showing that it will facilitate the process of electronic notification. If an office identification number is granted, it shall appear with the lawyer's, LLLT's, or LPO's Bar number in the signature block.

(b) Address of Record; Change of Address. A lawyer, LLLT, or LPO must advise the Bar of a current mailing address and telephone number. The mailing address shall be the lawyer's, LLLT's, or LPO's public address of record. A lawyer, LLLT, or LPO whose mailing address or telephone number changes shall, within 10 days after the change, notify the Bar, which shall forward changes weekly to the Administrative Office of the Court for entry into the state computer system. The notice shall be in a form acceptable to the Bar and shall include (1) the lawyer's, LLLT's, or LPO's full name, (2) the lawyer's, LLLT's, or LPO's Bar number, (3) the previous address and telephone number, clearly identified as such, (4) the new address and telephone number, clearly identified as such, and (5) the effective date of the change. The courts of this state may rely on the address information contained in the state computer system in issuing notices in pending actions.

(c) Electronic mail address. A lawyer, LLLT, or LPO shall advise the Bar of a current electronic mail address. A lawyer, LLLT, or LPO whose electronic mail address changes shall, within 10 days after the change, notify the Bar, which shall forward changes weekly to the Administrative Office Court for entry into the state computer system. Use of electronic mail addresses for court notice, service and filing must comply with GR 30.

(d) Change of Name. A lawyer, LLLT, or LPO whose name changes shall, within 10 days after the change, notify the Bar, which shall forward changes weekly to the Administrative Office of the Court for entry into the state computer system. The notice shall be in a form acceptable to the Bar Association and shall contain (1) the full previous name, clearly identified as such, (2) the full new name, clearly identified as such, (3) the lawyer's, LLLT's, or LPO's Bar number, and (4) the effective date of the change.

(e) Requirements of Local and Other Court Rules Not Affected. The responsibility of a party or a lawyer, LLLT, or LPO to keep the court and other parties and lawyers, LLLTs, or LPOs informed of the party's or lawyer's, LLLT's, or LPO's correct name and current address, as may be required by local or other court rule, is not affected by this rule.

(f) Resident Agent. If the address of record required under this rule is not in the state of Washington or is not a physical street address, the lawyer, LLLT, or LPO shall file with the Bar the name and address of an agent within this state for the purpose of receiving service of process or of any other document required or permitted by statute or court rule to be served or delivered to a resident lawyer, LLLT, or LPO. Service or delivery to such agent shall be deemed service upon or delivery to the lawyer, LLLT, or LPO. The name and address of the resident agent shall be a public record. If the address or name of the resident agent changes, the lawyer, LLLT, or

LPO shall notify the Bar of the change within 10 days after the change. Judicial and honorary members of the Bar are exempt from the requirements of this section.

[Adopted effective February 12, 1965; Amended effective September 1, 1990; October 30, 2001; September 1, 2005; April 30, 2013; January 1, 2014; September 1, 2017.]

APR 14 LIMITED PRACTICE RULE FOR FOREIGN LAW CONSULTANTS

(a) Purpose. The purpose of this rule is to authorize lawyers from a foreign country to advise or consult about foreign law and to prescribe the conditions and limitations upon such limited practice.

(b) Qualifications.

(1) To qualify as a Foreign Law Consultant applicant for admission to the limited practice of law in the State of Washington as provided in these rules, a person must:

(i) Present satisfactory proof of both admission to the practice of law, together with current good standing, in a foreign jurisdiction, and active legal experience as a lawyer or counselor at law or the equivalent in a foreign jurisdiction for at least 5 of the 7 years immediately preceding the application; and

(ii) Possess good moral character and fitness to practice law as defined in APR 20; and

(iii) Execute under oath and file with the Bar an application in such form as may be required by the Bar; and

(iv) File with the application a certificate from the authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice, and the date thereof, and as to the good standing of such lawyer or counselor at law or the equivalent, together with a duly authenticated English translation of such certificate, if it is not in English; and

(v) File with the application a letter of recommendation from one of the members of the executive body of such authority or from one of the judges of the highest law court or courts of original jurisdiction of such foreign country, together with a duly authenticated English translation of such letter, if it is not in English; and

(vi) Provide with the application such other evidence of the applicants educational and professional qualifications, good moral character and fitness and compliance with the requirements of this rule as the Board of Governors may require; and

(vii) Pay upon the filing of the application a fee equal to that required to be paid by a lawyer applicant to take the lawyer bar examination.

(2) Upon a showing that strict compliance with the provisions of subsections (b)(1)(iv) or (b)(1)(v) would cause the applicant unnecessary hardship, the Bar may at its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof.

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

(1) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney pursuant to APR 5; and

(2) Paying to the Bar the license fee and any mandatory assessments for the current year in the maximum amount required of active lawyer members; and

(3) Filing with the Bar in writing ~~his or her~~their address in the State of Washington, or the name and address of ~~his or her~~their registered agent as provided in APR 13, together with a statement that the applicant has read the Rules of Professional Conduct and Rules for Enforcement of Lawyer Conduct, is familiar with their contents and agrees to abide by them.

(d) Scope of Practice. A Foreign Law Consultant shall be authorized to engage in the limited practice of law only as authorized by the provisions of this rule. A Foreign Law Consultant may not:

(1) Appear for a person other than the Foreign Law Consultant as lawyer in any court or before any magistrate or other judicial officer in this state (other than upon permission for a particular action or proceeding pursuant to rule 8(b)) or prepare pleadings or any other papers or issue subpoenas in any action or proceeding brought in any court or before any judicial officer of this state;

(2) Prepare any deed, mortgage, assignment, discharge, lease or any other instrument affecting title to real estate located in the United States; or

(3) Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident thereof; or any instrument related to the administration of a decedents estate in the United States; or

(4) Prepare any instrument with respect to the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of such a resident; or

(5) Render legal advice on the law of the State of Washington, of any other state or territory of the United States, of the District of Columbia or of the United States (whether rendered incident to preparation of legal instruments or otherwise) unless and to the extent that the Foreign Law Consultant is admitted to practice law before the highest court of such other jurisdiction; or

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

(7) Use any title other than "Foreign Law Consultant," the firm name, and/or authorized title used in the foreign country where the Foreign Law Consultant is admitted to practice. In each case, such title or name shall be used in conjunction with the name of such foreign country.

(e) Regulatory Provisions. A Foreign Law Consultant shall be subject to the Rules for Enforcement of Lawyer Conduct and the Rules of Professional Conduct as adopted by the Supreme Court and to all other laws and rules governing lawyers admitted to the Bar of this state, except for the requirements of APR 11 relating to mandatory continuing legal education. Jurisdiction shall continue whether or not the Consultant retains the authority for the limited practice of law in this state, and regardless of the residence of the Consultant.

(f) Continuing Requirements.

(1) *Annual Fee and Assessments*. A Foreign Law Consultant shall pay to the Bar an annual license fee and any mandatory assessments for the current year in the maximum amount required of active lawyer members.

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

(g) Termination of License. A limited license is granted at the sufferance of the Supreme Court and may be revoked at any time upon the courts own motion, or upon the motion of the Bar, with or without cause, including failure to comply with the terms of this rule.

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

[Adopted effective February 12, 1965; Amended effective September 1, 1990; December 28, 1999;
October 1, 2002; November 25, 2003; January 2, 2007; September 1, 2017; December 5, 2017.]

APR 15 CLIENT PROTECTION FUND

(a) Purpose. The purpose of this rule is to create a Client Protection Fund (the Fund), to be maintained and administered as a trust by the Bar, in order to promote public confidence in the administration of justice and the integrity of the legal profession.

(b) Establishment. The Fund shall be established and funded through assessments ordered by the Supreme Court to be paid by members and other licensees to the Bar.

(1) The Board of Governors shall act as Trustees for the Fund.

(2) The Board of Governors shall appoint a Client Protection Board, to help administer the Fund pursuant to these rules. The Client Protection Board shall consist of 11 lawyers, LLLTs, or LPOs and two community representatives who are not licensed to practice law, who shall be appointed to serve staggered three-year terms.

(3) Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any lawyer, LLLT, or LPO of the Bar as a result of or directly related to the lawyer's, LLLT's, or LPO's practice of law, or while acting as a fiduciary in a matter directly related to the lawyer, LLLT's, or LPO's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time admitted to the practice of law in Washington as a lawyer, LLLT, or LPO but who was at the time of the act complained of under a court ordered suspension.

(4) The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from a lawyer's, LLLT's, or LPO's negligent performance of services or for acts performed after a lawyer, LLLT, or LPO is disbarred or revoked.

(5) Payments from the Fund shall be considered gifts to the recipients and shall not be considered entitlements.

(c) Funding. The Supreme Court may by order provide for funding by assessment of lawyers, LLLTs, and LPOs in amounts determined by the court upon the recommendation of the Board of Governors.

(d) Enforcement. Failure to pay any fee assessed by the Supreme Court in the manner and by date specified by the Bar shall be a cause for suspension from practice until payment has been made.

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

(1) A lawyer, LLLT, or LPO on Active status must pay restitution to the Fund in full within 30 days of final payment by the Fund to an applicant unless the lawyer, LLLT, or LPO enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(2) Lawyers, LLLTs, or LPOs on disciplinary or administrative suspension; disbarred or revoked lawyers, LLLTs, or LPOs; and lawyers, LLLTs, or LPOs on any status other than disability inactive must pay restitution to the Fund in full prior to returning to Active status, unless the

attorney enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(3) A lawyer, LLLT, or LPO who returns from disability inactive status as to whom an award has been made shall be required to pay restitution if and as provided in Procedural Regulation 6(I).

(4) Restitution not paid within 30 days of final payment by the Fund to an applicant shall accrue interest at the maximum rate permitted under RCW 19.52.050.

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

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.050.

(B) A lawyer, LLLT, or LPO may ask the Client Protection Board to review an adverse determination by Bar counsel regarding specific conditions for a periodic payment plan. The Chair of the Client Protection Board directs the procedure for Client Protection Board review, and the Client Protection Board's decision is not subject to further review.

(6) A lawyer's, LLLT's, or LPO's failure to comply with an approved periodic payment plan or to otherwise pay restitution due under this Rule may be grounds for denial of status change or for discipline.

(f) Administration. The Bar shall maintain and administer the Fund in a manner consistent with these rules and Regulations.

(g) Subpoenas. A lawyer member of the Client Protection Board, or Bar Counsel assigned to the Client Protection Board, shall have the power to issue subpoenas to compel the attendance of the lawyer, LLLT, or LPO being investigated or of a witness, or the production of books, or documents, or other evidence, at the taking of a deposition. A subpoena issued pursuant to this rule shall indicate on its face that the subpoena is issued in connection with an investigation under this rule. Subpoenas shall be served in the same manner as in civil cases in the superior court.

(h) Reports. The Bar shall file with the Supreme Court a full report on the activities and finances of the Fund at least annually and may make other reports to the court as necessary.

(i) Communications to the Bar. Communications to the Bar, Board of Governors (Trustees), Client Protection Board, Bar staff, or any other individual acting under the authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any applicant or other person providing information.

[Adopted effective February 12, 1965; Amended effective September 1, 1994; October 1, 2002; January 2, 2008; January 13, 2009; December 1, 2009; January 1, 2014; September 1, 2017.]

REGULATION 1. PURPOSE

(a) The purpose of these regulations is to establish procedures pursuant to Rule 15 of the Admission and Practice Rules, to maintain and administer a Client Protection Fund established as a trust by the Bar, in order to promote public confidence in the administration of justice and the integrity of the legal profession.

(b) Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any lawyer, LLLT, or LPO of the Bar as a result of or directly related to the lawyer's, LLLT's, or LPO's practice of law, or while acting as a fiduciary in a matter directly related to the lawyer's, LLLT's, or LPO's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a lawyer, LLLT, or LPO of the Bar but who was at the time of the act complained of under a court ordered suspension.

(c) The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from a lawyer's, LLLT's, or LPO's negligent performance of services.

[Adopted effective July 18, 1995; Amended effective December 1, 2009; September 1, 2017.]

REGULATION 2. ESTABLISHMENT OF THE FUND

(a) Trustees. Pursuant to APR 15, the members of the Board of Governors will serve during their terms of office as Trustees (Trustees) for the Fund to hold funds assessed by the Supreme Court for the purposes of the Fund. The Bar President will serve as President of the Trustees.

(b) Funding. The Trustees may recommend to the Supreme Court that it order an annual assessment of all active lawyers, LLLTs, or LPOs of the Bar in an amount recommended by the Trustees to be held by them in trust for the purposes of the Fund.

(c) Enforcement. Any active lawyer, LLLT, or LPO failing to pay any annual assessment on or before the date set for payment by the Supreme Court shall be ordered suspended from the practice of law in accordance with APR 17 and the Bar's Bylaws until the assessment is paid.

[Adopted effective July 18, 1995; Amended effective September 1, 2017.]

REGULATION 3. CLIENT PROTECTION BOARD

(a) Membership. The Client Protection Board shall consist of 11 lawyers, LLLTs, or LPOs and 2 community representatives who are not licensed to practice law, appointed by the Trustees for terms not exceeding three years each.

(b) Vacancies. Vacancies on the Client Protection Board shall be filled by appointment of the Trustees.

(c) Officers. The Trustees shall appoint a chairperson of the Client Protection Board for a term of one year or until a successor is appointed. The secretary of the Client Protection Board shall be a staff member of the Bar assigned to the Client Protection Board by the Executive Director of the Bar.

(d) Meetings. The Client Protection Board shall meet not less than once per year upon call of the chairperson, or at the request of the staff member of the Bar, who shall not be entitled to vote on Client Protection Board matters.

(e) Quorum. A majority of the Client Protection Board members, excluding the secretary, shall constitute a quorum.

(f) Record of Meetings. The secretary shall maintain minutes of the Client Protection Board deliberations and recommendations.

(g) Authority and Duties of Client Protection Board. The Client Protection Board shall have the power and authority to:

(1) Consider claims for reimbursement of pecuniary loss and make a report and recommendation regarding payment or nonpayment on any claim to the Trustees.

(2) Provide a full report of its activities annually to the Supreme Court and the Trustees and to make other reports and to publicize its activities as the Court or Trustees may deem advisable.

(h) Conflict of Interest.

(1) A Client Protection Board member who has or has had a lawyer/client relationship or financial relationship with an applicant or lawyer, LLLT, or LPO who is the subject of an application shall not participate in the investigation or deliberation of an application involving that applicant or lawyer, LLLT, or LPO.

(2) A Client Protection Board member with a past or present relationship, other than that as provided in section (1), with an applicant or lawyer, LLLT, or LPO who is the subject of an application, shall disclose such relationship to the Client Protection Board and, if the Client Protection Board deems it appropriate, that member shall not participate in any action relating to that application.

[Adopted effective July 18, 1995; Amended effective January 13, 2009; September 1, 2017.]

REGULATION 4. APPLICATIONS FOR PAYMENT

(a) Applications. All applications for payment through the Client Protection Fund shall be made by submitting to the Bar an application in such form and manner as determined by the Bar, and shall include all information requested on the form.

(b) Disciplinary Grievances. Before an application for payment from the Fund will be considered, the applicant must also file a disciplinary grievance with the Office of Disciplinary Counsel, unless the lawyer, LLLT, or LPO is disbarred, revoked, or deceased, or unless the Client Protection Board in its discretion finds that no disciplinary grievance is required.

(c) Information about the Fund. The application and information about the Fund shall be published on the Bar's public website and provided to any person on request.

[Adopted effective July 18, 1995; Amended effective November 2, 2006; January 13, 2009; September 1, 2017.]

REGULATION 5. ELIGIBLE CLAIMS

(a) Eligibility. To be eligible for payment from the Fund, the loss must be caused by the dishonest conduct of a lawyer, LLLT, or LPO or the failure to account for money or property entrusted to a lawyer, LLLT, or LPO as a result of or directly related to the lawyer's, LLLT's, or LPO's practice of law. The loss must also have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship in a matter directly related to the lawyer's, LLLT's, or LPO's practice of law.

(b) Time Limitations. Any application must be made within three years from the date on which discovery of the loss was made or reasonably should have been made by the applicant, and in no event more than three years from the date the lawyer, LLLT, or LPO dies, is disbarred or revoked, is disciplined for misappropriation of funds, or is criminally convicted for matters relating to the applicant's loss, provided that the Client Protection Board or Trustees in their discretion may waive any limitations period for excusable neglect or other good cause.

(c) Dishonest Conduct. As used in these rules and regulations, "dishonest conduct" or "dishonesty" means wrongful acts committed by a lawyer, LLLT, or LPO in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other thing of value, including but not limited to refusal to refund unearned fees or expenses as required by the Rules of Professional Conduct.

(d) Excluded Losses. Except as provided by Section E of this Regulation, the following losses shall not be reimbursable:

(1) Losses incurred by related persons, law partners and associate lawyers, LLLTs, or LPOs of the lawyer, LLLT, or LPO causing the loss. For purposes of these Rules and Regulations, "related persons" includes a spouse, domestic partner, child, grandchild, parent, grandparent, sibling, or other relative or individual with whom the lawyer, LLLT, or LPO maintains a close, familial relationship;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the lawyer, LLLT, or LPO or any person or entity described in Regulation 5 (D)(1), (2) or (3);

(5) Losses incurred by an assignee, lienholder, or creditor of the applicant or lawyer, LLLT, or LPO, unless application has been made by the client or beneficiary or the client or beneficiary has authorized such reimbursement;

(6) Losses incurred by any governmental entity or agency;

(7) Losses arising from business or personal investments not arising in the course of or arising out of the client-lawyer or client-LLLT relationship, or the provision of LPO services;

(8) Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.

(e) Special and Unusual Circumstances. In cases of special and unusual circumstances, the Client Protection Board may, in its discretion, consider an application which would otherwise be excluded by reason of the procedural requirements of these rules and regulations.

(f) Unjust Enrichment. In cases where it appears that there will be unjust enrichment, or that the applicant contributed to the loss, the Client Protection Board may, in its discretion, recommend the denial of the application. No rule should be interpreted as to provide a financial windfall to a claimant from the Fund.

(g) Investment Victims. When considering gifts to claimants who were victimized after investing with a lawyer, LLLT, or LPO the Client Protection Board may consider such factors as the sophistication of the investor, the length of the relationship with the lawyer, LLLT, or LPO, and whether the investor was aware that the lawyer, LLLT, or LPO had partners who were not lawyers, LLLTs, or LPOs.

(h) Exhaustion of Remedies. The Client Protection Board may consider whether an applicant has made reasonable attempts to seek reimbursement of a loss before taking action on an application. This may include, but is not limited to, the following:

(1) Filing a claim with an appropriate insurance carrier;

(2) Filing a claim on a bond, when appropriate;

(3) Filing a claim with any and all banks which honored a financial instrument with a forged endorsement;

(4) As a prelude to possible suit under part (5) below, demanding payment from any business associate or employer who may be liable for the actions of the dishonest lawyer, LLLT, or LPO; or

(5) Commencing appropriate legal action against the lawyer, LLLT, or LPO or against any other party or entity who may be liable for the applicant's loss.

[Adopted effective July 18, 1995; Amended effective January 4, 2005; September 1, 2006; September 1, 2008; January 13, 2009; December 1, 2009; September 1, 2012; September 1, 2017.]

REGULATION 6. PROCEDURES

(a) Ineligibility. Whenever it appears that an application is not eligible for reimbursement pursuant to Rule 5, the applicant shall be advised of the reasons why the application may not be eligible for reimbursement.

(b) Investigation and Report. The Bar staff member assigned to the Client Protection Board shall conduct an investigation regarding any application. The investigation may be coordinated with any disciplinary investigation regarding the lawyer, LLLT, or LPO. The staff member shall report to the Client Protection Board and make a recommendation to the Client Protection Board.

(c) Notification of Lawyer, LLLT, or LPO. The lawyer, LLLT, or LPO or ~~his or her~~their representative, regarding whom an application is made shall be notified of the application and provided a copy of it, and shall be requested to respond within 20 days. If the lawyer's, LLLT's, or LPO's address of record on file with the Bar is not current, then a copy of the application should be sent to the lawyer, LLLT, or LPO at any other address on file with the Bar. A copy of these Rules and Regulations shall be provided to the lawyer, LLLT, or LPO or representative.

(d) Withdrawal of Application/Restitution. If, during the investigation of an application, the Applicant withdraws the Application or the Applicant receives full restitution of the amount stated in the Application, the Applicant and the lawyer, LLLT, or LPO shall be advised that the file will be closed without further action.

(e) Testimony. The Client Protection Board may request that testimony be presented to complete the record. Upon request, the lawyer, LLLT, or LPO or applicant, or their representatives, may be given an opportunity to be heard at the discretion of the Client Protection Board.

(f) Finding of Dishonest Conduct. The Client Protection Board may make a finding of dishonest conduct for purposes of considering an application. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

(g) Evidence and Burden of Proof. Consideration of an application need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs. The applicant shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.

(h) Pending Disciplinary Proceedings. Unless the Trustees otherwise direct, no application shall be acted upon during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim.

(i) Deferred Disciplinary Proceedings; Lawyer, LLLT, or LPO on Disability Inactive Status.

(1) If an application relates to a lawyer, LLLT, or LPO on disability inactive status, and/or a disciplinary proceeding or investigation is deferred due to a lawyer's, LLLT's, or LPO's transfer to disability inactive status, the Client Protection Board may act on the application when received or may defer processing the application for up to three years if the lawyer, LLLT, or LPO remains on disability inactive status.

(2) A lawyer, LLLT, or LPO on disability inactive status seeking to return to Active status may, while pursuing reinstatement pursuant to the Rules for Enforcement of Conduct or other applicable discipline rules, request that the lawyer's, LLLT's, or LPO's obligation to make restitution for any applications approved while the lawyer, LLLT, or LPO was on disability inactive status be reviewed.

(A) If the request for review is based in, whole or in part on the merits of the application(s), the lawyer, LLLT, or, LPO may request the Client Protection Board review and reconsider any such applications. The Client Protection Board's decision on review shall be reported to the Trustees, which shall have sole authority for the final decision. If the Trustees determine that the application(s) should not have been approved, the lawyer, LLLT, or LPO will not be responsible

for restitution and the applicant(s) shall not be required to repay the Fund. If the Trustees determine that the applications were appropriately granted and the lawyer, LLLT, or LPO is responsible for restitution, the rules regarding restitution shall apply.

(B) If the lawyer, LLLT, or LPO does not contest the merits of the applications but simply wants to request that restitution be waived, the request shall be submitted to Bar Counsel for the Fund, who shall submit the request to the Trustees together with Bar Counsel's recommendation. The decision of the Trustees shall be final and is not subject to appeal.

(j) Public Participation. Public participation at Client Protection Board meetings shall be permitted only by prior permission granted by the Client Protection Board chairperson.

(k) Client Protection Board Action.

(1) *Actions of the Client Protection Board Which Are Final Decisions*. A decision by the Client Protection Board on an application for payment of $25,000 or less—whether such decision be to make payment, to deny payment, to defer consideration, or for any action other than payment of more than $25,000—shall be final and without right of appeal to the Trustees.

(2) *Actions of the Client Protection Board Which Are Recommendations to the Trustees*. A decision by the Client Protection Board (a) on an application for more than $25,000, or (b) involving a payment of more than $25,000 (regardless of the amount stated in the application), is not final and is a recommendation to the Trustees which shall have sole authority for final decisions in such cases.

[Adopted effective July 18, 1995; Amended effective January 4, 2005; November 2, 2006; September 1, 2008; January 13, 2009; January 1, 2014; September 1, 2017.]

REGULATION 7. ADJUDICATION BY TRUSTEES

(a) A recommendation by the Client Protection Board (a) concerning applications for more than $25,000, or (b) that payments of more than $25,000 be made to applicants regarding any one lawyer, LLLT, or LPO shall be reported to the Trustees which may, in its discretion, adopt, modify, disapprove or take any other appropriate action on the Client Protection Board's recommendation.

(b) A decision of the Trustees shall be final and there shall be no right of appeal from that decision.

[Adopted effective July 18, 1995; Amended effective January 4, 2005; January 13, 2009; September 1, 2017.]

REGULATION 8. NOTIFICATION OF APPLICANT AND LAWYER, LLLT, OR LPO

Both the applicant and the lawyer, LLLT, or LPO who is the subject of an application shall be advised of any decision of the Client Protection Board or the Trustees.

[Adopted effective July 18, 1995; Amended effective January 13, 2009; September 1, 2017.]

REGULATION 9. LIMITATIONS ON REIMBURSEMENT

(a) The Trustees may, at their discretion, set limitations on the amount of reimbursement.

(b) The maximum allowable amount of a gift is $150,000. There is no limit on the number of gifts that can be made to reimburse clients for the wrongful acts of any one lawyer, LLLT, or LPO.

(c) Applications approved for $5,000 or less shall be paid in full upon approval by the Client Protection Board (and the Trustees, if required under these Rules and Regulations). Applications approved for more than $5,000 shall be paid $5,000 upon approval by the Client Protection Board (and the Trustees, if required under these Rules and Regulations); payment of the remaining balance approved shall be deferred until fiscal year end and shall be subject to any proration which may be approved by the Trustees.

(d) At the last meeting of the Trustees for each fiscal year, the Client Protection Board shall report the total outstanding balance on approved gifts and shall recommend whether the outstanding balance should be paid in full or prorated. When approved gifts are prorated, the prorated payment shall reflect the total amount of the gift, less the initial $5,000 payment made upon approval by the Client Protection Board. By way of illustration:

Example 1: The application is for an amount in excess of $150,000. The Client Protection Board recommends and the Board of Governors, as Trustees, approves a gift in the maximum allowable amount of $150,000. $5,000 is paid upon approval by the Trustees. At fiscal year end, the Client Protection Board recommends and the Board of Governors, as Trustees, approves using a prorating formula that would result in applicants receiving 20% of their unpaid gifts. 20% of $145,000 is $29,000, so a second payment of $29,000 is issued to the applicant.

Example 2: In the same fiscal year another applicant applies for and receives a gift in the amount of $7,500. $5,000 is paid upon approval. At fiscal year's end, a second payment is issued for $500.

[Adopted effective July 18, 1995; Amended effective January 1, 2014; September 1, 2017.]

REGULATION 10. NO LEGAL RIGHT TO PAYMENT

Any and all payments made to applicants in connection with the Client Protection Fund are gratuitous and are at the sole discretion of the Trustees.

[Adopted effective July 18, 1995; Amended effective September 1, 2017.]

RULE 11. RESTITUTION AND SUBROGATION

(a) Restitution. A lawyer, LLLT, or LPO whose conduct results in payment to an applicant shall be liable to the Fund for restitution, and the Trustees may bring such action as they deem advisable to enforce restitution.

(b) Subrogation. As a condition of payment, an applicant shall be required to provide the Fund with a pro tanto transfer of the applicant's rights against the lawyer, LLLT, or LPO, the lawyer's, LLLT's, or LPO's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the applicant's loss. Failure to return a signed subrogation agreement to the Fund within three years of approval of the application will result in revocation of that approval.

(c) Action to Enforce Restitution. In the event the Trustees commence a judicial action to enforce restitution, they shall advise the applicant who may then join in the action to recover any unreimbursed losses. If the applicant commences such an action against the lawyer, LLLT, or LPO or another entity who may be liable for the loss, the applicant shall notify the Fund who may join in the action.

(d) Duty to Cooperate. As a condition of payment, the applicant shall be required to cooperate in all efforts that the Fund undertakes to achieve restitution.

[Adopted effective July 18, 1995; Amended effective September 1, 2017.]

REGULATION 12. COMPENSATION FOR REPRESENTING APPLICANTS

No lawyer shall charge or accept any payment for prosecuting an application on behalf of an applicant, unless such charge or payment has been approved by the Trustees.

[Adopted effective July 18, 1995; Amended effective September 1, 2017.]

REGULATION 13. CONFIDENTIALITY

(a) Matters Which Are Public. On approved applications, the facts and circumstances which generated the loss, the Client Protection Board's recommendations to the Trustees with respect to payment of a claim, the amount of claim, the amount of loss as determined by the Client Protection Board, the name of the lawyer, LLLT, or LPO causing the loss, and the amount of payment authorized and made, shall be public.

(b) Matters Which Are Not Public. The Client Protection Board's file, including the application and response, supporting documentation, and staff investigative report, and deliberations of any application; the name of the applicant, unless the applicant consents; and the name of the lawyer, LLLT, or LPO unless the lawyer, LLLT, or LPO consents or unless the lawyer's, LLLT's, or LPO's name is made public pursuant to these rules and regulations, shall not be public.

[Adopted effective July 18, 1995; Amended effective January 13, 2009; January 1, 2014; September 1, 2017.]

REGULATION 14. NOTICE OF ACTIONS

Notice of approval of an application to the Fund may be published in the official publication of the Bar and elsewhere at the direction of the Client Protection Board or Trustees. Notice may also be posted electronically on any web site maintained by the Bar. If the lawyer, LLLT, or LPO has made full restitution to the Fund, any notice posted electronically by the Bar may, at the request of the lawyer, LLLT, or LPO, be removed.

[Adopted effective July 18, 1995; Amended November 2, 2006; January 13, 2009; September 1, 2017.]

REGULATION 15. AMENDMENTS

These Rules and Regulations may be amended, altered or repealed on the recommendation of the Client Protection Board by a vote of the Trustees, with the approval of the Supreme Court.

[Adopted effective July 18, 1995; Amended November 2, 2006; January 13, 2009; September 1, 2017.]

(a) Purpose. The purpose of this rule is to protect the public, to assist lawyers, LLLTs, and LPOs in the performance of their duties and responsibilities in the representation of clients, to maintain and improve the integrity of the legal profession, and to promote the interests of justice.

(b) Lawyers, LLLTs, and LPOs Assistance Program (LAP).

(1) *Authorization*. The Bar is authorized to create a program to help prevent and alleviate problems that may detrimentally influence a lawyer's, LLLTs, or LPOs performance, including physical illnesses, emotional problems or addictions.

(2) *Confidentiality*. Confidential communications between a LAP client and staff or peer counselors of the Lawyers', LLLTs', or LPOs' Assistance Program shall be privileged against disclosure without the consent of the LAP client to the same extent and subject to the same conditions as confidential communications between a client and psychologist.

(3) *Exoneration From Liability*.

(i) *Bar and Its Agents*. No cause of action shall accrue in favor of any person, arising from any action or proceeding pursuant to these rules, against the Bar, or its officers or agents (including but not limited to its staff, members of the Board of Governors, or any other individual acting under the authority of these rules) provided only that the Bar or individual shall have acted in good faith. The burden of proving bad faith in this context shall be upon the person asserting it. The Bar shall provide defense to any action brought against an officer or agent of the Bar for actions taken in good faith under these rules and shall bear the costs of that defense and shall indemnify the officer or agent against any judgment taken therein.

(ii) *Other persons*. Communications to the Bar, Board of Governors, staff, or any other individual acting under the authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against them or other person providing information.

(c) Fee Arbitration Program. [Reserved]

(d) Law Office Management Assistance Program (LOMAP).

(1) *Authorization*. The Bar is authorized to create a program to help improve the quality of legal services by assisting lawyers, LLLTs, and LPOs to better manage their offices and improve the professional delivery of legal services.

(2) *Confidentiality*. Information obtained by Bar staff or agents of the Law Office Management Assistance Program shall be confidential unless:

(i) the assisted lawyer, LLLT, or LPO consents to disclosure;

(ii) disclosure, based upon reasonable belief, is necessary to prevent the assisted lawyer, LLLT, or LPO from committing a crime; or

(e) Professional Responsibility Program.

(1) *Authorization*. The Bar is authorized to maintain a program to assist lawyers, LLLTs, or LPOs in complying with their obligations under the Rules of Professional Conduct, thereby enhancing the quality of legal representation provided by Washington lawyers, LLLTs, and LPOs.

(2) *Professional Responsibility Counsel*. "Professional responsibility counsel" denotes a lawyer employed or appointed by the Bar to act as counsel on the Bar's behalf in performing duties under part (e) of this rule, and any other lawyer employed or appointed by the Bar, including but not limited to disciplinary counsel or general counsel, whenever such lawyer is temporarily performing those duties.

(3) *Ethics Inquiries*. Any member of the Bar, or any lawyer, LLLT, LPO, or legal intern admitted, licensed, or permitted by rule to practice law in this state, may direct an ethics inquiry to professional responsibility counsel. Such inquiries should be made by telephone to the Bar's designated ethics inquiry telephone line. The provisions of this rule also apply to ethics inquiries initially submitted in writing, including facsimile, e-mail, or other electronic means, but do not apply to requests for written ethics opinions directed to the Bar's Committee on Professional Ethics or its equivalent.

(4) *Scope*. An inquirer may request the guidance of professional responsibility counsel in identifying, interpreting or applying the Rules of Professional Conduct as they relate to ~~his or her~~their prospective ethical conduct. If the inquiry presents a set of facts, those facts should ordinarily be presented in hypothetical format. Professional responsibility counsel provides only informal guidance. Professional responsibility counsel provides only informal guidance. Professional responsibility counsel provides no legal advice or opinions, and the inquirer is responsible for making ~~his or her~~their own decision about the ethical issue presented. The inquiry shall be declined if it (i) requires analysis or resolution of legal issues other than those arising under the Rules of Professional Conduct; (ii) seeks an opinion about the ethical conduct of a person other than the inquirer; or (iii) seeks an opinion about the ethical propriety of the inquirer's past conduct.

(5) *Limitations and Inadmissibility*. Neither the making of an inquiry nor the providing of information by professional responsibility counsel under this rule creates a client-lawyer relationship. Any information or opinion provided during the course of an ethics inquiry is the informal, individual view of professional responsibility counsel only. No information relating to an ethics inquiry, including the fact that an inquiry has been made, its content, or the response thereto, may be asserted in response to any grievance or complaint under the applicable disciplinary rules, nor is such information admissible in any proceeding under the applicable disciplinary rules.

(6) *Records*. Professional responsibility counsel shall not make or maintain any permanent record of the identity of an inquirer or the substance of a specific inquiry or response. Professional responsibility counsel may keep records of the number of inquiries and the nature and type of inquiries and responses. Such records shall be used solely to aid the Bar in developing the Professional Responsibility Program and developing additional educational programs. Such records shall be exempt from public inspection and copying and shall not be subject to discovery or disclosure in any proceeding.

(7) *Confidentiality*. Communications between an inquirer and professional responsibility counsel are confidential and shall be privileged against disclosure except by consent of the inquirer or as authorized by the Supreme Court. Professional responsibility counsel shall not use or reveal information learned during the course of an ethics inquiry except as RPC 1.9 would permit with respect to information of a former client. The provisions of RPC 8.3 do not apply to information received by professional responsibility counsel during the course of an ethics inquiry.

(f) Communications to the Bar. Communications to the Bar, Board of Governors, staff, or any other individual acting under the authority of this rule, are absolutely privileged, and no lawsuit predicated thereon may be instituted against them or other person providing information.

[Adopted effective September 1, 2001; Amended effective April 1, 2003; December 4, 2007; January 2, 2008; December 28, 2010; September 1, 2017.]

APR 22.1 REVIEW OF APPLICATIONS

(a) Admissions Staff Review. All applications for admission or licensure to practice law in Washington State or to change membership class or status with the Bar, and all petitions for readmission to the practice of law in Washington State shall be reviewed by the Bar admissions staff for purposes of determining whether any of the factors set forth in APR 21(a) are present.

(b) Referral to Bar Counsel—Standard. All applications and petitions that reflect one or more of the factors set forth in APR 21(a) shall be referred to Bar Counsel for review.

(c) Review by Bar Counsel. Upon receiving a referral from the Bar admissions staff, Bar Counsel may conduct such further investigation as ~~he or she deems~~they deem necessary. Bar counsel may issue subpoenas to compel attendance of an applicant or witness, or the production of books, documents, or other evidence, at a deposition or hearing. Subpoenas shall be served in the same manner as in civil cases in the superior court. Any investigation or inquiry into a health diagnosis, alcohol or drug dependence, or treatment for either must comply with subsections (e) and (f) of this Rule.

(d) Referral for Hearing—Standard. Bar Counsel shall refer to the Character and Fitness Board for hearing any applicant about whom there is a substantial question whether the applicant possess the requisite good moral character and fitness to practice law. In determining whether a substantial question exists, Bar Counsel shall apply the factors and considerations set forth in APR 21(a) and review the material evidence in the light most favorable to the Bar's obligation to recommend the licensure or admission to the practice of law of only those persons who possess good moral character and fitness to practice law.

(e) Basis for Inquiry into Health Diagnosis and Drug or Alcohol Dependence. Any inquiry by the Bar or the Character and Fitness Board about drug or alcohol dependence, a health diagnosis, or treatment for either can occur only if it appears that the applicant has engaged in conduct that demonstrates the inability to meet one or more of the essential eligibility requirements and (1) the drug or alcohol dependence, health diagnosis, or treatment information was disclosed voluntarily to explain the conduct or as a voluntary response to any question on the application; or (2) the or the Character and Fitness Board learns from a third-party source that the drug or alcohol dependence, health diagnosis, or treatment was raised as an explanation for the conduct.

(f) Scope of Inquiry into Health Diagnosis and Drug or Alcohol Dependence. When a basis for an inquiry by the Bar or the Character and Fitness Board has been established under subsection (e), any such inquiry must be narrowly, reasonably, and individually tailored and adhere to the following:

(1) The first inquiry will be to request statements from the applicant;

(2) Following completion of the inquiry in subsection (f)(1) above, additional statements may be requested from treatment providers if reasonably deemed necessary by the Bar or the Character and Fitness Board. The statements of treatment providers shall be accorded considerable weight; and

(3) In those cases in which the statements from the applicant and treatment providers do not resolve reasonable concerns about the applicant's ability to meet the essential eligibility

requirements, the Bar or Character and Fitness Board may seek medical or treatment records. Any requests for medical or treatment records shall be by way of narrowly tailored requests and releases that provide access only to information that is reasonably necessary to assess the applicant's ability to meet the essential eligibility requirements.

(4) Any testimony or records from medical or other treatment providers may be admitted into evidence at a hearing on, or review of, the applicant's fitness and transmitted with the record on review to the Disciplinary Board and/or the Supreme Court. Records and testimony regarding the applicant's fitness shall otherwise be kept confidential in all respects, and neither the records nor the testimony of the medical or treatment provider shall be discoverable or admissible in any other proceeding or action without the written consent of the applicant.

[Adopted effective September 1, 2016; Amended effective September 1, 2017.]

APR 23 CHARACTER AND FITNESS BOARD

(a) Composition. The Character and Fitness Board shall consist of not less than three community representatives who are not licensed to practice law, appointed by the Supreme Court, and not less than one lawyer, LLLT, or LPO member from each congressional district, appointed by the Board of Governors. The validity of the Character and Fitness Board's actions is not affected if the Character and Fitness Board's makeup differs from the stated constitution due to a temporary vacancy in any of the specified positions.

(b) Qualifications. Lawyer, LLLT, or LPO members must be active lawyers, LLLTs, or LPOs of the Bar and have been active for at least five years.

(c) Character and Fitness Board Chair. The Board of Governors shall annually designate one lawyer member of the Character and Fitness Board to act as chair and another as vice-chair. The vice-chair shall serve as chair in the absence of or at the request of the chair. If both the chair and the vice-chair will be absent from a meeting or hearing, the chair may appoint another member of the Character and Fitness Board to serve as chair pro tempore at any hearing.

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

(e) Quorum. A majority of the Character and Fitness Board members shall constitute a quorum. Given a quorum, the concurrence of a majority of those present shall constitute action of the Character and Fitness Board. In the event a quorum is not present, Bar Counsel and the applicant may agree to waive the requirement of a quorum.

(f) Disqualification. In the event a grievance is made to the Bar alleging an act of misconduct by a lawyer, LLLT, or LPO member of the Character and Fitness Board, the procedures specified in ELC 2.3(b)(5) shall apply.

(g) Pro Tempore Members. When a member of the Character and Fitness Board is disqualified or unable to function on a case for good cause, the chair of the Character and Fitness Board may, by written order, designate a member pro tempore to sit with the Character and Fitness Board to hear and determine the cause. A member pro tempore may be appointed from among those persons who have previously served as members of the Character and Fitness Board (or its predecessor Character and Fitness Committee), or from among lawyers, LLLTs, or LPOs appointed as alternate Character and Fitness Board members by the Board of Governors and community representatives appointed as alternate Board members by the Supreme Court. A lawyer, LLLT, or LPO shall be appointed to substitute for a lawyer, LLLT, or LPO member of the Character and Fitness Board, and a community representative to substitute for a community representative member of the Character and Fitness Board.

(h) Voting. Each member, whether community representative or lawyer, LLLT, or LPO, shall have one vote.

(i) Terms of Office. The term of office for a member of the Character and Fitness Board shall be three years. Newly created Character and Fitness Board positions may be filled by appointments of less than three years, as designated by the Supreme Court or the Board of Governors, to permit as equal a number of positions as possible to be filled each year. All terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than two nonconsecutive terms with a minimum of three years between terms except as otherwise provided in these rules. Members shall continue to serve until replaced.

[Adopted effective September 1, 2006; Amended effective January 1, 2014; September 1, 2016; September 1, 2017.]

APR 23.4
SERVICE

Unless otherwise agreed by the parties in writing, service of papers and documents shall be made by first class postage prepaid mail to the applicant's, or ~~his or her~~their counsel's, last known address on record with the Bar. If properly made, service by mail is deemed accomplished on the date of the mailing. Any notice of change of address shall be submitted in writing to the Bar.

[Adopted effective September 1, 2016; Amended effective September 1, 2017.]

APR 24.1 HEARING PROCEDURE

(a) Notice. The Character and Fitness Board may fix a time and place for a hearing on the application, and Bar Counsel shall serve notice thereof not less than 30 days prior to the hearing upon the applicant and upon such other persons as may be ordered by the Character and Fitness Board. This notice requirement may be waived by the applicant.

(b) Appearance and Right to Counsel. Applicants shall appear in person at any hearing before the Character and Fitness Board, unless the applicant's presence is waived by the Character and Fitness Board for good cause shown. The presumption is that the applicant's personal attendance at the hearing will be required. An applicant may be represented by counsel.

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

(d) Proceedings Not Civil or Criminal. Hearings before the Character and Fitness Board are not civil or criminal but are sui generis hearings to determine whether an applicant is of good moral character and possesses the requisite fitness to practice law.

(e) Rules of Evidence.

(1) Evidentiary rulings shall be made by the Character and Fitness Board chair. A majority of Character and Fitness Board members present may by vote overrule a ruling by the chair.

(2) Consistent with subsection (d) of this rule, evidence, including hearsay evidence, is admissible if in the chair's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely on the conduct of their affairs. The chairperson may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(3) Witnesses shall testify under oath; all testimony shall be transcribed by a certified court reporter.

(4) Expert witnesses shall appear and testify in person or by telephone or video conference before the Character and Fitness Board, unless in the discretion of the Character and Fitness Board their appearance before the Character and Fitness Board is waived.

(5) Generally, all documentary evidence to be submitted to the Character and Fitness Board for consideration must be delivered to Bar Counsel not less than 30 days prior to the hearing. Bar Counsel will provide copies of all documentary evidence, and any hearing briefs, memoranda, or other documentary material, to the Character and Fitness Board members and to the applicant prior to the hearing date.

(6) The Character and Fitness Board may take notice of any judicially cognizable facts, or technical or scientific facts within a Character and Fitness Board member's specialized knowledge.

(7) Questioning of the applicant and the applicant's witnesses shall be conducted by Bar Counsel, by members of the Character and Fitness Board, and by the applicant or the applicant's counsel.

(8) The Character and Fitness Board may question medical or other treatment providers and seek medical or other treatment records consistent with the provisions of APR 22.1(e) and (f) and APR 24.1(f).

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

(1) *Time and Place*. Any independent medical examination shall occur at a time and place convenient to the applicant and shall be conducted by a provider mutually agreed upon by the applicant and the Bar.

(2) *Failure to Comply*. The failure of an applicant to agree to or submit to a required independent medical examination shall result in the applicant's application or petition being denied.

(3) *Costs*. The cost of any independent medical examination required by the Character and Fitness Board shall be borne by the Bar.

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

(5) *Confidentiality of IM*E. Any report and testimony of an examining professional may be admitted into evidence at a hearing on, or review of, the applicant's fitness and transmitted with the record on review to the Disciplinary Board and/or the Supreme Court. Reports and Testimony regarding the applicant's fitness shall otherwise be kept confidential in all respects, and neither the report nor the testimony of the examining professional shall be discoverable or admissible in any other proceeding or action without the consent of the applicant.

(6) *Rebuttal to IME*. Applicants shall have the right to provide rebuttal medical information from their treating clinicians if such information is provided within 30 days from the receipt of the independent medical examination report.

(g) Confidentiality. All hearings and documents before the Character and Fitness Board on applications for admission or licensure to practice law, enrollment in the law clerk program, and return to active membership are confidential, but may be provided to the Disciplinary Board or Supreme Court in connection with any appeal or review, or to other entities with the written consent of the applicant.

[Adopted effective September 1, 2016; Amended effective September 1, 2017.]

APR 24.2 DECISION AND RECOMMENDATION

RESTRICTIONS ON REINSTATEMENT

(a) Petitions For Reinstatement. All Petitions for Reinstatement after Disbarment shall be referred for hearing before the Character and Fitness Board. The provisions of APR 20 through 24.3 shall apply to petitions for reinstatement unless otherwise provided for in APR 25 through 25.6.

(b) When Petition May Be Filed. No petition for reinstatement shall be filed within a period of five years after disbarment or within a period of two years after an adverse decision of the Supreme Court upon a former petition, or after an adverse recommendation of the Character and Fitness Board or the Disciplinary Board on a former petition when that recommendation is not submitted to the Supreme Court. If prior to disbarment the lawyer, LLLT, or LPO was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for Enforcement of Lawyer Conduct, or any comparable rule, the period of such suspension shall be credited toward the five years referred to above.

(c) When Reinstatement May Occur. No disbarred lawyer, LLLT, or LPO may be reinstated sooner than six years following disbarment. If prior to disbarment the lawyer, LLLT, or LPO was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for Enforcement of Lawyer Conduct, or any comparable rule, the period of such suspension shall be credited toward the six years referred to above.

(d) Payment of Obligations. No disbarred lawyer, LLLT, or LPO may file a petition for reinstatement until costs and expenses and restitution ordered by the Disciplinary Board or the Supreme Court have been paid and until amounts paid out of the Client Protection Fund for losses caused by the conduct of the Petitioner have been repaid to the client protection fund, or until periodic payment plans for costs and expenses, restitution and repayment to the client protection fund have been entered into by agreement between the Petitioner and disciplinary counsel. A Petitioner may seek review by the Chair of the Disciplinary Board of an adverse determination by disciplinary counsel regarding the reasonableness of any such proposed periodic payment plan. Such review will proceed as directed by the Chair of the Disciplinary Board and the decision of the Chair of the Disciplinary Board is final unless the Chair of the Disciplinary Board determines that the matter should be reviewed by the Disciplinary Board, in which case the Disciplinary Board review will proceed as directed by the Chair and the decision of the Board will be final.

[Formerly APR 21.2, adopted effective October 1, 2002; Renumbered as APR 25.2 and amended effective September 1, 2006; September 1, 2016; September 1, 2017.]

APR 25.2 REVERSAL OF CONVICTION

If a lawyer, LLLT, or LPO has been disbarred solely because of ~~his or her~~their conviction of a crime and the conviction is later reversed and the charges dismissed on their merits, the Supreme Court may in its discretion, upon direct application by the lawyer, LLLT, or LPO enter an order reinstating the lawyer, LLLT, or LPO upon such conditions as determined by the Supreme Court. At the time such direct application is filed with the court a copy shall be filed with the Bar. The Supreme Court may request a response to the application from the Bar.

[Formerly APR 21.2, Adopted effective October 1, 2002; Renumbered as APR 25.2 and amended effective September 1, 2006; September 1, 2017.]

PETITIONS AND INVESTIGATIONS

(a) Form of Petition. A petition for reinstatement after disbarment shall be in writing and filed with the Bar. The petition shall set forth the residence and address of the Petitioner, the date of disbarment, and a concise statement of facts claimed to justify reinstatement. The petition shall be accompanied by the total fees required of a lawyer, LLLT, or LPO Applicant for admission under these rules, and by a completed application for admission.

(b) Investigations. The petition for reinstatement shall be referred to the Character and Fitness Board for hearing. Bar Counsel and Bar staff shall conduct such investigation as appears necessary, and in accordance with APR 20-24.3.

(c) Duty to Cooperate. It shall be the duty of every Petitioner to cooperate in good faith with any investigation by promptly furnishing written or oral explanations, documents, releases, authorizations, or anything else reasonably required by the Character and Fitness Board or Bar Counsel. Failure to appear as directed or to furnish additional proof or answers as required or to cooperate fully shall be sufficient reason for the Board to recommend the rejection of a petition.

(d) Proceedings Public. A petition for reinstatement after disbarment shall be a public proceeding from the time the petition is filed.

(e) Protective Orders. To protect a compelling interest, a Petitioner may, on a showing of good cause, move for a protective order prohibiting the disclosure or release of specific information, documents, or pleadings, and directing that the proceedings be conducted so as to implement the order.

[Formerly APR 21.3, Adopted effective October 1, 2002; Renumbered as APR 25.3 and amended effective September 1, 2006; January 1, 2014; September 1, 2016; September 1, 2017.]

APR 25.4

HEARING BEFORE CHARACTER AND FITNESS BOARD

(a) Notice. The Character and Fitness Board may fix a time and place for a hearing on the petition, and Bar Counsel shall serve notice thereof not less than 30 days prior to the hearing upon the Petitioner and upon such other persons as may be determined by Bar Counsel or as ordered by the Character and Fitness Board. Notice of the hearing shall also be published at least once in the Bar's official publication and such other newspaper or periodical as the Character and Fitness Board may direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and shall give the date fixed for the hearing.

(b) Statement in Support or Opposition. On or prior to the date of hearing, anyone wishing to do so may file with the Character and Fitness Board a written statement for or against the petition, such statements to set forth factual matters showing that the Petitioner does or does not meet the requirements for reinstatement as set forth in these rules.

(c) Hearings. Hearings shall be conducted pursuant to APR 24.1 except to the extent that provisions of APR 25-25.6 conflict with the provisions of APR 24.1, and except that such hearings shall be public.

[Formerly APR 21.4, Adopted effective October 1, 2002; Renumbered as APR 25.4 and amended effective September 1, 2006; January 1, 2014; September 1, 2016; September 1, 2017.]

APR 28
LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. **Purpose.** The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribe the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.

B. **Definitions.** For purposes of this rule, the following definitions will apply:

(1) "APR" means the Supreme Court's Admission to Practice Rules.

(2) "LLLT Board" means the Limited License Legal Technician Board.

(3) "Lawyer" means a person licensed as a lawyer and eligible to practice law in any United States jurisdiction.

(4) "Limited License Legal Technician" (LLLT) means a person qualified by education, training, and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations.

(5) "Paralegal/legal assistant" means a person qualified by education, training, or work experience; who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity; and who performs specifically delegated substantive law-related work for which a lawyer is responsible.

(6) "Reviewed and approved by a Washington lawyer" means that a Washington lawyer has personally supervised the legal work and documented that supervision by the Washington lawyer's signature and bar number.

(7) "Substantive law-related work" means work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.

(8) "Supervised" means a lawyer personally directs, approves, and has responsibility for work performed by the Limited License Legal Technician.

(9) "Washington lawyer" means a person licensed and eligible to practice law in Washington and who is an active or emeritus pro bono lawyer member of the Bar.

(10) Words of authority:

(a) "May" means "has discretion to," "has a right to," or "is permitted to."

(b) "Must" or "shall" means "is required to."

(c) "Should" means "recommended but not required."

C. Limited License Legal Technician Board

(1) *Establishment*. There is hereby established a Limited License Legal Technician Board (LLLT Board). The LLLT Board shall consist of 15 voting members appointed by the Supreme Court, and one nonvoting ex officio member who is a representative of the Washington State Board of Community and Technical Colleges. At least 11 members shall be Washington lawyers, LLLTs, or LPOs. Of those 11 members, at least 9 shall be active lawyers or LLLTs, and no more than 2 may be LPOs, or judicial or emeritus pro bono lawyers or LLLTs. Four members of the LLLT Board shall be Washington residents who do not have a license to practice law. Appointments shall be for staggered three year terms. No member may serve more than two consecutive full three year terms. The validity of the Board's actions is not affected if the Board's makeup differs from the stated constitution due to a temporary vacancy in any of the specified positions.

(2) *LLLT Board Responsibilities*. The LLLT Board shall be responsible for the following:

(a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;

(b) Working with the Bar and other appropriate entities to select, create, maintain, and grade the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to LLLTs, rules relating to the attorney-client privilege, procedural rules, and substantive law issues related to approved practice areas;

(c) Approving education and experience requirements for licensure in approved practice areas;

(d) Establishing and overseeing committees and tenure of members;

(e) Establishing and maintaining criteria for approval of educational programs that offer LLLT core curriculum; and

(f) Such other activities and functions as are expressly provided for in this rule.

(3) *Rules and Regulations*. The LLLT Board shall propose rules, regulations and amendments to these rules and regulations, to implement and carry out the provisions of this rule, for adoption by the Supreme Court.

(4) *Administration.* The Bar shall provide reasonably necessary administrative support for the LLLT Board. All notices and filings required by these Rules, including applications for admission as an LLLT, shall be sent to the headquarters of the Bar.

(5) *Expenses of the LLLT Board.* Members of the LLLT Board shall not be compensated for their services but shall be reimbursed for actual reasonable and necessary expenses incurred in the performance of their duties according to the Bar's expense policies.

D. [Reserved.]

E. **[Reserved.]**

F. **Scope of Practice Authorized by Limited Practice Rule.** The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not render any legal assistance on this issue and shall advise the client to seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may render the following limited legal assistance to a pro se client:

(1) Obtain relevant facts, and explain the relevancy of such information to the client;

(2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;

(3) Inform the client of and assist with applicable procedures for proper service of process and filing of legal documents;

(4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the LLLT Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;

(5) Review documents or exhibits that the client has received and explain them to the client;

(6) Select, complete, file, and effect service of forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the LLLT Board; and advise the client of the significance of the selected forms to the client's case;

(7) Perform legal research;

(8) Draft letters setting forth legal opinions that are intended to be read by persons other than the client;

(9) Draft documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a Washington lawyer;

(10) Advise the client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;

(11) Assist the client in obtaining necessary records, such as birth, death, or marriage certificates.

(12) Communicate and negotiate with the opposing party or the party’s representative regarding procedural matters, such as setting court hearings or other ministerial or civil procedure matters;

(13) Negotiate the client's legal rights or responsibilities, provided that the client has given written consent defining the parameters of the negotiation prior to the onset of the negotiation; and

(14) Render other types of legal assistance when specifically authorized by the scope of practice regulations for the approved practice area in which the LLLT is licensed.

G. Conditions Under Which A Limited License Legal Technician May Provide Services

(1) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a nonlicensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;

(2) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician that includes the following provisions:

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b) or specifically authorized by the scope of practice regulations for the approved practice area in which the LLLT is licensed;

(b) Identification of all fees and costs to be charged to the client for the services to be performed;

(c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the first page of the contract in minimum twelve-point bold type print;

(e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the LLLT Board.

(3) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client should seek the services of a lawyer.

(4) A document prepared by an LLLT shall include the LLLT's name, signature, and license number beneath the signature of the client. LLLTs do not need to sign sworn statements or declarations of the client or a third party, and do not need to sign documents that do not require a signature by the client, such as information sheets.

H. Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

(2) Retain any fees or costs for services not performed;

(3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client;

(4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized by the license held by the Limited License Legal Technician;

(5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24 or specifically authorized by the scope of practice regulations for the approved practice area in which the LLLT is licensed;

(6) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client;

(7) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;

(8) Conduct or defend a deposition;

(9) Initiate or respond to an appeal to an appellate court; and

(10) Otherwise violate the Limited License Legal Technician Rules of Professional Conduct.

I. Continuing Licensing Requirements

(1) *Continuing Education Requirements*. Each active Limited License Legal Technician must complete a minimum number of credit hours of approved or accredited education, as prescribed by APR 11.

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

(a) submitting an individual professional liability insurance policy in the amount of at least $100,000 per claim and a $300,000 annual aggregate limit;

(b) submitting a professional liability insurance policy of the employer or the parent company of the employer who has agreed to provide coverage for the LLLT's ability to respond in damages in the amount of at least $100,000 per claim and a $300,000 annual aggregate limit; or

(c) submitting proof of indemnification by the LLLT's government employer.

(3) *License Fees and Assessments*. Each Limited License Legal Technician must pay the annual license fee established by the Board of Governors, subject to review by the Supreme Court, and any mandatory assessments as ordered by the Supreme Court. Provisions in the Bar's Bylaws regarding procedures for assessing and collecting lawyer license fees and late fees, and regarding deadlines, rebates, apportionment, fee reductions, and exemptions, and any other issues relating to fees and assessments, shall also apply to LLLT license fees and late fees. Failure to pay may result in suspension from practice pursuant to APR 17.

(4) *Trust Account.* Each active Limited License Legal Technician shall annually certify compliance with Rules 1.15A and 1.15B of the LLLT Rules of Professional Conduct. Such certification shall be filed in a form and manner as prescribed by the Bar and shall include the bank where each account is held and the account number. Failure to certify may result in suspension from practice pursuant to APR 17.

J.Existing Law Unchanged. This rule shall in no way modify existing law prohibiting the unauthorized practice of law.

K. Professional Responsibility and Limited License Legal Technician-Client Relationship

(1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.

(2) Limited License Legal Technicians shall be held to the ethical standards of the Limited License Legal Technician Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

(3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.

L. Confidentiality and Public Records. GR 12.4 shall apply to access to LLLT Board records.

M. Inactive Status. An LLLT may request transfer to inactive status after being admitted. An LLLT on inactive status is required to pay an annual license fee as established by the Board of Governors and approved by the Supreme Court.

N. Reinstatement to Active Status. An LLLT on inactive status may return to active status by filing an application and complying with the procedures set forth for lawyer members of the Bar in the Bar's Bylaws.

O. Voluntary Resignation. Any Limited License Legal Technician may request to voluntarily resign the LLLT license by notifying the Bar in such form and manner as the Bar may prescribe. If there is a disciplinary investigation or proceeding then pending against the LLLT, or if the LLLT has knowledge that the filing of a grievance of substance against such LLLT is imminent, resignation is permitted only under the provisions of the applicable disciplinary rules. An LLLT who resigns the LLLT license cannot practice law in Washington in any manner, unless they are otherwise licensed or authorized to do so by the Supreme Court.

[Adopted effective September 1, 2012; Amended effective August 20, 2013; February 3, 2015; June 21, 2016; September 1, 2017, June 4, 2019.]

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

REGULATION 1. [Reserved.]

REGULATION 2. APPROVED PRACTICE AREAS—SCOPE OF PRACTICE AUTHORIZED BY LIMITED LICENSE LEGAL TECHNICIAN RULE

In each practice area in which an LLLT is licensed, the LLLT shall comply with the provisions defining the scope of practice as found in APR 28 and as described herein.

A. Issues Beyond the Scope of Authorized Practice.

An LLLT has an affirmative duty under APR 28(F) to inform clients when issues arise that are beyond the authorized scope of the LLLT's practice. When an affirmative duty under APR 28(F) arises, then the LLLT shall inform the client in writing that:

1. the issue may exist, describing in general terms the nature of the issue;

2. the LLLT is not authorized to advise or assist on this issue;

3. the failure to obtain a lawyer's advice could be adverse to the client's interests; and

4. the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's interests.

After an issue beyond the LLLT's scope of practice has been identified, if the client engages a lawyer with respect to the issue, then an LLLT may prepare a document related to the issue only if a lawyer acting on behalf of the client has provided appropriate documents and written instructions for the LLLT as to whether and how to proceed with respect to the issue. If the client does not engage a lawyer with respect to the issue, then the LLLT may prepare documents that relate to the issue if

the client informs the LLLT how the issue is to be determined and instructs the LLLT how
to complete the relevant portions of the document, and

above the LLLT’s signature at the end of the document, the LLLT inserts a statement to the effect that the LLLT did not advise the client with respect to any issue outside of the LLLT’s scope of practice and completed any portions of the document with respect to any such issues at the direction of the client.

B. Domestic Relations.

1. *Domestic Relations, Defined.* For the purposes of these Regulations, domestic relations shall include only the following actions: (a) divorce and dissolution, (b) parenting and support, (c) parentage or paternity, (d) child support modification, (e) parenting plan modification, (f) domestic violence protection orders, (g) committed intimate relationships only as they pertain to parenting and support issues, (h) legal separation, (i) nonparental and third party custody, (j) other protection or restraining orders arising from a domestic relations case, and (k) relocation.

2. *Scope of Practice for LLLT's—Domestic Relations.* LLLTs licensed in domestic relations may render legal services to clients as provided in APR 28(F) and this regulation, except as prohibited by APR 28(H) and Regulation 2(B).

(a) Unless an issue beyond the scope arises or a prohibited act would be required, LLLTs may advise and assist clients with initiating and responding to actions and related motions, discovery, trial preparation, temporary and final orders, and modifications of orders.

(b) LLLT legal services regarding the division of real property shall be limited to matters where the real property is a single family residential dwelling with owner equity less than or equal to twice the homestead exemption (*see* RCW 6.13.030). LLLTs shall use the form for real property division as approved by the LLLT Board.

(c) LLLTs may advise as to the allocation of retirement assets for defined contribution plans with a value less than the homestead exemption, and as provided in United States Internal Revenue Code (IRC) sections 401a; 401k; 403b; 457; and Individual Retirement Accounts as set forth in IRC section 408.

(d) LLLTs may include language in a decree of dissolution awarding retirement assets as described in APR 28 Regulation 2(B)(2)(c) when the respondent defaults, when the parties agree on the award, or when the court awards the assets following trial. The award language in the decree shall identify (1) the party responsible for having the qualified domestic relations order (QDRO) or supplemental order prepared and by whom, (2) how the cost of the QDRO or supplemental order preparation is to be paid, (3) by what date the QDRO or supplemental order must be prepared, and (4) the remedy for failure to follow through with preparation of the QDRO or supplemental order.

(e) LLLTs may prepare paper work and accompany and assist clients in dispute resolution proceedings including mediation, arbitration, and settlement conferences where not prohibited by the rules and procedures of the forum.

(f) LLLTs, when accompanying their clients, may assist and confer with their pro se clients at depositions.

(g) LLLTs may present to a court agreed orders, uncontested orders, default orders, and accompanying documents.

(h) LLLTs, when accompanying their clients, may assist and confer with their pro se clients and respond to direct questions from the court or tribunal regarding factual and procedural issues at the hearings listed below:

i. domestic violence protection orders and other protection or restraining orders arising from a domestic relations case;

ii. motions for temporary orders, including but not limited to temporary parenting plans, child support, maintenance, and orders to show cause;

iii. enforcement of domestic relations orders;

iv. administrative child support;

v. modification of child support;

vi. adequate cause hearings for nonparental custody or parenting plan modifications;

vii. reconsiderations or revisions;

viii. trial setting calendar proceedings with or without the client when the LLLT has confirmed the available dates of the client in writing in advance of the proceeding.

3. *Prohibited Acts.* In addition to the prohibitions set forth in APR 28(H), in the course of rendering legal services to clients or prospective clients, LLLTs licensed to practice in domestic relations:

a. shall not render legal services to more than one party in any domestic relations matter;

b. shall not render legal services in:

i. defacto parentage actions;

ii. actions that involve 25 U.S.C. chapter 21, the Indian Child Welfare Act of 1978, or chapter 13.38 RCW, the Washington State Indian Child Welfare Act;

iii. division or conveyance of formal business entities, commercial property, or residential
real property except as permitted by Regulation 2(B);

iv. preparation of QDROs and supplemental orders dividing retirement assets beyond what
is prescribed in Regulation 2(B)(2)(d);

v. any retirement assets whereby the decree effectuates the division or the implementation
of the division of the asset;

vi. bankruptcy, including obtaining a stay from bankruptcy;

vii. disposition of debts and assets, if one party is in bankruptcy or files a bankruptcy during the pendency of the proceeding, unless: (a) the LLLT's client has retained a lawyer to represent him/her in the bankruptcy, (b) the client has consulted with a lawyer and the lawyer has provided written instructions for the LLLT as to whether and how to proceed regarding the division of debts and assets in the domestic relations proceeding, or (c) the bankruptcy has been discharged;

viii. property issues in committed intimate relationship actions;

ix. major parenting plan modifications and nonparental custody actions beyond the adequate cause hearing unless the terms are agreed to by the parties or one party defaults;

x. the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues under chapter 26.27 RCW or Uniform Interstate Family Support Act issues under chapter 26.21A RCW unless and until jurisdiction has been resolved;

xi. objections or responses in contested relocation actions; and

xii. final revised parenting plans in relocation actions except in the event of default or where the terms have been agreed to by the parties.

REGULATION 3. EDUCATION REQUIREMENTS FOR LLLT APPLICANTS AND APPROVAL OF EDUCATIONAL PROGRAMS

An applicant for admission as an LLLT shall satisfy the following education requirements:

A. Core Curriculum.

1. *Credit Requirements*. An applicant for licensure shall have earned 45 credit hours as required by APR 3. The core curriculum must include the following required subject matters with minimum credit hours earned as indicated:

1. Civil Procedure, minimum 8 credit hours;

2. Contracts, minimum 3 credit hours;

3. Interviewing and Investigation Techniques, minimum 3 credit hours;

4. Introduction to Law and Legal Process, minimum 3 credit hours;

5. Law Office Procedures and Technology, minimum 3 credit hours;

6. Legal Research, Writing and Analysis, minimum 8 credit hours; and

7. Professional Responsibility, minimum 3 credit hours.

The core curriculum courses in which credit for the foregoing subject matters is earned shall satisfy the curricular requirements approved by the LLLT Board and published by the Bar. If the required courses completed by the applicant do not total 45 credit hours, then the applicant may earn the remaining credit hours by taking legal or paralegal elective courses. All core curriculum course credit hours must be earned at an ABA approved law school, an educational institution with an ABA approved paralegal program, or at an educational institution with an LLLT core curriculum program approved by the LLLT Board under the Washington State LLLT Educational Program Approval Standards.

For purposes of satisfying APR 3(e)(2), one credit hour shall be equivalent to 450 minutes of instruction.

2. *LLLT Educational Program Approval Requirements for Programs Not Approved by the ABA.* The LLLT Board shall be responsible for establishing and maintaining standards, to be published by the Association, for approving LLLT educational programs that are not otherwise approved by the ABA. Educational programs complying with the LLLT Board's standards shall be approved by the LLLT Board and qualified to teach the LLLT core curriculum.

B. Practice Area Curriculum. An applicant for licensure in a defined practice area shall have completed the prescribed curriculum and earned course credits for that defined practice area, as set forth below and in APR 3(e). Each practice area curriculum course shall satisfy the curricular requirements approved by the LLLT Board and published by the Bar.

1. *Domestic Relations.*

a. Prerequisites: Prior to enrolling in the domestic relations practice area courses, applicants
shall complete the following core courses: Civil Procedure; Interviewing and Investigation Techniques; Introduction to Law and Legal Process; Legal Research, Writing, and Analysis; and Professional Responsibility.

b. Credit Requirements: Applicants shall complete 5 credit hours in basic domestic relations subjects and 10 credit hours in advanced and Washington specific domestic relations subjects.

C. Required Supplemental Education. The LLLT Board has discretion to require all LLLTs to complete supplemental education in order to maintain their licenses due to changes in the permitted scope of practice for LLLTs. The LLLT Board shall provide notice to LLLTs of the supplemental education requirement and the deadline for completion of the requirement, allowing at least 12 months to complete the required supplemental education. LLLTs may be administratively suspended pursuant to the procedures set forth in APR 17 if they fail to comply with the supplemental education requirements by the stated deadline.

REGULATION 4. LIMITED TIME WAIVERS

A. **Limited Time Waiver, Defined**. For the limited time between the date the Board begins to accept applications and December 31, 2023, the LLLT Board shall grant a waiver of the minimum associate-level degree requirement and/or the core curriculum education requirement set forth in APR 3 if an applicant meets the requirements set forth in Regulation 4(B). The LLLT Board shall not grant waivers for applications filed after December 31, 2023. The LLLT Board shall not waive the practice area curriculum requirement. The limited time waiver application will be separate from the application process for admission set forth in these regulations.

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

1. Passed an LLLT Board approved national paralegal certification examination;

2. Active certification from an LLLT Board approved national paralegal certification organization; and

3. Completed 10 years of substantive law-related experience supervised by a licensed lawyer within the 15 years preceding the application for the waiver. Proof of 10 years of substantive-law related experience supervised by a licensed lawyer shall include the following:

a. the name and bar number of the supervising lawyer(s),

b. certification by the lawyer that the work experience meets the definition of substantive law-related work experience as defined in APR 28, and

c. the dates of employment or service.

C. Review of Limited Time Waiver Application. The Bar shall review each limited time waiver application to determine if the application meets the waiver requirements. Any application that does not meet the limited time waiver requirements as established by this Regulation shall be denied by the Bar on administrative grounds, with a written statement of the reason(s) for denial.

D. Review of Denial. An applicant whose application for waiver has been denied by the Bar may request review by the LLLT Board chair. Such request shall be filed with the Bar within 14 days of the date of the notification of denial. The applicant shall be provided with written notification of the chair's decision, which is not subject to review.

E. Expiration of Limited Time Waiver Approval. Approval of the limited time waiver application shall expire December 31, 2025. After expiration of the approval, any subsequent application for licensure by the applicant shall meet all of the standard requirements for admission without waiver.

REGULATION 5. [Reserved.]

REGULATION 6. [Reserved.]

REGULATION 7. [Reserved.]

REGULATION 8. [Reserved.]

REGULATION 9. SUBSTANTIVE LAW-RELATED WORK EXPERIENCE REQUIREMENT

Each applicant for licensure as a limited license legal technician shall show proof of having completed 3,000 hours of substantive law-related work experience supervised by a licensed lawyer as required by APR 5(c). The experience requirement shall be completed no more than three years before and 40 months after the date of the LLLT practice area examination that the applicant passed. The proof shall be provided in such form as the Bar requires, but shall include at a minimum:

1. the name and bar number of the supervising lawyer;

2. certification that the work experience meets the definition of substantive law-related work experience as defined in APR 28;

3. the total number of hours of substantive law-related work experience performed under the supervising lawyer; and

4. certification that the requisite work experience was acquired within the time period required by this regulation.

REGULATION 10. ADDITIONAL PRACTICE AREAS

A. Application for Additional Practice Area. An LLLT seeking admission in an additional practice area must complete and file with the Bar:

1. a completed practice area application in a form and manner prescribed by the Bar;

2. evidence in a form and manner prescribed by the Bar demonstrating completion of the practice area curriculum required under Regulation 3(B); and

3. a signed and notarized Authorization, Release, and Affidavit of Applicant.

B. Additional Practice Area Prelicensure Requirements. An LLLT who is seeking licensure in an additional practice area shall:

1. take and pass the additional practice area examination;

2. pay the annual license fee as stated in the fee schedule; and

3. file any and all licensing forms required for active LLLTs.

The requirements above shall be completed within one year of the date the applicant is notified of the practice area examination results. If an LLLT fails to satisfy all the requirements for licensure in an additional practice area within this period, the LLLT shall not be eligible for licensure in the additional practice area without submitting a new application and retaking the practice area examination.

C. Order Admitting LLLT to Limited Practice in Additional Practice Area. After examining the recommendation and accompanying documents transmitted by the Bar, the Supreme Court may enter such order in each case as it deems advisable. For those LLLTs it deems qualified, the Supreme Court shall enter an order admitting them to limited practice in the additional practice area.

D. Voluntary Termination of Single Practice Area License. An LLLT licensed in two or more practice areas may request to voluntarily terminate a single practice area by notifying the Bar in writing. After terminating the practice area license, the LLLT shall not accept any new clients or engage in work as an LLLT in any matter in the terminated practice area. The Bar will notify the LLLT of the effective date of the termination.

REGULATION 11. [Reserved.]

[1] FUNDAMENTAL PRINCIPLES OF PROFESSIONAL CONDUCT[1]

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. To understand this role, lawyers must comprehend the components of our legal system, and the interplay between the different types of professionals within that system. To fulfill this role lawyers must understand their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles are always present as guidelines. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Rules of Professional Conduct point the way to the aspiring lawyer and provide standards by which to judge the transgressor. Each lawyer must find within their ~~his or her~~[1] [2]own conscience the touchstone against which to test the extent to which their~~his or her~~ [3]actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession and the society which the lawyer serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

[Adopted effective September 1, 1985; Amended effective September 1, 2006; April 14, 2015.]

PREAMBLE AND SCOPE

[2] PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] **[Washington revision]** A lawyer, as a member of the legal profession, is a representative of clients, an officer of the court and a public citizen having special responsibility for the quality of justice.

[2] **[Washington revision]** As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's

[1] These *Fundamental Principles of the Rules of Professional Conduct* are taken from the former Preamble to the Rules of Professional Conduct as approved and adopted by the Supreme Court in 1985. Washington lawyers and judges have looked to the 1985 Preamble as a statement of our overarching aspiration to faithfully serve the best interests of the public, the legal system, and the efficient administration of justice. The former Preamble is preserved here to inspire lawyers to strive for the highest possible degree of ethical conduct, and these *Fundamental Principles* should inform many of our decisions as lawyers. The *Fundamental Principles* do not, however, alter any of the obligations expressly set forth in the Rules of Professional Conduct, nor are they intended to affect in any way the manner in which the Rules are to be interpreted or applied.

[7] **RPC 1.0B ADDITIONAL WASHINGTON TERMINOLOGY**

(a) "APR" denotes the Washington Supreme Court's Admission and Practice Rules.

(b) "Legal practitioner" denotes a lawyer or a limited license legal technician.

(c) "Limited License Legal Technician" or "LLLT" denotes a person qualified by education, training, and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations.

(d) "Limited Practice Officer" or "LPO" denotes a person licensed in accordance with the procedures set forth in APR 12 and who has maintained theirhis or her [4]certification in accordance with the rules and regulations of the Limited Practice Board.

(e) "Representation" or "represent," when used in connection with the provision of legal assistance by an LLLT, denotes limited legal assistance as set forth in APR 28 to a pro se client.

[Adopted effective April 14, 2015; Amended effective June 4, 2019.]

Washington Comments (1-3)

[1] This rules addresses the evolution of the practice of law in Washington to include the limited licensure of legal professionals that permits persons other than lawyers to provide legal assistance that would otherwise constitute the unauthorized practice of law.

[2] These Rules apply to a lawyer's ethical duties, including specific duties that encompass a lawyer's dealings with legal practitioners practicing under a limited license and their clients. LLLTs are bound by corresponding duties that are set forth in the LLLT RPC.

[3] LLLTs are authorized to engage in the limited practice of law in explicitly defined areas. Unlike a lawyer, an LLLT may perform only limited services for a client. A lawyer who interacts with an LLLT about the subject matter of that LLLT's representation or who interacts with an otherwise pro se client represented by an LLLT should be aware of the scope of the LLLT's license and the ethical obligations imposed on an LLLT by the LLLT RPC. See APR 28and related regulations; LLLT RPC 1.2, 1.5, 4.2, 4.3. See also RPC 5.10.

[Comments adopted effective April 14, 2015; Amended effective June 4, 2019.]

[8] **RPC 1.1 COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

[Adopted effective September 1, 1985; Amended effective September 1, 2006.]

[9] **Comment**

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also RPC 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience, and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional

conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[Comment 6 Adopted September 1, 2016.]

[7] [**Washington revision]** When lawyers or LLLTs from more than one law firm are providing legal services to the client on a particular matter, the lawyers and/or LLLTs ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See RPC 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers, LLLTs, and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

[Comment 7 Adopted September 1, 2016].

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

[Comment 6 Adopted effective September 1, 2006; Renumbered to 8 and Amended effective September 1, 2016.]

[10] **Additional Washington Comments (9-10)**

[9] This rule applies to lawyers only when they are providing legal services. Where a lawyer is providing nonlawyer services (”supporting lawyer”) in support of a lawyer who is providing legal services (“supported lawyer”), the supported lawyer should treat the supporting lawyer as a nonlawyer assistant for purposes of this rule and RPC 5.3. (Responsibilities Regarding Nonlawyer Assistants).

[Comment 9 adopted September 1, 2016].

[10] In some circumstances, a lawyer can also provide adequate representation by enlisting the assistance of an LLLT of established competence, within the scope of the LLLT’s license and consistent with the provisions of the LLLT RPC. However, a lawyer may not enter into an arrangement for the division of the fee with an LLLT who is not in the same firm as the lawyer. See Comment [7] to Rule 1.5(e); LLLT RPC 1.5(e). Therefore, a lawyer may enlist the assistance of an LLLT who is not in the same firm only (1) after consultation with the client in accordance with Rules 1.2 and 1.4 and (2) by referring the client directly to the LLLT.

[Comment [7] Adopted effective April 14, 2015; Renumbered to 10 effective September 1, 2016.]

[11] **RPC 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf

of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

[12] **(e) [Reserved.]**

(f) A lawyer shall not purport to act as a lawyer for any person or organization if the lawyer knows or reasonably should know that the lawyer is acting without the authority of that person or organization, unless the lawyer is authorized or required to so act by law or a court order.

[Adopted effective September 1, 1985; Amended effective October 1, 2002; October 29, 2002; September 1, 2006; September 1, 2011.]

[13] **Comments**

Allocation of Authority between Client and Lawyer

[1] **[Washington revision]** Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See RPC 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by RPC 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation. See also RPC 1.1, comments [6] and [10] as to decisions to associate other lawyers or LLLTs.

[Comment 1 amended effective September 1, 2016.]

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other

law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

See also Washington Comment [14].

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

[14] Additional Washington Comments (14–17)

Agreements Limiting Scope of Representation

[14] An agreement limiting the scope of a representation shall consider the applicability of Rule 4.2 to the representation. (The provisions of this Comment were taken from former Washington RPC 1.2(c).) See also Comment [11] to Rule 4.2 for specific considerations pertaining to contact with a person otherwise represented by a lawyer to whom limited representation is being or has been provided.

[Comment [14] amended effective April 14, 2015.]

[Comments adopted effective September 1, 2006.]

Acting as a Lawyer Without Authority

[15] Paragraph (f) was taken from former Washington RPC 1.2(f), which was deleted from the RPC by amendment effective September 1, 2006. The mental state has been changed from "willfully" to one of knowledge or constructive knowledge. See Rule 1.0A(f), (j). Although the language and structure of paragraph (f) differ from the former version in a number of other respects, paragraph (f) does not otherwise represent a change in Washington law interpreting former RPC 1.2(f).

[Comment [15] adopted effective September 1, 2011.]

[16] If a lawyer is unsure of the extent of their~~his or her~~[5] authority to represent a person because of that person's diminished capacity, paragraph (f) of this Rule does not prohibit the lawyer from taking action in accordance with Rule 1.14 to protect the person's interests. Protective action taken in conformity with Rule 1.14 does not constitute a violation of this Rule. [Comment [15] adopted effective September 1, 2011.]

[17] Paragraph (f) does not prohibit a lawyer from taking any action permitted or required by these Rules, court rules, or other law when withdrawing from a representation, when terminated by a client, or when ordered to continue representation by a tribunal. See Rule 1.16(c).

[Comment [15] adopted effective September 1, 2011.]

Special Circumstances Presented by Washington's Marijuana Laws

[18] Under Paragraph (d), a lawyer may counsel a client regarding Washington's marijuana laws and may assist a client in conduct that the lawyer reasonably believes is permitted by those laws. If Washington law conflicts with federal or tribal law, the lawyer shall also advise the client regarding the related federal or tribal law and policy.

[Comment [18] adopted effective December 9, 2014; Amended effective September 25, 2018.]

[17] LLLTs are required to disclose the scope of the representation and the basis or rate of their fees and expenses in writing to the client prior to the performance of services for a fee. APR 28(G)(3); LLLT RPC 1.5(b). Accordingly, when lawyers and LLLTs are associated in a firm, if the firm's services include representation by an LLLT who acts under the authority of APR 28, then there must be a written fee agreement that comports with APR 28(G)(3) and LLLT RPC 1.5(b). See RPC 8.4(f)(2).

[Comment [17] adopted April 14, 2015.]

[18] Paragraph (e) does not allow division of fees between a lawyer and an LLLT who are not in the same firm. See LLLT RPC 1.5(e).

[Comment [18] adopted April 14, 2015.]

[19] An LLLT, unlike a lawyer, is prohibited from entering into a contingent fee or retainer agreement with a client directly. See LLLT RPC 1.5 Comment [1]. Nonetheless, this prohibition was not intended to prohibit a lawyer from sharing fees that include contingent fees or retainers with an LLLT with whom the lawyer has entered into a for-profit business relationship under
Rule 5.9. See Rules 5.9 and 5.10 for a managing lawyer's additional duties regarding LLLTs who are members of the same firm as the lawyer. See also RPC 5.4 Washington Comment [4].

[Comment [19] adopted April 14, 2015.]

[Comments adopted effective September 1, 2006.]

[22] **RPC 1.6 CONFIDENTIALITY OF INFORMATION**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer to the extent the lawyer reasonably believes necessary:

(1) shall reveal information relating to the representation of a client to prevent reasonably certain death or substantial bodily harm;

(2) may reveal information relating to the representation of a client to prevent the client from committing a crime;

(3) may reveal information relating to the representation of a client to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) may reveal information relating to the representation of a client to secure legal advice about the lawyer's compliance with these Rules;

(5) may reveal information relating to the representation of a client to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to

establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) may reveal information relating to the representation of a client to comply with a court order;

(7) may reveal information relating to the representation to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorneyclient privilege or otherwise prejudice the client; or

(8) may reveal information relating to the representation of a client to inform a tribunal about any client's breach of fiduciary responsibility when the client is serving as a court appointed fiduciary such as a guardian, personal representative, or receiver.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

[Adopted effective September 1, 1985; Amended effective September 1, 1990; September 1, 2006; September 1, 2016; September 1, 2018.]

[23] **Comments**

See also Washington Comment [19].

[1] **[Washington revision]** This Rule governs the disclosure by a lawyer of information relating to the representation of a client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] **[Washington revision]** A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0A(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[Comment 2 amended effective April 14, 2015.]

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in

judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct. *See also* Scope.

[Comment 3 amended effective September 1, 2011.]

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] **[Washington revision]** Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a
lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose information relating to a client of the firm to other lawyers or LLLTs within the firm, unless the client has instructed that particular information be confined to specified lawyers or LLLTs.

[Comment 5 amended effective April 14, 2015.]

Disclosure Adverse to Client

[6] **[Washington revision]** Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and requires disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply must reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] **[Reserved.]**

[24] [8] **[Reserved.]**

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the Rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[25] [12] **[Reserved.]**

Detection of Conflicts of Interest

[13] [**Washington revision**] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See RPC 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced, that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse, or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these rules. See also RPC 1.1, comments [6], [7], and [10] as to decisions to associate other lawyers or LLLTs.

[Comment 13 adopted effective September 1, 2016.]

[14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[Comment 14 adopted effective September 1, 2016.]

[15] **[Washington revision]** A lawyer may be ordered to reveal information relating to the representation of a client by a court. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

See also Washington Comment [24].

[16] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[17] **[Washington revision]** Paragraphs (b)(2) through (b)(7) permit but do not require the disclosure of information relating to a client's representation to accomplish the purposes specified in those paragraphs. In exercising the discretion conferred by those paragraphs, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 3.3, 4.1(b), and 8.1. See also Rule 1.13(c), which permits disclosure in some circumstances whether or not Rule 1.6 permits the disclosure.

See also Washington Comment [23].

Acting Competently to Preserve Confidentiality

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See RPC 1.1, 5.1 and

5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to forgo security measures that would otherwise be required by this rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see RPC 5.3, Comments [3]-[4].

[Comment 16 renumbered to 18 and amended effective September 1, 2016.]

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these rules.

[Comment 17 renumbered to 19 and amended effective September 1, 2016.]

Former Client

[20] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

[26] **Additional Washington Comments (21-28)**

[21] The phrase "information relating to the representation" should be interpreted broadly. The "information" protected by this Rule includes, but is not necessarily limited to, confidences and secrets. "Confidence" refers to information protected by the attorney client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

[22] Washington's Rule 1.6(b)(2), which authorizes disclosure to prevent a client from committing a crime, is significantly broader than the corresponding exception in the Model Rule. While the Model Rule permits a lawyer to reveal information relating to the representation to prevent the client from "committing a crime . . . that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used the lawyer's services," Washington's Rule permits the lawyer to reveal such information to prevent the commission of any crime.

[23] **[Reserved.]**

[27] [24] **[Reserved.]**

[25] The exceptions to the general rule prohibiting unauthorized disclosure of information relating to the representation "should not be carelessly invoked." *In re Boelter*, 139 Wn.2d 81, 91, 985 P.2d 328 (1999). A lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of avoidable disclosure.

[26] Washington has not adopted that portion of Model Rule 1.6(b)(6) permitting a lawyer to reveal information related to the representation to comply with "other law." Washington's omission of this phrase arises from a concern that it would authorize the lawyer to decide whether a disclosure is required by "other law," even though the right to confidentiality and the right to waive confidentiality belong to the client. The decision to waive confidentiality should only be made by a fully informed client after consultation with the client's lawyer or by a court of competent jurisdiction. Limiting the exception to compliance with a court order protects the client's interest in maintaining confidentiality while insuring that any determination about the legal necessity of revealing confidential information will be made by a court. It is the need for a judicial resolution of such issues that necessitates the omission of "other law" from this Rule.

Withdrawal

[27] After withdrawal the lawyer is required to refrain from disclosing the client's confidences, except as otherwise permitted by Rules 1.6 or 1.9. A lawyer is not prohibited from giving notice of the fact of withdrawal by this Rule, Rule 1.8(b), or Rule 1.9(c). If the lawyer's services will be used by the client in furthering a course of criminal or fraudulent conduct, the lawyer must withdraw. See Rule 1.16(a)(1). Upon withdrawal from the representation in such circumstances, the lawyer may also disaffirm or withdraw any opinion, document, affirmation, or the like. If the client is an organization, the lawyer may be in doubt about whether contemplated conduct will actually be carried out by the organization. When a lawyer requires guidance about compliance with this Rule in connection with an organizational client, the lawyer may proceed under the provisions of Rule 1.13(b).

Other

[28] This Rule does not relieve a lawyer of theirhis or her [6]obligations under Rule 5.4(b) of the Rules for Enforcement of Lawyer Conduct.

[32] RPC 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of an independent lawyer on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, expect as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include spouse, child, grandchild, parent, grandparent or other relative or individual with who the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not, while representing a client in connection with contemplated or pending litigation, advance or guarantee financial assistance to a client, except that:

(1) a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses; and

(2) in matters maintained as class actions only, repayment of expenses of litigation may be contingent on the outcome of the matter.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, confirmed in writing. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented by a lawyer in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of an independent lawyer in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not:

(1) have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them at the time the client-lawyer relationship commenced; or

(2) have sexual relations with a representative of a current client if the sexual relations would, or would likely, damage or prejudice the client in the representation.

(3) For purposes of Rule 1.8(j), "lawyer" means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.

(k) While lawyers are associated in a firm with other lawyers or LLLTs, a prohibition in the foregoing paragraphs (a) through (i) of this Rule or LLLT RPC 1.8 that applies to anyone of them shall apply to all of them, except that the prohibitions in paragraphs (a), (h), and (i) of LLLT RPC 1.8 shall apply to firm lawyers only if the conduct is also prohibited by this rule.

(l) A lawyer who is related to another lawyer or LLLT as parent, child, sibling, or spouse, or who has any other close familial or intimate relationship with another lawyer or LLLT, shall not represent a client in a matter directly adverse to a person who the lawyer knows is represented by the related lawyer or LLLT unless:

(1) the client gives informed consent to the representation; and

(2) the representation is not otherwise prohibited by Rule 1.7.

(m) A lawyer shall not:

(1) make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm:

(i) to bear the cost of providing conflict counsel; or

(ii) to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel; or

(2) knowingly accept compensation for the delivery of indigent defense services from a lawyer who has entered into a current agreement in violation of paragraph (m)(1).

[Adopted effective September 1, 1985; Amended effective September 1, 1993; June 27, 2000; September 1, 2006; April 24, 2007; September 1, 2008; September 1, 2011; April 14, 2015.]

[33] **Comment**

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] **[Washington revision]** Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of an independent lawyer. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer

obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of an independent lawyer is desirable. See Rule 1.0A(e) (definition of informed consent).

[Comment 2 amended effective April 14, 2015.]

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] **[Washington revision]** If the client is independently represented by a lawyer in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent lawyer. The fact that the client was independently represented by a lawyer in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

[Comment 4 amended effective April 14, 2015.]

Use of Information Related to Representation

[5] **[Washington revision]** Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), and 8.1.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In

any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] **[Washington revision]** Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. See Washington Comment [21].

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule. 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] **[Washington revision]** Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0A(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

[Comment 13 amended effective April 14, 2015.]

Limiting Liability and Settling Malpractice Claims

[14] **[Washington revision]** Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless permitted by law and the client is independently represented by a lawyer in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for ~~his or her~~[7]their own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[Comment 14 amended effective April 14, 2015.]

[15] **[Washington revision]** Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of client or former client not represented by a lawyer, the lawyer must first advise such a person in writing of the appropriateness of independent representation by a lawyer in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult an independent lawyer.

[Comment 15 amended effective April 14, 2015.]

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished

when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] **[Washington revision]** When the client is an organization, paragraph (j) of this Rule applies to a lawyer for the organization (whether inside or outside counsel). For purposes of this Rule, "representative of a current client" will generally be a constituent of the organization who supervises, directs or regularly consults with that lawyer on the organization's legal matters. See Comment [1] to Rule 1.13 (identifying the constituents of an organizational client).

See also Washington Comments [22] and [23].

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

[34] **Additional Washington Comments (21-31)**

Financial Assistance

[21] Paragraph (e) of Washington's Rule differs from the Model Rule. Paragraph (e) is based on former Washington RPC 1.8(e). The minor structural modifications to the general prohibition on providing financial assistance to a client do not represent a change in Washington law, and paragraph (e) is intended to preserve prior interpretations of the Rule and prior Washington practice.

Client-Lawyer Sexual Relationships

[22] Paragraph (j)(2) of Washington's Rule, which prohibits sexual relationships with a representative of an organizational client, differs from the Model Rule. Comment [19] to Model Rule 1.8 was revised to be consistent with the Washington Rule.

[23] Paragraph (j)(3) of the Rule specifies that the prohibition applies with equal force to any lawyer who assists in the representation of the client, but the prohibition expressly does not apply to other members of a firm who have not assisted in the representation.

Personal Relationships

[24] Model Rule 1.8 does not contain a provision equivalent to paragraph (l) of Washington's Rule. Paragraph (l) prohibits representations based on a lawyer's personal conflict arising from their~~his or her~~ [8]relationship with another lawyer. Paragraph (l) is a revised version of former Washington RPC 1.8(i). See also Comment [11] to Rule 1.7.

Indigent Defense Contracts

[25] Model Rule 1.8 does not contain a provision equivalent to paragraph (m) of Washington's Rule. Paragraph (m) specifies that it is a conflict of interest for a lawyer to enter into or accept compensation under an indigent defense contract that does not provide for the payment of funds, outside of the contract, to compensate conflict counsel for fees and expenses.

[26] Where there is a right to a lawyer in court proceedings, the right extends to those who are financially unable to obtain one. This right is affected in some Washington counties and municipalities through indigent defense contracts, i.e., contracts entered into between lawyers or law firms willing to provide defense services to those financially unable to obtain them and the governmental entities obliged to pay for those services. When a lawyer or law firm providing indigent defense services determines that a disqualifying conflict of interest precludes representation of a particular client, the lawyer or law firm must withdraw and substitute counsel must be obtained for the client. See Rule 1.16. In these circumstances, substitute counsel is typically known as "conflict counsel."

[27] An indigent defense contract by which the contracting lawyer or law firm assumes the obligation to pay conflict counsel from the proceeds of the contract, without further payment from the governmental entity, creates an acute financial disincentive for the lawyer either to investigate or declare the existence of actual or potential conflicts of interest requiring the employment of conflict counsel. For this reason, such contracts involve an inherent conflict between the interests of the client and the personal interests of the lawyer. These dangers warrant a prohibition on making such an agreement or accepting compensation for the delivery of indigent defense services from a lawyer that has done so. See ABA Standards for Criminal Justice, Std. 5-3.3(b)(vii) (3d ed. 1992) (elements of a contract for defense services should include "a policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses"); People v. Barboza, 29 Cal.3d 375, 173 Cal. Rptr. 458, 627 P.2d 188 (Cal. 1981) (structuring public defense contract so that more money is available for operation of office if fewer outside attorneys are engaged creates "inherent and irreconcilable conflicts of interest").

[28] Similar conflict-of-interest considerations apply when indigent defense contracts require the contracting lawyer or law firm to pay for the costs and expenses of investigation and expert services from the general proceeds of the contract. Paragraph (m)(1)(ii) prohibits agreements that do not provide that such services are to be funded separately from the amounts designated as compensation to the contracting lawyer or law firm.

[29] Because indigent defense contracts involve accepting compensation for legal services from a third-party payer, the lawyer must also conform to the requirements of paragraph (f). See also Comments [11] - [12].

[Comments adopted effective September 1, 2006.]

Settling Malpractice Claims

[30] A client or former client of an LLLT who is not represented by a lawyer is unrepresented for purposes of Rule 1.8(h)(2).

[Comment adopted April 14, 2015.]

Lawyers Associated in Firms with Limited License Legal Technicians

[31] LLLT RPC 1.8 prohibits LLLTs from engaging in certain conduct that is not necessarily prohibited to lawyers by this Rule. See LLLT RPC 1.8(a) (strictly prohibiting an LLLT from entering into a business transaction with a client); (h)(1) (strictly prohibiting an LLLT from making an agreement prospectively limiting the LLLT's liability to a client for malpractice), (i) (strictly prohibiting an LLLT from acquiring a proprietory interest in a client's cause of action or the subject matter of the litigation). These prohibitions do not apply to any lawyers in a firm unless the conduct is also prohibited to a lawyer under this Rule.

[Comment 31 adopted April 14, 2015.]

[37] RPC 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) Except as provided in paragraph (e), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

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

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

(1) the personally disqualified lawyer is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;

(2) the former client of the personally disqualified lawyer receives notice of the conflict and the screening mechanism used to prohibit dissemination of information relating to the former representation;

(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified lawyer serves on their~~his or her~~ [9]former law firm and former client an affidavit attesting that the personally disqualified lawyer will not participate in the matter and will not discuss the matter or the representation with any other lawyer or employee of their~~his or her~~ [10]current law firm, and attesting that during the

period of the lawyer's personal disqualification those lawyers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified lawyer. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The law firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.

(f) When LLLTs and lawyers are associated in a firm, an LLLT's conflict of interest under LLLT RPC 1.7 or LLLT RPC 1.9 is imputed to lawyers in the firm in the same way as conflicts are imputed to lawyers under this rule. Each of the other provisions of this Rule also applies in the same way when LLLT conflicts are imputed to lawyers in the firm.

[Adopted effective September 1, 1985 Amended effective September 1, 1992; September 1, 2006; September 1, 2011; April 14, 2015.]

[38] **Comment**

Definition of "Firm"

[1] **[Washington revision]** For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers, LLLTs, or any combination thereof in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers or LLLTs employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0A(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0A, Comments [2] - [4].

[Comment 1 amended effective April 14, 2015.]

Principles of Imputed Disqualification

[2] **[Washington revision]** The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b) and (e).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] [**Reserved.** See Washington Comment [11].]

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] **[Washington revision]** Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a definition of informed consent, see Rule 1.0A(e).

[Comment 6 amended effective April 14, 2015.]

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[39] **Additional Washington Comments (9 - 15)**

Principles of Imputed Disqualification

[9] The screening provisions in Washington RPC 1.10 differ from those in the Model Rule. Washington's adoption of a nonconsensual screening provision in 1993 preceded the ABA's 2009 adoption of a similar approach in the Model Rules. Washington's rule was amended and the screening provision recodified as paragraph (e) in 2006, and paragraphs (a) and (e) were further amended in 2011 to conform more closely to the Model Rules version. None of the amendments to this Rule, however, represents a change in Washington law. The Rule preserves Washington practice established in 1993 with respect to screening by allowing a lawyer personally disqualified from representing a client based on the lawyer's prior association with a firm to be screened from a representation to be undertaken by other members of the lawyer's new firm under the circumstances set forth in paragraph (e). See Washington Comment [10].

[10] Washington's RPC 1.10 was amended in 1993 to permit representation with screening under certain circumstances. Rule 1.10(e) retains the screening mechanism adopted as Washington RPC 1.10(b) in 1993, thus allowing a firm to represent a client with whom a lawyer in the firm has a conflict based on ~~his or her~~their [11]association with a prior firm if

the lawyer is effectively screened from participation in the representation, is apportioned no part of the fee earned from the representation and the client of the former firm receives notice of the conflict and the screening mechanism. However, prior to undertaking the representation, non-disqualified firm members must evaluate the firm's ability to provide competent representation even if the disqualified member can be screened in accordance with this Rule. While Rule 1.10 does not specify the screening mechanism to be used, the law firm must be able to demonstrate that it is adequate to prevent the personally disqualified lawyer from receiving or transmitting any confidential information or from participating in the representation in any way. The screening mechanism must be in place over the life of the representation at issue and is subject to judicial review at the request of any of the affected clients, law firms, or lawyers. However, a lawyer or law firm may rebut the presumption that information relating to the representation has been transmitted by serving an affidavit describing the screening mechanism and affirming that the requirements of the Rule have been met.

[11] Under Rule 5.3, this Rule also applies to nonlawyer assistants and lawyers who previously worked as nonlawyers at a law firm. See Daines v. Alcatel, 194 F.R.D. 678 (E.D. Wash. 2000); Richards v. Jain, 168 F. Supp. 2d 1195 (W.D. Wash. 2001). For the definition of nonlawyer for the purposes of Rule 5.3, see Washington Comment [5] to Rule 5.3.

[Comment 11 amended effective April 14, 2015; September 1, 2016.]

[12] In serving an affidavit permitted by paragraph (e), a lawyer may serve the affidavit on the former law firm alone (without simultaneously serving the former client directly) if the former law firm continues to represent the former client and the lawyer contemporaneously requests in writing that the former law firm provide a copy of the affidavit to the former client. If the former client is no longer represented by the former law firm or if the lawyer has reason to believe the former law firm will not promptly provide the former client with a copy of the affidavit, then the affidavit must be served directly on the former client also. Serving the affidavit on a represented former client does not violate Rule 4.2 because the communication with the former client is not about the "subject of the representation" and the notice is "authorized by law," i.e., the Rules of Professional Conduct.

[13] Rule 1.8(l) conflicts are not imputed to other members of a firm under paragraph (a) of this Rule unless the relationship creates a conflict of interest for the individual lawyer under Rule 1.7 and also presents a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

[14] For the parallel provision imputing lawyer conflicts to an LLLT when an LLLT has associated with a lawyer, see LLLT RPC 1.10(f).

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

[Comment 15 adopted effective September 1, 2018.]

[Comments adopted effective September 1, 2006.]

[42] RPC 1.13 ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that they have ~~he or she has~~ been discharged because of the lawyer's actions taken pursuant to paragraphs (b) and (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(h) For purposes of this Rule, when a lawyer who is not a public officer or employee represents a discrete governmental agency or unit that is part of a broader governmental entity,

the lawyer's client is the particular governmental agency or unit represented, and not the broader governmental entity of which the agency or unit is a part, unless:

(1) otherwise provided in a written agreement between the lawyer and the governmental agency or unit; or

(2) the broader governmental entity gives the lawyer timely written notice to the contrary, in which case the client shall be designated by such entity. Notice under this subsection shall be given by the person designated by law as the chief legal officer of the broader governmental entity, or in the absence of such designation, by the chief executive officer of the entity.

[Adopted effective September 1, 2006.]

[43] **Comment**

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] **[Washington revision]** When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0A(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[Comment [3] amended effective April 14, 2015.]

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization

concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to a higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1)-(7). Under paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6(b)(2) and 1.6(b)(3) may permit the lawyer to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that they have ~~he or she has~~ been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

[44] **Additional Washington Comment (15)**

[15] Paragraph (h) was taken from former Washington RPC 1.7(c); it addresses the obligations of a lawyer who is not a public officer or employee but is representing a discrete governmental agency or unit.

[Comments adopted effective September 1, 2006.]

[45] **RPC 1.14 CLIENT WITH DIMINISHED CAPACITY**

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

[Former Rule 1.13 was amended effective July 1, 1988; July 14, 1989; March 1, 1991; October 1, 2002. Renumbered and amended effective September 1, 2006.]

[46] **Comment**

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized

that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must to look to the client, and not family members, to make decisions on the client's behalf.

[4] **[Washington revision]** If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rules 1.2(d) and 1.6(b)(8).

[Comment 4 Amended effective September 1, 2016.]

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's

interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] **[Washington revision]** A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other legal practitioner involved the nature of ~~his or her~~their [12]relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

[Comment [10] amended effective April 14, 2015.]

[Comments adopted effective September 1, 2006.]

[56] RPC 1.18 DUTIES TO PROSPECTIVE CLIENT

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client or except as provided in paragraph (e).

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraphs (d) or (e). If a lawyer or LLLT is disqualified from representation under this paragraph or paragraph (c) of LLLT RPC 1.18, no lawyer in a firm with which that lawyer or LLLT is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

(e) A lawyer may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. The prospective client may also expressly consent to the lawyer's subsequent use of information received from the prospective client.

[Adopted effective September 1, 2006; Amended effective April 14, 2015; September 1, 2016.]

[57] Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] **[Washington revision]** A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter.

Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's communications in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to a communication that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, and is thus not a "prospective client." Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a 'prospective client.' See also Washington Comment [10].

[Comment 2 amended effective September 1, 2016.]

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[Comment 4 amended effective September 1, 2016.]

[5] **[Washington revision]** [**Reserved.** Comment [5] to Model Rule 1.18 is codified, with minor modifications, as paragraph (e). See Rule 1.0A(e) for the definition of informed consent.]

[Comment 5 amended effective April 14, 2015.]

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] **[Washington revision]** Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0A(k) (requirements for screening procedures).

Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[Comment 7 amended effective April 14, 2015.]

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15A.

[58] Additional Washington Comments (10–13)

[10] Unilateral communications from individuals seeking legal services do not generally create a relationship covered by this Rule, unless the lawyer invites unilateral confidential communications. The public dissemination of general information concerning a lawyer's name or firm name, practice area and types of clients served, and contact information, is not in itself, an invitation to convey unilateral confidential communications nor does it create a reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship.

[11] This Rule is not intended to modify existing case law defining when a client-lawyer relationship is formed. See *Bohn v. Cody*, 119 Wn.2d 357, 363, 832 P.2d 71 (1992); *In re Disciplinary Proceeding Against McGlothen*, 99 Wn.2d 515, 522, 663 P.2d 1330 (1983). See also Scope [17].

[12] For purposes of this Rule, "significantly harmful" means more than de minimis harm.

[13] Pursuant to statute or other law, government officers and employees may be entitled to defense and indemnification by the government. In these circumstances, a government lawyer may find it necessary to obtain information from a government officer or employee to determine if they ~~he or she~~ meet~~s~~ the criteria for representation and indemnification. In this situation, the government lawyer is acting on behalf of the government entity as the client, and this Rule would not apply. The government lawyer shall comply with Rule 4.3 in obtaining such information.

[Comments adopted effective September 1, 2006; Amended effective April 14, 2015.]

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

[Comments adopted September 1, 2006.

4.2
[93] COMMUNICATION WITH PERSON REPRESENTED BY A LAWYER

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

[Adopted effective September 1, 1985; Amended effective October 29, 2002; September 1, 2006; April 14, 2015.]

[94] Comment

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] **[Washington revision]** This Rule applies to communications with any person who is represented by a lawyer concerning the matter to which the communication relates.

[Comment 2 amended effective April 14, 2015.]

[3] **[Washington revision]** The Rule applies even though the person represented by a lawyer initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[Comment 3 amended effective April 14, 2015.]

[4] **[Washington revision]** This Rule does not prohibit communication with a person represented by a lawyer or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a person represented by a lawyer who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[Comment 4 amended effective April 14, 2015.]

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] **[Washington revision]** A lawyer who is uncertain whether a communication with a person represented by a lawyer is permissible may seek a court order. A lawyer may also seek a court

order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by a lawyer is necessary to avoid reasonably certain injury.

[Comment 6 amended effective April 14, 2015.]

[7] **[Washington revision]** In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by their~~his or her~~ [13]own lawyer, the consent by that lawyer to a communication will be sufficient for purposes of this Rule. In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[Comment amended effective April 14, 2015.]

[8] **[Washington revision]** The prohibition on communication with a person represented by a lawyer only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0A(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of another lawyer by closing eyes to the obvious.

[Comment 8 amended effective April 14, 2015.]

[9] **[Washington revision]** In the event the person with whom the lawyer communicates is not known to be represented by a lawyer in the matter, the lawyer's communications are subject to Rule 4.3.

[Comment 9 amended April 14, 2015.]

[95] **Additional Washington Comments (10 – 13)**

[10] Comment 7 to Model Rule 4.2 was revised to conform to Washington law. The phrase "or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability" and the reference to Model Rule 3.4(f) was deleted. Whether and how lawyers may communicate with employees of an adverse party is governed by Wright v. Group Health Hospital, 103 Wn.2d 192, 691 P.2d 564 (1984). See also Washington Comment [5] to Rule 3.4.

[Comment 10 adopted effective April 14, 2015.]

[11] **[Washington revision]** A person not otherwise represented by a lawyer to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, they are ~~he or she is~~ to communicate only with the limited

representation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.2(b)).

[Comment 11 amended effective April 14, 2015.]

[12] A person who is assisted by an LLLT is not represented by a lawyer for purposes of this Rule. See APR 28B(4). Therefore, a lawyer may communicate directly with a person who is assisted by an LLLT. Lawyer communication with a person who is assisted by an LLLT instead is governed by RPC 4.3 and RPC 4.4. For special considerations that may arise when a lawyer deals with a person who is assisted by an LLLT, see Rule 4.4 Comment [5].

[13] A lawyer who is representing themself~~himself or herself~~ [14]in a matter in which they are ~~he or she is~~ personally involved ("a pro se lawyer") is "representing a client" in the matter and so is prohibited by this rule from communicating about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. *In re Disciplinary Proceeding Against Haley*, 156 Wn.2d 324, 333–39, 126 P.3d 1262, 1266–69 (2006). On the other hand, a lawyer who is personally involved in a matter and has retained another lawyer to represent them~~him or her~~ [15]is not "representing a client," and is permitted to communicate directly with another person the lawyer knows to be represented in the matter without the consent of the other lawyer, provided the represented lawyer is not acting as co-counsel.

[Comments adopted effective September 1, 2006.]

[96] RPC 4.3 DEALING WITH PERSON NOT REPRESENTED BY A LAWYER

In dealing on behalf of a client with a person who is not represented by a lawyer, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure the services of another legal practitioner, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

[Adopted effective September 1, 1985; Amended effective October 29, 2002; September 1, 2006; April 14, 2015.]

[97] Comment

[1] **[Washington revision]** An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(f). For the definition of "unrepresented person" under this Rule, see Washington Comment [5].

[Comment 1 adopted effective September 1, 2006; Amended effective April 14, 2015.]

[2] **[Washington revision]** The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain the services of another legal practitioner. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations. For special considerations that may arise when a lawyer deals with a person who is assisted by an LLLT, see RPC 4.4 Comment [5].

[Comment 2 amended effective April 14, 2015.]

[98] Additional Washington Comments (3-6)

[3] An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a

written notice of appearance under which, or a written notice of time period during which, they are ~~he or she is~~ to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.3(b)).

[4] Government lawyers are frequently called upon by unrepresented persons, and in some instances by the courts, to provide general information on laws and procedures relating to claims against the government. The provision of such general information by government lawyers is not a violation of this Rule.

[Comment 4 adopted effective September 1, 2006.]

[5] For purposes of this Rule, a person who is assisted by an LLLT is not represented by a lawyer and is an unrepresented person. See APR 28.

[Comment 5 adopted effective April 14, 2015; Amended effective June 4, 2019.]

[6] When a lawyer communicates with an LLLT who represents an opposing party about the subject of the representation, the lawyer should be guided by an understanding of the limitations imposed on the LLLT by APR 28, related regulations and the LLLT RPC. The lawyer should further take care not to overreach or intrude into privileged information. APR 28(K)(3) ("The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.").

[Comment 6 adopted effective April 14, 2015; Amended effective June 4, 2019.]

(b) a lawyer having direct supervisory authority over the LLLT shall make reasonable efforts to ensure that the LLLT's conduct is compatible with the professional obligations of the lawyer and the professional obligations applicable to the LLLT directly;

(c) a lawyer shall be responsible for conduct of an LLLT that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the LLLT is employed, or has direct supervisory authority over the LLLT, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

[Adopted effective April 14, 2015.]

[121] **Comment**

[1] Lawyers may employ, hire, or associate with LLLTs. As with a lawyer's obligations under Rule 5.3 with respect to nonlawyer assistants, a lawyer with managerial authority over LLLTs must make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that LLLTs in the firm will act in a away compatible with the Rules of Professional Conduct, and a lawyer with supervisory authority over an LLLT must make reasonable efforts to ensure that the LLLT's conduct is compatible with the professional obligations of the lawyer. In addition, LLLTs are subject to the LLLT RPC and APR 28. A lawyer with managerial or supervisory authority over an LLLT is also ethically obligated to make reasonable efforts to ensure that the LLLTs conduct is compatible with those specific professional and ethical obligations.

[Comment adopted effective April 14, 2015.]

RPC 6.1

[122] **PRO BONO PUBLICO SERVICE**

Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of pro bono publico service per year. In fulfilling this responsibility, the lawyers should:

(a) provide legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide pro bono publico service through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, or charitable, religious, civil, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate:

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

Pro bono publico service may be reported annually on a form provided by the WSBA. A lawyer rendering a minimum of fifty (50) hours of pro bono publico service shall receive commendation for such service from the WSBA.

[Adopted effective September 1, 1985; Amended effective September 1, 2006.]

[123] **Comment**

[124] **[Washington revision]** Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of their~~his or her~~ [16]legal career, each lawyer should render on average per year, at a minimum, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as postconviction death penalty appeal cases.

[125] **[Washington revision]** Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means or organizations primarily representing such persons. The variety of these activities should facilitate participation by government lawyers, even when restrictions may exist on their engaging in the outside practice of law.

[126] **[Washington revision]** Persons eligible for legal services under paragraphs (a)(1) are those who qualify for services provided by a qualified legal services provider (see Washington Comment [14]) and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford legal services. Legal services under paragraphs (a)(1) and (2) include those rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[Comment 3 amended effective April 14, 2015.]

[127] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[128] **[Washington revision]** A lawyer's responsibility under this Rule can be fulfilled either through the activities described in paragraph (a)(1) and (2) or in a variety of ways as set forth in paragraph (b).

[129] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[130] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[131] **[Washington revision]** Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving in a volunteer capacity on bar association committees or on boards of pro bono or legal services programs, taking part in Law Week activities, acting as an uncompensated continuing legal education instructor, an uncompensated mediator or arbitrator and engaging in uncompensated legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[132] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[133] [10] **[Reserved.]**

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

[134] **Additional Washington Comments (13–16)**

[13] Washington's version of this Rule differs from the Model Rule. Washington's Rule 6.1 specifies an aspirational minimum of thirty hours of pro bono publico legal services per year rather than fifty, but provides for presentation of a service recognition award to those lawyers reporting to the WSBA a minimum of fifty hours. Unlike the Model Rule, paragraph (a) of Washington's Rule does not specify that the majority of the pro bono publico legal service hours should be provided without fee or expectation of fee. And Washington's Rule does not include the final paragraph of the Model Rule relating to voluntary contributions of financial support to legal services organizations. The provisions of Rule 6.1 were taken from former Washington RPC 6.1 (as amended in 2003).

[14] For purposes of this Rule, a "qualified legal services provider" is a not-for-profit legal services organization whose primary purpose is to provide legal services to low-income clients.

[15] Pro bono publico service does not include services rendered for wages or other compensation by lawyers employed by qualified legal services providers (as that term is defined in Washington Comment [14]), government agencies, or other organizations as part of their employment.

[16] The amount of time spent rendering pro bono publico services should be calculated on the same basis that lawyers calculate their time on billable matters. For example, if time spent traveling to a client meeting or to a court hearing is considered to be part of the time for which a paying client would be billed, it is appropriate to include such time in calculating the number of pro bono publico service hours rendered under this Rule.

[Comments effective September 1, 2006.]

[154] RPC 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly

(1) assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law, or

(2) assist or induce an LLLT in conduct that is a violation of the applicable rules of professional conduct or other law;

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, honorably discharged veteran or military status, or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, lawyers, or LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments;

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of their~~his or her~~ [17]conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent

to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;

(j) willfully disobey or violate a court order directing themhim or her [18]to do or cease doing an act which they he or she ought in good faith to do or forbear;

(k) violate theirhis or her [19]oath as an attorney;

(l) violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer
Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;

(m) violate the Code of Judicial Conduct; or

(n) engage in conduct demonstrating unfitness to practice law.

[Adopted effective September 1, 1985; Amended effective September 17, 1993; October 31, 2000; October 1, 2002; September 1, 2006; April 14, 2015; September 1, 2018.]

[155] **Comments**

[1] **[Washington revision]** Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Lawyers are also subject to discipline if they assist or induce an LLLT to violate the LLLT RPC. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[Comment 1 amended effective April 14, 2015.]

[156] [2] **[Reserved.]**

[3] **[Washington revision]** Legitimate advocacy respecting the factors set forth in paragraph (h) does not violate paragraphs (d) or (h). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[157] **Additional Washington Comment (6-8)**

[6] Paragraphs (g) - (n) were taken from former Washington RPC 8.4 (as amended in 2002).

[7] Under paragraph (f)(2), lawyers are also subject to discipline if they assist or induce an LLLT to violate the LLLT RPC. See also Rule 4.3 Washington Comment [6].

[Comment 7 amended effective April 14, 2015.]

[8] A lawyer who counsels a client regarding Washington's marijuana laws or assists a client in conduct that the lawyer reasonably believes is permitted by those laws does not thereby violate RPC 8.4. *See also* RPC 1.2 Washington Comment [18].

[Comment 8 adopted effective September 25, 2018.]

[Comments adopted effective September 1, 2006.]

[158] **RPC 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW**

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

(c) Disciplinary Authority Over Judges. Notwithstanding the provisions of Rule 8.4(m), a lawyer, while serving as a judge or justice as defined in RCW 2.64.010, shall not be subject to the disciplinary authority provided for in these Rules or the Rules for Enforcement of Lawyer Conduct for acts performed in their~~his~~ or judicial capacity or as a candidate for judicial office unless judicial discipline is imposed for that conduct by the Commission on Judicial Conduct or the Supreme Court. Disciplinary authority should not be exercised for the identical conduct if the violation of the Code of Judicial Conduct pertains to the role of the judiciary and does not relate to the judge's or justice's fitness to practice law.

[Adopted effective September 1, 1985; Amended effective October 1, 2002; September 1, 2006; September 1, 2010.]

[159] **Comment**

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rules 6 and 22, ABA Model Rules for Lawyer Disciplinary Enforcement. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule. With respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as

within the scope of that paragraph may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.

[Comment 5 amended effective September 1, 2016.]

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

[160] **Additional Washington Comments (8–13)**

[8] The Commission on Judicial Conduct is an independent agency of the judicial branch of state government. Wash. Const. art. IV, § 31; RCW 2.64.120. The Commission has authority to receive and investigate complaints of, and conduct proceedings as to, alleged violations of rules of judicial conduct by a "judge or justice". Wash. Const. art. IV, § 31; RCW 2.64.057. The terms "judge" and "justice" are defined to include justices of the supreme court, judges of the court of appeals, judges of the superior courts, judges of any court organized under RCW Titles 3 or 35, judges pro tempore, court commissioners, and magistrates, and the Commission's authority applies regardless of whether the judge or justice services full time or part time. RCW 2.64.010(4).

[9] Whether an act is performed in the judge's "judicial capacity" depends on the facts and circumstances of the conduct. In general, acts are performed in the judicial capacity if theyof they involve the making of judicial decisions, the performance of judicial duties, or the discharge of administrative responsibilities in connection with judicial office. Other factors include whether the act was performed or purported to be performed in the individual's official capacity as a judge and whether the conduct is expressly governed by the Code of Judicial Conduct. With the exception of conduct committed during a judicial campaign, see Comment [12], paragraph (c) does not apply to conduct occurring prior to service as a judge, nor does it apply to conduct wholly outside of the judicial campaign.

[10] Paragraph (c) does not prevent the exercise of disciplinary authority over (1) a judge or justice after they have he or she has been disciplined for judicial misconduct by the Commission on Judicial Conduct or the Supreme Court, (2) a former judge or justice, or (3) a lawyer who serves as a pro tem or part time judge for acts performed by themhim or her [20]as a lawyer and otherwise outside of his or hertheir [21]judicial capacity.

[161] [11] **[Reserved.]**

[12] Acts performed as a candidate for judicial office are governed by paragraph (c) if performed by a judge or a justice or a successful lawyer candidate for judicial office. This rule has no application to acts performed by an unsuccessful lawyer candidate for judicial office.

[13] Paragraph (c) applies to judges and justices defined to be within the jurisdiction of the Commission on Judicial Conduct under Wash. Const. art. IV, § 31 and Title 2.64 RCW and is

not intended to apply to other lawyers in this state designated as judges, including but not limited to federal judges, administrative law judges, and tribal judges.

[Comments adopted effective September 1, 2006; Amended effective September 1, 2010.]

ELC 2.2 BOARD OF GOVERNORS; DISCIPLINARY SELECTION PANEL

(a) Function. The Board of Governors of the Association:

(1) through the Executive Director, provides administrative and managerial support to enable the Office of Disciplinary Counsel, the Disciplinary Board, review committees, and other Association staff and appointees to perform the functions specified by these rules;

(2) makes appointments, removes those appointed, and fills vacancies as provided in these rules; and

(3) performs other functions and takes other actions provided in these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Limitation of Authority. The Board of Governors, officers of the Association, and the Executive Director of the Association have no right or responsibility to direct the investigations, prosecutions, appeals, or discretionary decisions of the Office of Disciplinary Counsel under these rules, or to review hearing officer, review committee, or Disciplinary Board decisions or recommendations in specific cases.

(c) Restrictions on Discipline-System Appointments. After leaving office, Association officers and Executive Director and Board of Governors members cannot serve as hearing officers, Disciplinary Board members, or Conflicts Review Officers until three years have expired after departure from office.

(d) Restriction on Advising or Representing Respondents or Grievants. Current and former members of the Board of Governors, Executive Directors, and officers of the Association are subject to the restrictions set forth in rule 2.14.

(e) Disciplinary Selection Pane. The Disciplinary Selection Panel makes recommendations to the Board of Governors for appointment, reappointment, and removal of Disciplinary Board members, hearing officers, chief hearing officer, and Conflicts Review Officers. The Panel is appointed by the Supreme Court, upon the recommendation of the Board of Governors, shall include a Board of Governors member who serves as its chair, and should include, without limitation, one or more former Chairs of the Disciplinary Board, one or more current or former hearing officers, and one or more former nonlawyer members of the Disciplinary Board.

(f) Diversity. The Disciplinary Selection Panel and the Board of Governors considers diversity in gender, ethnicity, disability status, sexual orientation, geography, area of practice, and practice experience, when making appointments under Rules 2.2, 2.3, 2.5, 2.7, and 2.9.

[Adopted effective October 1, 2002; Amended effective January 1, 2014; September 1, 2015.]

ELC 2.3

DISCIPLINARY BOARD

(a) Function. The Board performs the functions provided under these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Membership.

(1) *Composition*. The Board consists of not fewer than four nonlawyer members, appointed by the Court, and not fewer than ten lawyers, appointed by the Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel.

(2) *Qualifications*. A lawyer Board member must be an Active member of the Association, have been an Active or Judicial member of the Association for at least five years, and have no record of public discipline.

(3) *Voting*. Each member, including the Chair and the Vice Chair, whether nonlawyer or lawyer, has one vote. Recused members may not attend or participate in the Board's deliberations on a matter. Board staff may attend Board deliberations, to serve as a resource.

(4) *Quorum*. A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least seven members vote.

(5) *Leave of Absence While Grievance Is Pending*. If a grievance is filed against a lawyer member of the Board, the following procedures apply:

(A) The member initially decides whether to remain on the Board or take a leave of absence until the matter is resolved.

(B) If the member chooses to remain on the Board, the Conflicts Review Officer who is conducting the review of the grievance under rule 2.7 must promptly provide a confidential summary of the grievance to a different Conflicts Review Officer who is not conducting the review. A copy of the summary is provided to the member at the same time.

(C) The Conflicts Review Officer who is not conducting the review of the grievance should then, or at any time thereafter as deemed appropriate, determine if the member is so impaired from serving on the Disciplinary Board that the member should take, or continue to take, a leave of absence to protect the integrity of the discipline system. In making this determination, the Conflicts Review Officer should consider, among other things, the facts, circumstances, and nature of the misconduct alleged, the possible outcome, and the extent of public concern regarding the matter.

(D) The Conflict Review Officer's determination is confidential. All materials used in connection with such a determination are confidential unless released under rule 3.4(d) or (e).

(c) Terms of Office. The term of office for a Board member is three years. Newly created Board positions may be filled by appointments of less than three years, as designated by the Court, to permit as equal a number of positions as possible to be filled each year. Terms of

office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members continue to serve until replaced, except a member's term of office ends immediately if a disciplinary sanction is imposed.

(d) Chair. The Supreme Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, annually designates one lawyer member of the Board to act as Chair and another as Vice Chair. The Vice Chair serves in the absence of or at the request of the Chair.

(e) Unexpired Terms. The Supreme Court, upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, fills unexpired terms in membership on the Board. A member appointed to fill an unexpired term will complete the unexpired term of the member replaced, and may be reappointed to a consecutive term if the unexpired term is less than 18 months.

(f) Pro Tempore Members. If a Board member is disqualified or unable to function, the Chair may, by written order, designate a member pro tempore. A member pro tempore must have previously served on the Board. Only a lawyer may be appointed to substitute for a lawyer member, and only a nonlawyer to substitute for a nonlawyer member.

(g) Meetings. The Board meets regularly at times and places it determines. The Chair may convene special Board meetings. In the Chair's discretion, the Board may meet and act through electronic, telephonic, written, or other means of communication.

(h) Disqualification. A Board member should disqualify themself ~~him- or herself~~ from a particular matter in which the member's impartiality might reasonably be questioned, -including, but not limited to, instances in which:

(1) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

(2) the member previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the member practices law serves or has previously served as a lawyer concerning the matter, or such lawyer is or has been a material witness concerning the matter;

(3) the member knows that, individually or as a fiduciary, the member or the member's spouse or relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under subsection (i);

(4) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:

(A) is a party to the matter, or an officer, director, or trustee of a party;

(B) is acting as a lawyer in the matter;

(C) is to the member's knowledge likely to be a material witness in the matter;

(5) the member served as a hearing officer for a hearing on the matter, or served on a review committee that issued an admonition to the lawyer regarding the matter.

(i) Remittal of Disqualification. A member disqualified under subsection (h)(3) or (h)(4) may, instead of withdrawing from consideration of the matter, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the member's participation, all agree in writing or on the record that the member's relationship is immaterial or that the member's economic interest is de minimis, the member is no longer disqualified, and may participate in the matter. If a party is not immediately available, the member may proceed on the assurance of the party's counsel that the party's consent will be subsequently given.

(j) Counsel and Clerk. The Executive Director of the Association may appoint a suitable person or persons to act as counsel and clerk to the Board, to assist the Board and the review committees in carrying out their functions under these rules.

(k) Restriction on Representing or Advising Respondents or Grievants. Current and former members of the Disciplinary Board are subject to the restrictions on representing respondents in rule 2.14.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 2.4 REVIEW COMMITTEES

(a) Function. A review committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.

(b) Membership. The Chair appoints three or more review committees of three members each from among the Board members. Each review committee consists of two lawyers and one nonlawyer. The Chair may reassign members among the several committees on an interim or permanent basis. The Chair does not serve on a review committee.

(c) Review Committee Chair. The Chair of the Disciplinary Board designates one member of each review committee to act as its chair.

(d) Terms of Office. A review committee member serves as long as the member is on the Board.

(e) Distribution of Cases. The Clerk assigns matters to the several review committees under the Chair's direction, equalizing the committee's caseloads as possible.

(f) Meetings. A review committee meets at times and places determined by the review committee chair, under the general direction of the Chair of the Disciplinary Board. In the review committee chair's discretion, the committee may meet and act through electronic, telephonic, written, or other means of communication. A majority of a review committee constitutes a quorum. A review committee can act only upon at least two affirmative votes.

(g) Adjunct Review Committee Members. Notwithstanding other provisions of these rules, if deemed necessary to the efficient operation of the discipline system, the Board may authorize the Chair to appoint former Board members as adjunct review committee members for a period deemed necessary by the Chair, but those appointments terminate at the end of the term of the Chair making the appointment. The Chair may remove adjunct review committee members when deemed appropriate. The Chair may appoint adjunct review committee members to existing review committees or may create adjunct review committees. An adjunct member has the same authority as a regular review committee member and must comply with rule 2.3(b)(5) but is not otherwise a Board member.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 2.5 HEARING OFFICERS

(a) Function. A hearing officer to whom a case has been assigned for hearing conducts the hearing and performs other functions as provided under these rules.

(b) Qualifications. A hearing officer must be an active member of the Association, have been an active or judicial member of the Association for at least seven years, have no record of public discipline, and have experience as an adjudicator or as an advocate in contested adjudicative hearings.

(c) Appointment. The Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, appoints hearing officers to the hearing officer list. The list should include as many lawyers as necessary to carry out the provisions of these rules effectively and efficiently.

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

(e) Chief Hearing Officer.

(1) *Appointment*. The Supreme Court, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, appoints a chief hearing officer for a renewable term of two years. The person appointed as chief hearing officer must meet the qualifications for hearing officers set forth in paragraph (b) above, have significant experience in the adjudication of contested matters, and have substantial administrative and managerial skills. If the chief hearing officer position is vacant or the chief hearing officer has recused or been disqualified from a particular matter, the Chair may, as necessary, perform the duties of chief hearing officer.

(2) *Duties and Authority*. The chief hearing officer:

(A) hears matters,

(B) assigns cases,

(C) monitors and evaluates hearing officer performance,

(D) hears motions for hearing officer disqualification,

(E) hears prehearing motions when no hearing officer has been assigned,

(F) hears motions for protective orders under rule 3.2(e),

(G) hears motions prior to a matter being ordered to hearing, including while a grievance is being investigated,

(H) hears requests for amendment of formal complaints under rule 10.7(c),

(I) approves stipulations to discipline not involving suspension or disbarment as provided by rule 9.1(d)(2),

(J) responds to hearing officer requests for information or advice related to their duties,

(K) supervises hearing officer training in accordance with established policies, and

(L) performs other duties as the chief hearing officer deems necessary for an efficient and effective hearing system.

(f) Case Assignment. The chief hearing officer assigns hearing officers to cases from the list of hearing officers appointed by the Supreme Court. The chief hearing officer shall be given confidential notice of any grievances filed against any hearing officers, and the ultimate disposition of those grievances, and shall consider this information when making assignments.

(g) Training. Hearing officers must comply with training requirements established by the chief hearing officer.

(h) Staff. The Executive Director of the Association may appoint a suitable person or persons to assist the hearing officers and the chief hearing officer in carrying out their functions under these rules.

[Adopted effective October 1, 2002; Amended effective January 1, 2014; September 1, 2017.]

ELC 2.7 CONFLICTS REVIEW OFFICER

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

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

(2) *Independence*. Conflicts Review Officers act independently of disciplinary counsel and the Association.

(b) Appointment and Qualifications.

(1) The Supreme Court, on the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel, shall appoint three active members of the Association as Conflicts Review Officers. Each Conflicts Review Officer is appointed for a three-year term on a staggered basis, and may be recommended for reappointment at the discretion of the Board of Governors. Applications shall be solicited from those eligible to serve, and submitted to the Board of Governors, in such manner as the Association deems most appropriate under the policies and procedures then in effect for recruitment and appointment of volunteers in the discipline system.

(2) When no Conflicts Review Officer is available to handle a matter due to conflict of interest or other good cause, the Supreme Court, on the recommendation of the Board of Governors, shall appoint a Conflicts Review Officer pro tempore for the matter.

(3) To be eligible for appointment as Conflicts Review Officer or Conflicts Review Officer pro tempore, a lawyer must have prior experience as a Disciplinary Board member, disciplinary counsel, or special disciplinary counsel. Conflicts Review Officers and Conflicts Review Officers pro tempore may have no other active role in the discipline system during the term of appointment.

(c) Counsel and Clerk; Assignment of Cases. The Association shall assign matters to the Conflicts Review Officers in such a manner as to balance their caseloads insofar as it is

practicable to do so. The Executive Director of the Association may appoint a suitable person or persons to act as counsel and clerk to the Conflicts Review Officers, to assist them in carrying out their functions under these rules.

(d) Access to Disciplinary Information. Conflicts Review Officers and Conflicts Review Officers pro tempore have access to any otherwise confidential disciplinary information necessary to perform the duties required by these rules. Conflicts Review Officers and Conflicts Review Officers pro tempore shall return original files to the Association promptly upon completion of the duties required by these rules and shall not retain copies.

(e) Compensation and Expenses. The Association reimburses Conflicts Review Officers and Conflicts Review Officers pro tempore for all necessary and reasonable expenses, and may provide compensation at a level established by the Board of Governors.

(f) Restriction on Representing or Advising Respondents or Grievants. Current Conflicts Review Officers are subject to the restrictions set forth in rule 2.14. Members serving as Conflicts Review Officer pro tempore are subject to the same restriction while serving in that capacity.

[Adopted effective October 1, 2002; Amended effective January 12, 2010; January 1, 2014; January 1, 2015; September 1, 2017.]

ELC 2.10
REMOVAL OF APPOINTEES

The power granted by these rules to any person, committee, or board to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform their ~~his or her~~ duties, or for any other cause, and to fill the resulting vacancy.

[Adopted effective October 1, 2002.]

located in the county where the lawyer practiced, or the judge of any other court in which the lawyer may have practiced or is known to have practiced.

[Adopted effective October 2, 2002; Amended effective January 1, 2014.]

ELC 3.6 MAINTENANCE OF RECORDS

(a) Permanent Records. In any matter in which a disciplinary sanction or admonition has been imposed or the lawyer has resigned in lieu of discipline under rule 9.3, the bar file and transcripts of the proceeding are permanent records. Related file materials, including investigative files, may be maintained in disciplinary counsel's discretion. Exhibits may be returned to the party supplying them, but copies should be retained where possible.

(b) Destruction of Grievance and Investigation Files. In any matter in which a grievance or investigation has been dismissed without the imposition of a disciplinary sanction or admonition, whether following a hearing or otherwise, file materials relating to the matter may be destroyed three years after the dismissal first occurred, and must be destroyed at that time on the respondent lawyer's request unless the files are being used in an ongoing investigation or unless other good cause exists for retention. However, file materials on a matter dismissed after a diversion must be retained at least five years after the dismissal.

(c) Retention of Docket. If a file on a matter has been destroyed under section (b), the Association may retain a docket record of the matter for statistical purposes only. That docket record must not include the name or other identification of the respondent.

(d) Destruction of Random Examination Files. In any random examination matter concluded under rule 15.1 without a disciplinary grievance being ordered, the file materials relating to the matter may be destroyed three years after the matter was concluded, and must be destroyed at that time on the respondent lawyer's request unless the files are being used in an ongoing investigation or unless other good cause exists for retention. In any random examination matter that a review committee directs be made the subject of a disciplinary grievance, the materials related to the random examination will be made part of the disciplinary grievance. A docket, limited to the name of the lawyer and any law firm examined or reexamined under rule 15.1, together with the date the examination or reexamination was concluded, will be maintained for a period of seven years for the purpose of determining prior examinations under rule 15.1(b).

(e) Review. If disciplinary counsel opposes a request by a respondent for destruction of files under this rule, the Board rules on that request.

(f) Deceased Lawyers. Records and files relating to a deceased lawyer, including permanent records, may be destroyed at any time in disciplinary counsel's discretion.

[Adopted effective October 1, 2002; Amended effective January 1, 2014; December 8, 2015.]

ELC 4.1

SERVICE OF PAPERS

(a) Service Required. Every pleading, every paper relating to discovery, every written request or motion other than one which may be heard ex parte, and every similar paper or document issued by disciplinary counsel or the respondent lawyer under these rules must be served on the opposing party. If a hearing is pending and a hearing officer has been assigned, except for discovery, the party also must serve a copy on the hearing officer.

(b) Methods of Service.

(1) *Service by Mail*.

(A) Unless personal service is required or these rules specifically provide otherwise, service may be accomplished by postage prepaid mail. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.

(B) Service by mail may be by first class mail or by certified or registered mail, return receipt requested.

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

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

(ii) for disciplinary counsel, at the address of the Association or other address that disciplinary counsel requests;

(iii) for a hearing officer assigned to a matter, at the address of the hearing officer set forth on the notice of assignment of the hearing officer, or such other address as the hearing officer directs; and

(iv) for the chief hearing officer, the Chair, the Board, a review committee, Association counsel, or any other person or entity acting under the authority of these rules, addressed to that person or entity in care of the Clerk at the address of the Association.

(1) *Service by Delivery*. If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

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

(A) if the respondent is found in Washington State, by personal service in the manner required for personal service of a summons in a civil action in the superior court;

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

(i) leaving a copy at the respondent's place of usual abode in Washington State with a person of suitable age and discretion then resident therein; or

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

(C) if the respondent is found outside of Washington State, then by the methods of service described in (A) or (B) above.

(c) Service Where Question of Mental Competence. If the Superior Court has appointed a guardian or guardian ad litem for a respondent, service under sections (a) and (b) above must also be made on the guardian or guardian ad litem.

(d) Proof of Service. If personal service is required, proof of service may be made by affidavit of service, sheriff's return of service, or a signed acknowledgment of service. In other cases, proof of service may also be made by certificate of a lawyer similar to that allowed by CR 5(b)(2)(B), which certificate must state the form of mail used. Proof of service in all cases must be filed but need not be served on the opposing party.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 4.9

SERVICE AND FILING BY AN INCARCERATED PERSON~~INMATE~~ [1]~~CONFINED IN AN INSTITUTION~~

Service and filing of papers under these rules by an ~~individual incarcerated?~~ incarcerated person ~~[2]inmate confined~~ in an institution will conform to the requirements of GR 3.1.

[Adopted effective January 1, 2014.]

ELC 5.1 GRIEVANTS

(a) Filing of Grievance. Any person or entity may file a grievance against a lawyer who is subject to the disciplinary authority of this jurisdiction.

(b) Consent to Disclosure.

(1) Subject to paragraph (2), by filing a grievance, the grievant consents to disclosure of all information submitted. This includes disclosure to the respondent lawyer or to any person under rules 3.1 – 3.4.

(2) Disclosure may be specifically restricted, such as:

(A) when a protective order is issued under rule 3.2(e); or

(B) when the grievance was filed under rule 5.2; or

(C) when necessary to protect a compelling privacy or safety interest of a grievant or other individual.

(3) By filing a grievance, the grievant also agrees that the respondent or any other lawyer contacted by the grievant may disclose to disciplinary counsel any information relevant to the investigation, unless a protective order is issued under rule 3.2(e).

(4) Consent to disclosure under this rule by submitting information to disciplinary counsel does not constitute a waiver of any privilege or restriction against disclosure in any other forum.

(c) Grievant Rights. A grievant has the following rights:

(1) to be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;

(2) to have a reasonable opportunity to communicate with the person assigned to the grievance, by telephone, in person, or in writing, about the substance of the grievance or its status;

(3) to receive a copy of any response submitted by the respondent, subject to the following:

(A) Withholding Response. Disciplinary counsel may withhold all or a portion of the response from the grievant when:

(i) the response refers to information protected by RPC 1.6 or RPC 1.9 to which the grievant is not privy; or

(ii) the response contains information of a personal and private nature about the respondent or others; or

(iii) the interests of justice would be better served by not releasing the response.

(B) Challenge to Disclosure Decision. Either the grievant or the respondent may file a challenge to disciplinary counsel's decision to withhold or not withhold all or a portion of a grievance or response within 20 days of the date of mailing of the decision. The challenge shall be resolved by a review committee, unless the matter has previously been dismissed under rule 5.6 or the time period for submitting a request for review of a dismissal has expired under rule 5.7(b).

(4) to attend any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e), except that if the grievant is also a witness, the hearing officer may order the grievant excluded during the testimony of any other witness whose testimony might affect the grievant's testimony;

(5) to provide relevant testimony at any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e);

(6) to be notified of any proposed decision to refer the respondent to diversion and to be given a reasonable opportunity to submit to disciplinary counsel a written comment thereon;

(7) to be advised of the disposition of the grievance; and

(8) to request reconsideration of a dismissal of the grievance as provided in rule 5.7(b).

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

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

(2) assist in securing relevant evidence; and

(3) appear and testify at any hearing resulting from the grievance.

(e) Vexatious grievants.

(1) The Chair of the Disciplinary Board may enter an order declaring an individual or entity a vexatious grievant and restraining that individual from filing grievances or pursuing other rights under this rule, pursuant to the procedures set out in this subsection. A "vexatious grievant" is a person or entity who has engaged in a frivolous or harassing course of conduct that so departs from a reasonable standard of conduct as to render the grievant's conduct abusive to the disciplinary system or participants in the disciplinary system.

(2) Either disciplinary counsel or a lawyer who has been the subject of a grievance may file a motion to declare the grievant vexatious.

(3) The motion must set forth with particularity (A) the facts establishing that the grievant's

conduct is vexatious and (B) the restrictions on the grievant's conduct that are sought.

(4) The moving party must serve a copy of the motion on the grievant. If the motion is filed by a respondent lawyer, the motion must also be served on disciplinary counsel. Service may be made by first class mail.

(5) The grievant, disciplinary counsel, and the respondent lawyer shall have 20 days to file a written response.

(6) If the Chair finds that the person is a vexatious grievant, the Chair shall enter an order setting out with particularity (A) the factual basis for such finding, (B) the restrictions imposed on the grievant's conduct, and (C) the basis for imposing such restrictions. The restrictions must be no broader than necessary to prevent the harassment and abuse found.

(7) The moving party, the grievant, and the disciplinary counsel may seek review of the Chair's order by a petition for discretionary review under rule 12.4. No other appeal of the order shall be allowed.

(8) The fact that a person or entity has been determined to be a vexatious grievant and the scope of any restrictions imposed shall be public information. All other proceedings and documents related to a motion under this subsection are confidential.

[Adopted effective October 1, 2002; Amended effective January 1, 2014; January 1, 2014; January 1, 2015.]

(f) Action Final. Except as provided in subsection (e), a review committee's action under this rule is final and not subject to further review.

[Adopted effective October 1, 2002; Amended and Renumbered from 5.6 to 5.7 effective January 1, 2014.]

ELC 5.8 ADVISORY LETTER

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

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

(2) a respondent lawyer's conduct does not constitute a violation but the lawyer should be cautioned.

(b) Review Committee. An advisory letter may only be issued by a review committee. An advisory letter may not be issued when a grievance is dismissed following a hearing.

(c) Effect. An advisory letter is not a sanction and is not disciplinary action. An advisory letter is not public information, and may not be introduced into evidence in any subsequent disciplinary hearing.

[Adopted effective October 1, 2002; Amended and renumbered from 5.7 to 5.8 effective January 1, 2014.]

ELC 8.1 ACTION ON ADJUDICATION OF INCOMPETENCY OR INCAPACITY

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

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

(2) was acquitted of a crime based on insanity[PM3];

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

(4) was involuntarily committed to a mental health facility for more than 14 days under 71.05 RCW; or

(5) was found to be mentally incapable of conducting the practice of law in any other jurisdiction.

(b) Notice to Lawyer. The Association must forthwith notify the disabled lawyer and their ~~his or her~~ guardian or guardian ad litem, if any, of the transfer to disability inactive status. The Association must also notify the Supreme Court of the transfer and provide a copy of the judgment, order, or other appropriate document on which the transfer was based.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 8.2 DETERMINATION OF INCAPACITY TO PRACTICE LAW

(a) Review Committee May Order Hearing. Disciplinary counsel reports to a review committee on investigations into an active, suspended, or inactive respondent lawyer's mental or physical capacity to practice law. Subject to rule 5.2, the respondent lawyer and their ~~his or her~~ guardian or guardian ad litem, if any, shall be provided with a complete copy of disciplinary counsel's report and shall be afforded a reasonable opportunity to respond prior to the review committee taking action on the report. The committee orders a hearing if it appears there is reasonable cause to believe that the respondent does not have the mental or physical capacity to practice law. In other cases, the committee may direct further investigation as appears appropriate or dismiss the matter.

(b) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(c) Procedure.

(1) *Applicable Rules and Case Caption*. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings except that the respondent lawyer's initials are to be used in the case caption rather than the lawyer's full name.

(2) *Appointment of Counsel*. If counsel for the respondent does not appear within the time for filing an answer, the Chair must appoint an active member of the Association as counsel for the respondent under rule 8.10.

(3) *Health Records*. After a review committee orders a hearing under this rule, disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the inquiry, subject to a motion to the hearing officer, or if no hearing officer has been appointed, to the chief hearing officer, to limit the scope of the requested releases or authorizations for good cause.

(4) *Examination*. Upon motion, the hearing officer, or if no hearing officer has been appointed, the chief hearing officer, may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in determining the respondent's capacity to practice law. Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(5) *Hearing Officer Recommendation*. If the hearing officer finds that the respondent does not have the mental or physical capacity to practice law, the hearing officer must recommend that the respondent be transferred to disability inactive status.

(6) *Appeal Procedure*. Either respondent or disciplinary counsel may appeal from a final determination of the hearing officer as to the respondent's capacity to practice law. The procedures for appeal and review of suspension recommendations apply to such appeals.

(7) *Transfer Following Board Review*. If, after review of the decision of the hearing officer, the Board finds that the respondent does not have the mental or physical capacity to practice law, it must enter an order immediately transferring the respondent to disability inactive status. The transfer is effective upon service of the order under rule 4.1.

(d) Interim Suspension.

(1) When a review committee orders a hearing on the capacity of a respondent to practice law, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a) unless the respondent is already suspended on an interim basis.

(2) Even if the Court previously denied a petition for interim suspension under subsection (d)(1), disciplinary counsel may petition the Court for the interim suspension of a respondent under rule 7.2(a)(3) if the respondent fails:

(A) to appear for an independent examination under this rule;

(B) to waive health care provider-patient privilege as required by this rule; or

(C) to appear at a hearing under this rule.

(e) Termination of Interim Suspension. If the hearing officer files a decision recommending that a respondent placed on interim suspension under this rule not be transferred to disability inactive status, upon either party's petition the Court may terminate the interim suspension.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 8.3 DISABILITY PROCEEDINGS DURING COURSE OF DISCIPLINARY PROCEEDINGS

(a) **Supplemental Proceedings on Capacity To Defend.** A hearing officer, or chief hearing officer if no hearing officer has been appointed, must order a supplemental proceeding on the respondent lawyer's capacity to defend the disciplinary proceedings if the respondent asserts, or there is reasonable cause to believe, that the respondent is incapable of properly defending the disciplinary proceeding because of mental or physical incapacity. A different hearing officer shall be appointed for the supplemental proceeding.

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

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

(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or

(3) is currently unable to practice law because of mental or physical incapacity.

(c)Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(d) Procedure for Supplemental Proceedings.

(1) *Applicable Rules and Case Caption*. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings except that the respondent lawyer's initials are to be used in the case caption rather than the lawyer's full name.

(2) *Effect on Pending Disciplinary Matters*. Pending the outcome of the supplemental proceedings, the hearing officer, or the chief hearing officer if no hearing officer has been appointed, must order any disciplinary proceedings pending against the respondent stayed. Disciplinary counsel may defer any pending disciplinary investigation in accordance with the provisions of rule 5.3(d).

(3) *Appointment of Counsel*. If counsel for the respondent does not appear within 20 days of notice to the respondent of the issues to be considered in a supplemental proceeding under this rule, or within the time for filing an answer, the Chair must appoint an active member of the Association as counsel for the respondent in the supplemental proceedings under rule 8.10.

(4) *Health Records*. Disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the determination under subsection (b), subject to a motion to the hearing officer to limit the scope of the requested releases or authorizations for good cause. If the respondent asserted incapacity, there is a rebuttable presumption that good cause does not exist.

(5) *Examination*. Upon motion, the hearing officer may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in the determinations to be made under subsection (b). Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(6) *Failure To Appear or Cooperate*. If the respondent fails to appear for an independent examination, fails to waive health care provider-patient privilege as required in these rules, or fails to appear at the hearing, unless the procedure under rule 8.10(d) is followed the following procedures apply:

(A) If the Association has the burden of proof, the hearing officer must hold a hearing and, if presented with sufficient evidence to determine incapacity, order the respondent transferred to disability inactive status. If there is insufficient evidence to determine incapacity, the hearing officer must enter an order terminating the supplemental proceedings and reinstating the disciplinary proceedings. A respondent who does not appear at the hearing may move to vacate the order of transfer under rule 10.6(c).

(B) If the respondent has the burden of proof, the hearing officer must enter an order terminating the supplemental proceedings and resuming the disciplinary proceedings.

(7) *Hearing Officer Decision*.

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

(B) Capacity To Defend with Counsel. Regardless of the hearing officer's determination as to mental or physical capacity to practice law, if the hearing officer finds that the respondent is not capable of defending themself ~~himself or herself~~ in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint an active member of the Association as counsel for the respondent in the disciplinary proceeding.

(C) Finding of Incapacity. If the hearing officer finds that the respondent either does not have the mental or physical capacity to practice law, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer must recommend that the respondent be transferred to disability inactive status.

(D) Review and Appeals. Either respondent or disciplinary counsel may appeal from a final determination of the hearing officer as to the respondent's capacity to practice law or respondent's capacity to defend a disciplinary proceeding. The procedures for appeal and review of suspension recommendations shall apply.

(8) *Transfer Following Board Review*.

(A) The Board must enter an order immediately transferring the respondent to disability inactive status if after review of a hearing officer's recommendation of transfer to disability inactive status, the Board finds that the respondent:

(i)does not have the mental or physical capacity to practice law; or

(ii) is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity.

(B) The transfer is effective upon service of the order on the respondent under rule 4.1.

(e) Interim Suspension. When supplemental proceedings have been ordered, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a)(1) or seek automatic suspension under rule 7.3 unless the respondent is already suspended on an interim basis.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 9.3 RESIGNATION IN LIEU OF DISCIPLINE

(a) Grounds. A respondent lawyer who desires not to contest or defend against allegations of misconduct may, at any time before the answer in any disciplinary proceeding is due, or thereafter with disciplinary counsel's consent, resign their ~~his or her~~ membership in the Association in lieu of further disciplinary proceedings.

(b) Process. The respondent first notifies disciplinary counsel that the respondent intends to submit a resignation and asks disciplinary counsel to prepare a statement of alleged misconduct and to provide a declaration of costs and a proposed resignation form. After receiving the statement and the declaration of costs, if any, the respondent may resign by signing and submitting to disciplinary counsel, the resignation form prepared by disciplinary counsel, sworn to or affirmed under oath, which must include the following:

(1) Disciplinary counsel's statement of the misconduct alleged in the matters then pending.

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

(3) Respondent's affirmative acknowledgment that the resignation is permanent including the statement:

"I understand that my resignation is permanent and that any future application by me for reinstatement as a member of the Washington State Bar Association is currently barred. If the Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by one who has been disbarred for ethical misconduct, and that, if I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this resignation was based."

(4) Respondent's agreement:

(A) to notify all other jurisdictions in which the respondent is or has been admitted to practice law of the resignation in lieu of discipline;

(B) to seek to resign permanently from the practice of law in any other jurisdiction in which the respondent is admitted;

(C) to provide disciplinary counsel with copies of any of these notifications and any responses; and

(D) acknowledging that the resignation could be treated as a disbarment by all other jurisdictions.

(5) Respondent's agreement to:

(A) notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license that is predicated on the respondent's admission to practice law of the resignation in lieu of discipline;

(B) seek to resign permanently from any such license; and

(C) provide disciplinary counsel with copies of any of these notifications and any responses.

(6) Respondent's agreement that when applying for any employment or license the respondent agrees to disclose the resignation in lieu of discipline in response to any question regarding disciplinary action or the status of the respondent's license to practice law.

(7) Respondent's agreement to pay any restitution or additional costs and expenses ordered by a review committee, and attaches payment for costs as described in subsection (f) below, or states that the respondent will execute a confession of judgment or deed of trust as described in subsection (f).

(8) Respondent's agreement that when the resignation becomes effective, the respondent will be subject to all restrictions that apply to a disbarred lawyer.

(c) Public Filing. Upon receipt of a resignation meeting the requirements set forth above, and the costs and expenses and any executed confession of judgment or deed of trust required under subsection (f), disciplinary counsel will endorse the resignation and promptly causes it to be filed with the Clerk as a public and permanent record of the Association.

(d) Effect. A resignation under this rule is effective upon its filing with the Clerk. All disciplinary proceedings against the respondent terminate except disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances to create a record of the respondent's actions. The Association immediately notifies the Supreme Court of a resignation under this rule and the respondent's name is forthwith stricken from the roll of lawyers. Upon filing of the resignation, the resigned respondent must comply with the same duties as a disbarred lawyer under title 14 and comply with all restrictions that apply to a disbarred lawyer. Notice is given of the resignation in lieu of discipline under rule 3.5.

(e) Resignation is Permanent. Resignation under this rule is permanent. A respondent who has resigned under this rule will never be eligible to apply and will not be considered for admission or reinstatement to the practice of law nor will the respondent be eligible for admission for any limited practice of law.

(f) Costs and Expenses. If a respondent resigns under this rule, the expenses under rule 13.9(c) are $1,500 and respondent must consent to the entry of an order assessing these expenses under ELC 13.9(e). Disciplinary counsel may file a claim under section (g) for costs not covered by this amount.

(g) Review of Costs, Expenses, and Restitution. Any claims for restitution or for costs and expenses not resolved by agreement between disciplinary counsel and the respondent may be

submitted at any time, including after the resignation, to a review committee in writing for the determination of appropriate restitution or costs and expenses. The Lawyers' Fund for Client Protection may request review including a determination by the review committee of whether any funds were obtained by the respondent by dishonesty of, or failure to account for money or property entrusted to, the respondent in connection with the respondent's practice of law or while acting as a fiduciary in a matter related to the respondent's practice of law. The review committee's order is not subject to further review and is the final assessment of restitution or costs and expenses for the purposes of rule 13.9 and may be enforced as any other order for restitution or costs and expenses. The record before the review committee and the review committee's order is public information under rule 3.1(b).

[Adopted effective October 1, 2002; Amended effective January 1, 2014; September 1, 2017.]

ELC 9.4

RECIPROCAL RESIGNATION IN LIEU OF DISCIPLINE

(a) Duty To Self-Report Resignation in Lieu of Discipline. Within 30 days of resigning in lieu of discipline from another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the resignation in lieu of discipline.

(b) Obtaining Order. Upon notification from any source that a lawyer admitted to practice in this state has resigned in lieu of discipline in another jurisdiction, disciplinary counsel must obtain a copy of the resignation in lieu of discipline and any order approving the resignation and file it with the Supreme Court, except in circumstances set forth in subsection (e).

(c) Supreme Court Action. Except in circumstances set forth in subsection (e), upon receipt of a copy of a resignation in lieu of discipline and any order approving the resignation the Supreme Court orders the respondent lawyer to show cause within 60 days of service why the lawyer should not be disbarred in this jurisdiction. The Association must personally serve this order and a copy of the resignation in lieu of discipline and any order from the other jurisdiction approving the resignation, on the respondent under rule 4.1(b)(3).

(d) Discipline To Be Imposed.

(1) Sixty days after service of the order under subsection (c), the Supreme Court enters an order disbarring the respondent lawyer unless the lawyer demonstrates that disbarment would result in grave injustice.

(2) The burden is on the respondent to establish that continuing to remain admitted to practice in this jurisdiction will not place the public at risk.

(3) If the Supreme Court determines that disbarment would result in a grave injustice, the Court may enter an appropriate order.

(e) Prior Matter In Washington. No action will be taken against a lawyer under this rule when the lawyer has already been the subject of disciplinary action or other final disposition of a

(b) Respondent Must Attend. A respondent given notice of a hearing must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. If, after proper notice, the respondent fails to attend the hearing, the hearing may proceed, and the hearing officer:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and

(2) must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:

(A) the facts stated are within the witness's personal knowledge;

(B) the facts are set forth with particularity; and

(C) it shows affirmatively that the witness could testify competently to the stated facts.

(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things previously requested in accordance with these rules. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

(d) Witnesses. Except as provided in subsection (b)(2), witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by CR 32. If ordered by the hearing officer, testimony may be taken by telephone, television, video connection, or other contemporaneous electronic means. Testimony must be recorded by a court reporter or, if allowed by the hearing officer, by tape or electronic recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(e) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this rule and with all lawful orders made by the hearing officer under this rule. Subpoenas may be enforced under rule 4.7. The hearing officer may additionally draw adverse inferences as appear warranted by the respondent's failure to respond.

(f) Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the hearing officer files a recommendation.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

EVIDENCE AND BURDEN OF PROOF

(a) Proceedings Not Civil or Criminal. Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil

nor criminal but are sui generis hearings to determine if a lawyer's conduct should have an impact on their ~~his or her~~ license to practice law.

(b) Burden of Proof. Disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a formal complaint charges a respondent lawyer with an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.

(d) Rules of Evidence. Consistent with subsection (a) of this rule, the following rules of evidence apply during disciplinary hearings:

(1) Evidence, including hearsay evidence, is admissible if in the hearing officer's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(2) If not inconsistent with subsection (1), the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings;

(3) Documents may be admitted in the form of copies or excerpts, or by incorporation by reference;

(4) *Official Notice*.

(A) official notice may be taken of:

(i) any judicially cognizable facts;

(ii) technical or scientific facts within the hearing officer's specialized knowledge; and

(iii) codes or standards adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association.

(B) The parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material noticed and the sources thereof, including any staff memoranda and data, and they shall have an opportunity to contest the facts and material noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

ELC 11.14
DECISION OF BOARD

(a) Basis for Review. Board review is based on the hearing officer's Decision, the parties' briefs filed under rule 11.9, and the record on review.

(b) Standards of Review. The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer cannot be considered by the Board.

(c) Oral Argument. The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to file their ~~his or her~~ last brief, including a response or reply, under rule 11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the time, place, and terms for oral argument.

(d) Action by Board. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer. The Board may also direct that the hearing officer hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) Order or Opinion. The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. Regardless of whether or not a dissenting member files a written dissent, the Board order or opinion must set forth the result favored by each dissenting member. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. A copy of the complete decision is served by the Clerk on the parties.

(f) Procedure to Amend, Modify, or Reverse if No Appeal.

(1) If the Board intends to amend, modify, or reverse the hearing officer's recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.

(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.

(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.

(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request

ELC 12.4 DISCRETIONARY REVIEW

(a) Decisions Subject to Discretionary Review. Respondent or disciplinary counsel may seek discretionary review of Board decisions under rule 11.12(e) not subject to appeal under rule 12.3. The Court accepts discretionary review only if:

(1) the Board's decision is in conflict with a Supreme Court decision;

(2) a significant question of law is involved;

(3) there is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or

(4) the petition involves an issue of substantial public interest that the Court should determine.

(b) Petition for Review. Respondent or disciplinary counsel may seek discretionary review by filing a petition for review with the Clerk within 30 days of service of the Board's decision on respondent.

(c) Content of Petition; Answer; Service; Decision. A petition for review should be substantially in the form prescribed by RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in that rule to the Court of Appeals are considered references to the Board. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4(d) (h) governs answers and replies to petitions for review and related matters including service and decision by the Court.

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

(1) 14 days after service of the petition filed by the other party, or

(2) the time for filing a petition under subsection (b) of this rule.

(e) Filing Fee. The first party to file a petition for discretionary review must, at the time the petition is filed, either pay the statutory filing fee to the Clerk of the Disciplinary Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(f) Acceptance of Review. The Court accepts discretionary review of a Board decision by granting a petition for review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 12.5 RECORD TO SUPREME COURT

(a) Transmittal. The Clerk should transmit the record, including the filing fee, to the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the transcript of oral argument before the Board, if any. Notwithstanding these deadlines, the Clerk should not transmit the record to the Supreme Court prior to payment of the filing fee or receipt of proof that the Supreme Court has waived the filing fee.

(b) Content. The record transmitted to the Court consists of:

(1) the notice of appeal, if any;

(2) the Board's decision;

(3) the record before the Board;

(4) the transcript of any oral argument before the Board; and

(5) any other portions of the record before the hearing officer, including any bar file documents or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within 10 days of entry of an order assessing costs under rule 13.9(e), the Clerk should transmit it to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under rule 13.9(d).

(e) Additions to Record. Either party may request that the Clerk transmit additional portions of the record to the Court prior to or with the filing of the party's last brief. Thereafter, either party may move the Court for an order directing the transmittal of additional portions of the record to the Court.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 12.6 BRIEFS

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

(b) Time for Filing. The brief of the party seeking review should be filed with the Supreme Court within 30 days of service under rule 12.5(c) of the list of portions of the record transmitted to the Court.

(c) Answering Brief. The answering brief of the other party should be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. A reply brief of a party seeking review should be filed with the Court within the sooner of 20 days after service of the answering brief or 14 days before oral argument. A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.

(e) Briefs When Both Parties Seek Review. When both the respondent lawyer and disciplinary counsel seek review of a Board decision, the respondent is deemed the party seeking review for the purposes of this rule. In that case, disciplinary counsel may file a brief in reply to any response the respondent has made to the issues presented by disciplinary counsel, to be filed with the Court the sooner of 20 days after service of the respondent's reply brief or 14 days before oral argument.

(f) Form of Briefs. Briefs filed under this rule must conform as nearly as possible to the requirements of RAP 10.3 and 10.4. Bar file documents should be abbreviated BF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Clerk. The Supreme Court clerk reproduces and distributes briefs as provided in RAP 10.5.

[Adopted effective October 1, 2002.]

ELC 12.7 ARGUMENT

(a) Rules Applicable. Oral argument before the Supreme Court is conducted under Title 11 of the Rules of Appellate Procedure, unless the Court directs otherwise.

the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

[Adopted effective October 1, 2002. Amended effective January 1, 2014.]

ELC 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY

(a) Providing Client Property. A lawyer who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or has been transferred to disability inactive status must provide each client or the client's substituted counsel upon request with the client's assets, files, and other documents in the lawyer's possession, regardless of any possible claim of lien under 60.40.RCW.

(b) Notice if Suspended for 60 Days or Less. A lawyer who has been suspended for 60 days or less under rule 13.3 must within 10 days of the effective date of the suspension:

(1) notify every client involved in litigation or administrative proceedings, and counsel for each adverse party (or the adverse party directly if not represented by counsel), of the suspension, that the suspension is a disciplinary suspension, and of the lawyer's consequent inability to act as a lawyer after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another lawyer. If the client does not substitute counsel within 10 days of this notice, the lawyer must advise the court or agency of the lawyer's inability to act; and

(2) notify all other clients of the suspension and consequent inability to act during the suspension. The notice must advise the client to seek legal advice elsewhere if needed during the suspension.

(c) Notice if Otherwise Suspended, Disbarred, or Resigned in Lieu of Discipline. A lawyer who has been disbarred, has resigned in lieu of discipline, or has been suspended for more than 60 days, for nonpayment of dues, or under Title 7 or APR 11, APR 17, or APR 26, must within 10 days of the effective date of the disbarment, suspension, or resignation:

(1) notify every client of the lawyer's suspension, disbarment, or resignation in lieu of discipline, whether a suspension is a disciplinary suspension, an interim suspension, or an administrative suspension, and of the lawyer's consequent inability to act as the client's lawyer, and advise the client to seek legal advice elsewhere;

(2) advise every client involved in litigation or administrative proceedings to seek the prompt substitution of another lawyer. If the client does not substitute counsel within ten days of being notified of the lawyer's inability to act, the lawyer must advise the court or agency of the lawyer's inability to act; and

(3) notify counsel for each adverse party in pending litigation or administrative proceedings, or the adverse party directly if not represented by counsel, of the lawyer's suspension, disbarment, or resignation in lieu of discipline, and the lawyer's inability to act further on the client's behalf.

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

(e) Address of Client. All notices to lawyers, adverse parties, courts, or agencies as required by sections (b), (c), or (d) must contain the client's name and last known address, unless doing so would disclose a confidence or secret of the client. If the name and address are omitted, the client must be advised that so long as their ~~his or her~~ address remains undisclosed and no new lawyer is substituted, the client may be served by leaving papers with the clerk of the court under CR 5(b)(1) in pending superior court actions, and that comparable provisions may allow similar service in other court proceedings or administrative actions.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 14.2 LAWYER TO DISCONTINUE PRACTICE

(a) Discontinue Practice. A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, resignation in lieu of disbarment or discipline, suspension, or transfer to disability inactive status, and also must take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on them ~~him or her~~ as a lawyer authorized to practice law.

(b) Continuing Duties to Former Clients. This rule does not preclude a disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, from disbursing assets held by the lawyer to clients or other persons or from providing information on the facts and the lawyer's theory of a case and its status to a succeeding lawyer, provided that the lawyer not be involved in any discussion regarding matters occurring after the date of the suspension, resignation in lieu of disbarment or discipline, transfer to disability inactive status, or disbarment. The lawyer must provide this information on request and without charge.

[Adopted effective October 1, 2002; Amended effective January 1, 2014.]

ELC 14.4
LAWYER TO KEEP RECORDS OF COMPLIANCE

A lawyer who has been disbarred, suspended, or transferred to disability inactive status must maintain written records of the various steps taken by them ~~him or her~~ under this title, so that proof of compliance will be available in any subsequent proceeding.

[Adopted effective October 1, 2002.]

ER 803
HEARSAY RULE

Hearsay is not admissible except as provided by these rules, by other court rules, or by statute.

[Adopted effective April 2, 1979.]

Comment 802

[Deleted effective September 1, 2006.]

HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

(a) Specific Exceptions. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present Sense Impression*. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) *Excited Utterance*. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) *Then Existing Mental, Emotional, or Physical Condition*. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) *Statements for Purposes of Medical Diagnosis or Treatment*. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) *Recorded Recollection*. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) *Records of Regularly Conducted Activity*. [Reserved. See RCW 5.45.]

(7) *Absence of Entry in Records Kept in Accordance With RCW 5.45*. Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of RCW 5.45, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Public Records and Reports*. [Reserved. See RCW 5.44.040.]

(9) *Records of Vital Statistics*. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) *Absence of Public Record or Entry*. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a

record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) *Records of Religious Organizations*. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Marriage, Baptismal, and Similar Certificates*. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family Records*. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, tattoos, engravings on urns, crypts, or tombstones, or the like.

(14) *Records of Documents Affecting an Interest in Property*. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office.

(15) *Statements in Documents Affecting an Interest in Property*. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in Ancient Documents*. Statements in a document in existence 20 years or more whose authenticity is established.

(17) *Market Reports, Commercial Publications*. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) *Learned Treatises*. To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) *Reputation Concerning Personal or Family History*. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy,

relationship by blood, adoption, or marriage, ancestry, or other similar fact of a person's personal or family history.

(20) *Reputation Concerning Boundaries or General History*. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

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

(22) *Judgment of Previous Conviction*. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of 1 year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal case for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) *Judgment as to Personal, Family, or General History, or Boundaries*. Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(b) *Other Exceptions*. [Reserved.]

[Amended effective September 1, 1992.]

Comment 803

[Deleted effective September 1, 2006.]

ER 805 HEARSAY WITHIN HEARSAY

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

[Adopted effective April 2, 1979.]

Comment 805

[Deleted effective September 1, 2006.]

ER 1101
APPLICABILITY OF RULES

(a) Courts Generally. Except as otherwise provided in section (c), these rules apply to all actions and proceedings in the courts of the state of Washington. The terms "judge" and "court" in these rules refer to any judge of any court to which these rules apply or any other officer who is authorized by law to hold any hearing to which these rules apply.

(b) Law With Respect to Privilege. The law with respect to privileges applies at all stages of all actions, cases, and proceedings.

(c) When Rules Need Not Be Applied. The rules (other than with respect to privileges, the rape shield statute and ER 412) need not be applied in the following situations:

(1) *Preliminary Questions of Fact*. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

(2) *Grand Jury*. Proceedings before grand juries and special inquiry judges.

(3) *Miscellaneous Proceedings*. Proceedings for extradition or rendition; detainer proceedings under RCW 9.100; preliminary determinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; contempt proceedings in which the court may act summarily; habeas corpus proceedings; small claims court; supplemental proceedings under RCW 6.32; coroners' inquests; preliminary determinations in juvenile court; juvenile court hearings on declining jurisdiction; disposition, review, and permanency planning hearings in juvenile court; dispositional determinations related to treatment for alcoholism, intoxication, or drug addiction under RCW 70.96A; and dispositional determinations under RCW 71.05 and 71.34.

(4) *Applications for Protection Orders*. Protection order proceedings under Chapters 7.90, 7.92, 7.94, 10.14, 26.50, and 74.34 RCW. Provided when a judge proposes to consider information from a criminal or civil database, the judge shall disclose the information to each party present at the hearing; on timely request, provide each party with an opportunity to be heard; and take appropriate measures to alleviate litigants' safety concerns. The judge has discretion not to disclose information that they do ~~he or she does~~ not propose to consider.

(d) Arbitration Hearings. In a mandatory arbitration hearing under RCW 7.06, the admissibility of evidence is governed by MAR 5.3.

[Adopted effective April 2, 1979. Amended effective January 1, 1980; August 27, 1980; September 1, 1989; September 1, 1992; September 21, 1999; January 2, 2008;

September 1, 2008, September 1, 2010; December 10, 2013; May 27, 2014; December 8, 2015; July 4, 2017.]

Comment 1101

[Deleted effective September 1, 2006.]

ER 1102
AMENDMENTS

[RESERVED]

[Adopted as Reserved effective April 2, 1979.]

standards to assist the LPO in determining the appropriate conduct. So long as LPOs are guided by these principles, their conduct will assist in assuring the law continues to be a noble profession.

SCOPE

The Limited Practice Officer Rules of Professional Conduct, where mandatory in character, state the minimum level of conduct below which no LPO can fall without being subject to disciplinary action. Other LPORPC may afford the LPO some discretion in exercising professional judgment and may provide guidance for compliance, rather than adding mandatory professional obligations.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of an LPO's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that an LPO often has to act upon uncertain or incomplete knowledge of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations. Violation of a Rule should not itself give rise to a cause of action against an LPO nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other non-disciplinary remedy, such as disqualification of an LPO in a pending transaction. The Rules are designed to provide guidance to LPOs and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Nothing in these Rules is intended to change existing Washington law on the use of rules of professional conduct in a civil action. *Cf. Hizey v. Carpenter*, 119 Wn.2d 251, 830 P.2d 646 (1992) (lawyer rules of professional conduct do not define standards of civil liability of lawyers for professional conduct, but provide only a public disciplinary remedy).

The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

LPORPC 1.0 TERMINOLOGY

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

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Client(s)" when used in a purchase and sale transaction denotes the buyer and seller and may include the purchase money lender for the same transaction only if the LPO accepts the duty to select, prepare, or complete legal documents for the purchase money loans. When used in a loan-only transaction, whether or not the LPO accepts the duty to select, prepare, or complete legal documents, "Clients" are the borrower and lender.

(c) "Closing Firm" means any bank, depository institution, escrow agent, title company, law firm, or other business, whether public or private, that employs, or contracts for the services of, an LPO for the purpose of providing real or personal property closing services for a transaction.

(d) "Fraud" or "fraudulent" denotes conduct that has a purpose to deceive and is fraudulent under the substantive or procedural law of Washington, except that it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

(e) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

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

(g) "LPO Services" means those documentation activities for use by others performed by an LPO under the authorization of APR 12(d).

(h) "Party(ies)" or "Participant(s)" in a closing transaction includes persons other than "clients" from whom the LPO accepts instructions or to whom the LPO may make deliveries or disburse funds.

(i) "Reasonable" or "reasonably" when used in relation to conduct by an LPO denotes the conduct of a reasonably prudent and competent LPO performing the same LPO services.

(j) "Reasonable belief" or "reasonably believes" when used in reference to an LPO denotes that the LPO believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) "Reasonably should know" when used in reference to an LPO denotes that an LPO of reasonable prudence and competence would ascertain the matter in question.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Transaction" means any real or personal property closing requiring the involvement of a lawyer or LPO to select, prepare or complete documents for the purpose of closing a loan, extension of credit, sale or other transfer of title to or interest in real or personal property.

(n) "Written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail.

Comment

LPO services arise from a writing in which the clients have agreed to the basic terms of a transaction (APR 12(e)(1)). In a sale transaction, LPO services arise from a purchase and sale agreement between the buyer and seller. Lenders and others involved (brokers, lien-holders, etc.) are accommodated parties.

In loan-only transactions, LPO services arise from closing instructions between the closing firm, lender and borrower. Thus, the lender and borrower each is a client; lien-holders and nonborrowing owners, etc. are accommodated parties.

LPORPC 1.1 COMPETENCE

An LPO shall provide competent LPO services. Competence requires the knowledge, thoroughness and preparation reasonably necessary to provide the LPO services. Not every LPO is competent to provide LPO services for every transaction.

Comment

Continuing competence is an ongoing core professional obligation. To maintain the requisite knowledge and skill, an LPO should keep abreast of changes in the law and its practice relevant to LPO duties, engage in continuing study and education and comply with all continuing education requirements to which the LPO is subject. The rule also reminds the LPO that the competence required for a particular transaction is neither universal nor automatic.

LPORPC 1.2 DILIGENCE

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

Comment

Lack of diligence is a professional defect. An LPO's work load must be controlled so that each transaction can be handled competently. However, timely action under this rule should be measured by circumstances under the LPO's control (as distinguished from unreasonable timing demands imposed by employer work load, the parties or the terms of the transaction). Unless the client relationship is terminated as provided in Rule 1.6, an LPO should carry through to conclusion all matters undertaken for a client. *See also* Rule 1.3, Communication with Clients, *infra*.

LPORPC 1.3 COMMUNICATION WITH CLIENTS

(a) Upon reasonable request, an LPO shall promptly provide relevant information to the clients regarding the documents selected, prepared, and completed for the transaction.

(b) An LPO shall timely notify its clients of omissions or discrepancies in the documentation provided to the LPO which must be resolved before the LPO can provide LPO services in the transaction.

(c) An LPO must inform a client to seek legal advice from a lawyer if the LPO is reliably informed or, based on contact with the client reasonably believes, that the client does not understand or appreciate the meaning or effect of an instrument prepared by the LPO for signature by the client.

Comment

The performance of LPO services occasionally may require direct communication with multiple clients in a transaction. Proper focus for LPO communication with clients is not as an advocate or advisor, but as necessary to clear up documentary discrepancies and insure that there is an adequate written agreement for the LPO to select, prepare and complete the documentation for the transaction.

See also Rules 1.2, Diligence; 1.6, Declining Services, *infra*.

LPORPC 1.4 CONFIDENTIALITY

These rules do not impose any duty of confidentiality on an LPO. Any LPO duty of confidentiality arising under common law, statute, or contract is not affected by these rules.

LPORPC 1.5 CONFLICT OF INTEREST

(a) An LPO shall not provide LPO services in a transaction where the LPO, or a member of the LPO's immediate family, is either a party or client. For purposes of this rule, "immediate family" includes a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the LPO maintains a close, familial relationship.

(b) An LPO shall not use information obtained from the provision of LPO services to a client in a transaction for personal gain to the disadvantage of the client.

(c) Where an LPO's employer is a buyer or seller in a transaction, the LPO shall not provide LPO services unless the LPO provides written notice of the conflict to all other clients and obtains a written waiver of the conflict from all other clients. The notice and waiver shall be substantially in the form below.

As required by rule 1.5 of the Limited Practice Officer Rules of Professional Conduct, you are hereby notified that the limited practice officer providing LPO services for this transaction is employed by {name of closing firm}, which has an interest in this transaction. Specifically, {set forth the closing firm's interest in the transaction}.

By signing below, you acknowledge that you (1) understand and have received the notice of conflict of interest; (2) have been advised to seek legal counsel if you do not understand the conflict or this waiver; and (3) waive the conflict of interest created by the closing firm having an interest in the transaction.

LPORPC 1.6 DECLINING OR TERMINATING SERVICES

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

(1) The LPO services will clearly result in violation of the Limited Practice Officer Rules of Professional Conduct or other law, including the unauthorized practice of law by the LPO;

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

(3) The LPO reasonably believes that the documentation requirements of the transaction exceed the LPO's competence;

(4) The LPO is discharged; or

(5) A client insists on confidentiality of information disclosed to the LPO to which the LPO cannot agree.

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

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

(2) A client has used the services of the LPO to perpetrate a crime or fraud;

(3) A client insists upon pursuing an objective or practice that the LPO reasonably considers repugnant or with which an LPO has a fundamental disagreement;

(4) A client fails substantially to fulfill an obligation to the LPO regarding the LPO's services and has been given reasonable warning that the LPO will terminate services unless the obligation is fulfilled;

(5) The LPO services will result in an unreasonable financial burden on the LPO or its services in the transaction have been rendered unreasonably difficult by the clients; or

(6) Other cause for refusal of services exists. Where the clients are unwilling or unable to correct the situation, other cause for refusal of services may include, but is not limited to: insufficient or conflicting documentation that is not timely corrected by the clients; direction from a client to use forms not approved by the Limited Practice Board or to make unauthorized alterations to approved forms; direction from a client that is inconsistent with the existing documentation; apparent lack of or defect in the capacity of a client or signatory; or failure of the clients to allow sufficient time for competent and orderly performance of LPO services.

(c) Upon termination of an LPO's services, the LPO must take steps to the extent reasonably practicable to protect the clients' interests, such as giving reasonable notice to the clients (as determined by the circumstances of the transaction), advising the clients that they can seek the advice of a lawyer regarding the transaction, allowing time for employment of a lawyer or another LPO where reasonable, and surrendering papers and property to which the clients are entitled if requested and if all LPO fees and costs are paid.

Comment

The rule first identifies situations where an LPO must decline followed by situations where an LPO may decline to provide LPO services. An LPO ordinarily must decline or terminate services if a client demands that the LPO engage in conduct that is illegal or violates the LPO Rules of Professional Conduct or other law, or in the other enumerated instances.

LPORPC 1.7 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of performing LPO services in a transaction, an LPO shall not knowingly fail to disclose all material facts to clients or any parties to the transaction, or make false statements of material facts to clients or any such party.

LPORPC 1.8 UNAUTHORIZED PRACTICE OF LAW

An LPO shall not:

(a) engage in, or assist others in, the unauthorized practice of law, including the giving of legal advice;

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

(c) select, prepare, or complete documents authorized by APR 12 for or together with any person whose LPO certification has been revoked or suspended, if the LPO knows, or reasonably should know, of such revocation or suspension; or

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

Comment

Clearly, the selection and completion of legal forms constitutes the practice of law. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 582; 1586, (1983). Adjudicated cases finding LPO unauthorized practice of law have involved LPO use of unapproved forms and unapproved alterations of approved forms. *See Bishop v. Jefferson Title Co.*, 107 Wn.App 833, 128 p. 3d 802 (2001). Washington General Rule (GR) 24 sets forth the definition of the practice of law.

LPORPC 1.9 LPO DUTIES AND AUTHORITY ARE NOT DELEGABLE

The powers, duties and responsibilities of an LPO are personal to the LPO and may not be assigned or delegated to a person who is not an LPO. An LPO may be supported and assisted by one or more persons who are not LPOs if the LPO adequately supervises the assistants and retains sole and final responsibility for the work performed by the assistants. An LPO must take all steps reasonably necessary to insure that an assistant's activities do not violate APR 12 and regulations of the Limited Practice Board and are consistent with the LPO's duties under these rules. An LPO must review and approve the assistant's activities and document preparation. An LPO should have no more assistants and support staff than the LPO can adequately directly supervise, to insure that the assistant activities conform to assigned LPO support tasks defined in writing. Nothing in this rule authorizes an LPO assistant to exercise the authority or perform the duties of an LPO independently.

LPORPC 1.10 MISCONDUCT

It is professional misconduct for an LPO to:

(a) violate or attempt to violate the Limited Practice Officer Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the LPO's honesty, trustworthiness or fitness as an LPO in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

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

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

(f) violate a duty or sanction imposed by or under the Rules for Enforcement of Limited Practice Officer Conduct in connection with a disciplinary matter, including, but not limited to, the duties catalogued at ELPOC 1.5, Violation of Duties Imposed by These Rules;

(g) engage in conduct demonstrating unfitness to practice as an LPO. "Unfitness to practice" includes but is not limited to the inability, unwillingness or repeated failure to perform adequately the material functions required of an LPO or to comply with the LPORPC and/or ELPOC;

(h) misrepresent or conceal a material fact made in an application for admission under APR 12 or in support thereof;

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act that reflects disregard for the rule of law, whether the same be committed in the course of ~~his or her~~their conduct as an LPO, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding.

Comment

Regarding subparagraph (d), it is common for courts to issue orders to the parties to engage in a transaction involving a closing agent. The LPO should seek legal advice as to whether such orders are valid.

LPORPC 1.11 REPORTING PROFESSIONAL MISCONDUCT

An LPO who knows that another LPO has committed repeated and material violations of the LPORPC should inform the Limited Practice Board.

Comment

The intent of this rule is to encourage an LPO to report professional misconduct in order to ensure effective self-regulation of LPOs. Examples of misconduct include, but are not limited to use of unapproved forms, unauthorized delegation or performance of LPO duties, use of an LPO's name, signature stamp or identification number by unlicensed persons, or an LPO acting as an LPO while one's license is inactive or suspended. If an LPO knows of the unauthorized practice of law by someone other than an LPO, the LPO should report the person to the Practice of Law Board (GR 25).

The purpose of this comment is to discuss the legal standard of care to which a limited practice officer is subject, while also clarifying the limited duties of a limited practice officer compared to an attorney when selecting and preparing legal documents and to show the greater breadth of a lawyer's duties and services which a party may not expect when engaging a limited practice officer.

Generally, when anyone selects and prepares a legal document for another, they (including licensed limited practice officers) will be held to the standard of a lawyer: "to comply with the duty of care, an attorney must exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful, and prudent lawyer in the practice of law in this jurisdiction ... ." *Hizey v. Carpenter*, 119 Wn.2d 251, 261, 830 P.2d 246 (1992). However, when selecting and preparing approved forms a limited practice officer, though having a limited license to practice law as defined and limited in APR 12, will not be authorized or charged with many of the duties of a lawyer. Except as provided otherwise in APR 12 rules and regulations, these include the duty to investigate legal matters, to form legal opinions (including but not limited to the capacity of an individual to sign for an entity or whether a legal document is effective), to give legal advice (including advice on how a legal document affects the rights or duties of a party), or to consult with a party on the advisability of a transaction. See also LPORPC 1.1, Competence, and LPORPC 1.3, Communication.

APR 12 APPENDIX. [Reserved.]

[Adopted effective February 12, 1965; Amended effective January 21, 1983; October 28, 1983; September 13, 1985; December 9, 1995; July 1, 2002; January 1, 2009; March 1, 2016; September 1, 2017.]

RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT (ELPOC) TITLE 1—SCOPE, JURISDICTION, AND DEFINITIONS

ELPOC 1.1 SCOPE OF RULES

These rules govern the procedure by which a Limited Practice Officer may be subjected to disciplinary sanctions or actions for violation of the Limited Practice Officer Rules of Professional Conduct (LPORPC) adopted by the Washington Supreme Court.
[Adopted effective January 1, 2009.]

ELPOC 1.2 JURISDICTION

Any licensed LPO permitted to engage in the limited practice of law in this state is subject to these Rules for Enforcement of Limited Practice Officer Conduct. Jurisdiction exists regardless of the LPO's residency or authority to engage in the limited practice of law in this state.
[Adopted effective January 1, 2009.]

ELPOC 1.3 DEFINITIONS

Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:

(a) "Association" means the Washington State Bar Association;

(b) "Public file" means the pleadings, motions, rulings, decisions, and other formal papers filed in a proceeding;

(c) "Board" when used alone means the Limited Practice Board;

(d) “Board of Governors” means the Board of Governors of the Washington State Bar Association;

(e) “Chair” when used alone means the Chair of the Limited Practice Board;

(f) “Clerk” when used alone means the Association’s staff designated to work with the Limited Practice Board and includes the Directory of Regulatory Services and other Association counsel where appropriate;

(g) “Closing Firm” means any bank, depository institution, escrow agent, title company, law firm, or other business, whether public or private, that employs, or contracts for the services of, an LPO for the purpose of providing real or personal property closing services for a transaction;

(h) “Court” unless otherwise specified, means the Supreme Court of Washington;

(i) “Disciplinary action” means sanctions under rule 13.1 and admonitions under rule 13.5;

(j) “ELC” means the Rules for Enforcement of Lawyer Conduct;

(k) “Final” means no review has been sought in a timely fashion or all appeals have been concluded;

(l) “Grievant” means the person or entity who files a grievance (except for a confidential source under rule 5.2);

(m) “Hearing Officer” means the person assigned under rule 10.2(a)(1) or, when a hearing panel has been assigned, the hearing panel chair;

(n) “LPO” means limited practice officer;

(o) “Mental or physical incapacity” includes, but is not limited to, insanity[1], mental illness, senility, or debilitating use of alcohol or drugs;

(p) "Panel" means a hearing panel under rule 10.2(a)(2);

(q) “Party” means disciplinary counsel or respondent, except in rule 2.3(f) “party” also includes a grievant;

(r) “Respondent” means an LPO against whom a grievance is filed or an LPO investigated by the Clerk or disciplinary counsel;

(s) "APR" means the Admission and Practice Rules;

(t) "CR" means the Superior Court Civil Rules;

(u) "RAP" means the Rules of Appellate Procedure;

(v) "LPORPC" means the Limited Practice Officer Rules of Professional Conduct adopted by the Washington Supreme Court.

(w) Words of authority.

(1) "May" means "has discretion to," "has a right to," or "is permitted to."

(2) "Must" means "is required to."

(3) "Should" means recommended but not required.

[Adopted effective January 1, 2009; Amended effective March 1, 2016.]

ELPOC 1.4 NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.

[Adopted effective January 1, 2009.]

ELPOC 1.5 VIOLATION OF DUTIES IMPOSED BY THESE RULES

An LPO violates LPORPC 1.10 and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

- respond to inquiries or requests about matters under investigation, rule 5.3(e);
- file an answer to a formal complaint or to an amendment to a formal complaint, rule 10.5;
- cooperate with discovery and comply with hearing orders, rules 5.5 and 10.11(g);
- attend a hearing and bring materials requested by Association staff and/or disciplinary counsel, rule 10.13(b) and (c);
- respond to subpoenas and comply with orders enforcing subpoenas, rule 10.13(e);
- notify clients and others of inability to act, rule 14.1;
- discontinue practice, rule 14.2;
- file an affidavit of compliance, rule 14.3;
- maintain confidentiality, rule 3.2;

- cooperate with an examination of books and records, rule 15.2;
- notify the Association of a trust account overdraft, rule 15.4(d);
- file a declaration or questionnaire certifying compliance with LPORPC 1.12A and B, rule 15.5;
- comply with conditions of probation, rule 13.8;
- comply with conditions of a stipulation, rule 9.1;
- pay restitution, rule 13.7; or
- pay costs, rule 5.3(e) or 13.9.

[Adopted effective January 1, 2009.]

TITLE 2—ORGANIZATION AND STRUCTURE

ELPOC 2.1 SUPREME COURT

The Washington Supreme Court has exclusive responsibility in the state to administer the LPO discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of LPO discipline and disability. Persons carrying out the functions set forth in these rules act under the Supreme Court's authority. [Adopted effective January 1, 2009.]

ELPOC 2.2 BOARD OF GOVERNORS

(a) Function. The Board of Governors of the Association:

(1) supervises the general functioning of the disciplinary counsel and Association staff; and

(2) performs other functions and takes other actions provided in these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Limitation of Authority. The Board of Governors has no right or responsibility to review hearing officer, hearing panel, or Limited Practice Board decisions or recommendations in specific cases.
[Adopted effective January 1, 2009.]

ELPOC 2.3 LIMITED PRACTICE BOARD

(a) Function for purposes of these rules. The Board performs the functions provided under these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Membership.

(1) *Composition*. The Board is composed as set forth in APR 12(b)(1).

(2) *Voting*. Each member, including the Chair, whether nonlawyer or lawyer, has one vote.

(3) *Quorum*. A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least five members vote.

(4) *Leave of Absence While Grievance Is Pending*. If a grievance is filed against a member of the Board, the member shall take a leave of absence until the matter is resolved.

(c) Disqualification.

(1) A Board member should disqualify ~~him or herself~~themself from a particular matter in which the member's impartiality might reasonably be questioned, including, but not limited to, instances in which:

(A) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

(B) the member previously served as a lawyer or LPO or was a material witness in the matter in controversy, or a lawyer or LPO with whom the member works serves or has previously served as a lawyer or LPO concerning the matter, or such lawyer or LPO is or has been a material witness concerning the matter;

(C) the member knows that, individually or as a fiduciary, the member or the member's spouse or relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under section (d);

(D) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:

(i) is a party to the matter, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer or LPO in the matter;

(iii) is to the member's knowledge likely to be a material witness in the matter;

(d) Remittal of Disqualification. A member disqualified under subsection (c)(1)(C) or (c)(1)(D) may, instead of withdrawing from consideration of the matter, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the member's participation, all agree in writing or on the record that the member's relationship is immaterial or that the member's economic interest is de minimis, the member is no longer disqualified, and may participate in the matter. If a party is not immediately available, the member may proceed on the assurance of the party's counsel that the party's consent will be subsequently given.

(e) Counsel and Clerk. The Executive Director of the Association, under the direction of the Association's Board of Governors, may appoint a suitable person or persons to act as counsel and

Clerk to the Board, to assist the Board and the discipline committee in carrying out their functions under these rules.

(f) Restriction on Representing Respondents. Former members of the Board are subject to the restrictions on representing respondents in rule 2.11(b).
[Adopted effective January 1, 2009.]

ELPOC 2.4 DISCIPLINE COMMITTEE

(a) Function. The discipline committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.

(b) Membership. The Chair appoints a discipline committee of three members from among the Board members. At least one of the members must have substantial experience in the industry. The Chair may change the appointment of members to the discipline committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the discipline committee.

(c) Discipline Committee Chair. The Chair of the Limited Practice Board designates one member of the discipline committee with substantial experience in the industry to act as its chair.

(d) Terms of Office. A Limited Practice Board member may serves as a discipline committee member as long as the member is on the Board or for other shorter terms as determined by the Chair of the Limited Practice Board to be appropriate.

(e) Meetings. The discipline committee meets at times and places determined by the discipline committee chair, under the general direction of the Chair of the Limited Practice Board. In the discipline committee chair's discretion, the committee may meet and act through electronic, telephonic, written, or other means of communication.
[Adopted effective January 1, 2009.]

ELPOC 2.5 HEARING OFFICER OR PANEL

(a) Function. A hearing officer or panel to whom a case has been assigned for hearing conducts the hearing and performs other functions as provided under these rules.

(b) Qualifications. A hearing officer must be an active hearing officer in the lawyer discipline system as set forth in rule 2.5 of the Rules for Enforcement of Lawyer Conduct (ELC), preferably with practice or adjudicative experience in law related to real estate transactions.
[Adopted effective January 1, 2009.]

ELPOC 2.6 HEARING OFFICER CONDUCT

Conduct of Those on Hearing Officer List. The duties and responsibilities imposed on hearing officers by ELC 2.6 apply to hearing officers for LPO disciplinary proceedings. Additionally, a person on the hearing officer list should not:

(1) testify voluntarily as a character witness in an LPO disciplinary proceeding;

(2) serve as an expert witness related to the professional conduct of LPOs in any proceeding; or

(3) serve as respondent's counsel in LPO disciplinary proceedings.

[Adopted effective January 1, 2009.]

ELPOC 2.7 DISCIPLINARY COUNSEL

Association disciplinary counsel appointed under ELC 2.8, or other designated Association staff who are WSBA members, acts as counsel on the Board's behalf on all matters under these rules, and performs other duties as required by these rules. Special disciplinary counsel may be appointed whenever necessary to conduct an individual investigation or proceeding. [Adopted effective January 1, 2009.]

ELPOC 2.8 REMOVAL OF APPOINTEES

The power granted by these rules to any person, committee, or board to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform ~~his or her~~their duties, or for any other cause, and to fill the resulting vacancy.

[Adopted effective January 1, 2009.]

ELPOC 2.9 COMPENSATION AND EXPENSES

Compensation and expenses of hearing officers will be as prescribed in ELC 2.11.

[Adopted effective January 1, 2009.]

ELPOC 2.10 COMMUNICATIONS TO THE BOARD PRIVILEGED

Communications to the Board, discipline committee, Association, Board of Governors, hearing officer, disciplinary counsel, Association staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness, or other person providing information. [Adopted effective January 1, 2009.]

ELPOC 2.11 RESPONDENT LIMITED PRACTICE OFFICER

(a) Right to Representation. An LPO may be represented by counsel during any stage of an investigation or proceeding under these rules.

(b) Restrictions on Representation of Respondent. A former Chair of the Board or Board member cannot represent a respondent LPO in any proceeding under these rules until three years after leaving office.

(c) Restriction on Charging Fee To Respond to Grievance. A respondent LPO may not seek to charge a grievant a fee or recover costs from a grievant for responding to a grievance unless otherwise permitted by these rules.

(d) Medical and Psychological Records. A respondent LPO must furnish written releases or authorizations to permit disciplinary counsel access to medical, psychiatric, or psychological

(d) Deceased Limited Practice Officers. Records and files relating to a deceased LPO, including permanent records, may be destroyed at any time in the Clerk's discretion. [Adoptive effective January 1, 2009.]

TITLE 4—GENERAL PROCEDURAL RULES

ELPOC 4.1 SERVICE OF PAPERS

(a) Service Required. Every pleading, every paper relating to discovery, every written request or motion other than one which may be heard ex parte, and every similar paper or document issued by the Board, the Clerk, disciplinary counsel or the respondent LPO under these rules must be served on the opposing party. If a hearing is pending and a hearing officer has been assigned, except for discovery, the party also must serve a copy on the hearing officer.

(b) Methods of Service.

(1) *Service by Mail*.

(A) Unless personal service is required or these rules specifically provide otherwise, service may be accomplished by postage prepaid mail. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.

(B) Except as provided below, service by mail must be by certified or registered mail, return receipt requested. Service may be by first class mail if:

(i) the parties so agree;

(ii) the document is a notice of dismissal by the Clerk or disciplinary counsel, a notice regarding deferral under rule 5.3(b), or a request for review of any of these notices;

(iii) one or more properly made certified mailings is returned as unclaimed; or

(iv) service is on a hearing officer.

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

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

(ii) for the Board, the Clerk or disciplinary counsel, at the address of the Association or other address that disciplinary counsel requests.

(2) *Service by Delivery*. If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

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

(A) if the respondent is found in Washington State, by personal service in the manner required for personal service of a summons in a civil action in the superior court;

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

(i) leaving a copy at the respondent's place of usual abode in Washington State with a person of suitable age and discretion then resident therein; or

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

(C) if the respondent is found outside of Washington State, then by the methods of service described in (A) or (B) above.

(c) Service Where Question of Mental Competence. If a guardian or guardian ad litem has been appointed for a respondent who has been judicially declared to be ~~of unsound mind~~incapacitated or [2]incapable of conducting ~~his or her~~their own affairs, service under sections (a) and (b) above must also be made on the guardian or guardian ad litem.

(d) Proof of Service. If personal service is required, proof of service may be made by affidavit of service, sheriff's return of service, or a signed acknowledgment of service. In other cases, proof of service may also be made by certificate of a lawyer similar to that allowed by CR 5(b)(2)(B), which certificate must state the form of mail used. Proof of service in all cases must be filed but need not be served on the opposing party.
[Adopted effective January 1, 2009.]

ELPOC 4.2 FILING; ORDERS

(a) Filing Originals. Except in matters before the Supreme Court, the original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the Clerk. Filing may be made by first class mail and is deemed accomplished on the date of mailing. Filing of papers for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

(b) Filing and Service of Orders. Any written order, decision, or ruling, except an order of the Supreme Court or an informal ruling issued under rule 10.8(e), must be filed with the Clerk, and the Clerk serves it on the respondent LPO and disciplinary counsel.
[Adopted effective January 1, 2009.]

ELPOC 4.3 PAPERS

All pleadings or other papers must be typewritten or printed, double spaced, on good quality 8-1/2 by 11-inch paper. The use of letter size copies of exhibits is encouraged if it does not impair legibility.
[Adopted effective January 1, 2009.]

ELPOC 4.4 COMPUTATION OF TIME

CR 6(a) and (e) govern the computation of time under these rules.

[Adopted effective January 1, 2009.]

ELPOC 4.5 STIPULATION TO EXTENSION OR REDUCTION OF TIME

Except for notices of appeal or matters pending before the Supreme Court, the respondent LPO and the Board, the Clerk or disciplinary counsel may stipulate in any proceeding to extension or reduction of the time requirements.
[Adopted effective January 1, 2009.]

ELPOC 4.6 ENFORCEMENT OF SUBPOENAS

(a) Authority. To enforce subpoenas issued under these rules, the Supreme Court delegates contempt authority to the Superior Courts as necessary for the Superior Courts to act under this rule.

(b) Procedure.

(1) If a person fails to obey a subpoena, or obeys the subpoena but refuses to testify or produce documents when requested, disciplinary counsel, the respondent LPO or the person issuing the subpoena may petition the Superior Court of the county where the hearing is being conducted, where the subpoenaed person resides or is found, or where the subpoenaed documents are located, for enforcement of the subpoena. The petition must:

(A) be accompanied by a copy of the subpoena and proof of service;

(B) state the specific manner of the lack of compliance; and

(C) request an order compelling compliance.

(2) Upon the filing of the petition, the Superior Court enters an order directing the person to appear before it at a specified time and place to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the Superior Court's show cause order must be served on the person.

(3) At the show cause hearing, if it appears to the Superior Court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the Superior Court enters an order requiring the person to appear at a specified time and place and testify or produce the required documents. On failing to obey this order, the person is dealt with as for contempt of court.
[Adopted effective January 1, 2009.]

TITLE 5—GRIEVANCE INVESTIGATIONS AND DISPOSITION

ELPOC 5.1 GRIEVANTS

(a) Filing of Grievance. Any person or entity may file a grievance against an LPO licensed in this state.

(b) Consent to Disclosure. By filing a grievance, the grievant consents to disclosure of the content of the grievance to the respondent LPO or to any other person contacted during the investigation

of the grievance, or to any person under rules 3.1 – 3.4, unless a protective order is issued under rule 3.2(c) or the grievance was filed under rule 5.2. By filing a grievance, the grievant also agrees that the respondent may disclose to the Clerk or disciplinary counsel investigating the grievance any information relevant to the investigation, unless a protective order is issued under rule 3.2(c).

(c) Grievant Rights. A grievant has the following rights:

(1) to be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;

(2) to have a reasonable opportunity to speak with the person assigned to the grievance, by telephone or in person, about the substance of the grievance or its status;

(3) to receive a copy of any response submitted by the respondent, except:

(A) if the response contains information of a personal and private nature about the respondent; or

(B) if the discipline committee determines that the interests of justice would be better served by not releasing the response;

(4) to submit additional supplemental written information or documentation at any time;

(5) to attend any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(c);

(6) to provide relevant testimony at any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(c);

(7) to be notified of any proposed decision to refer the respondent to diversion and to be given a reasonable opportunity to submit to the Clerk or disciplinary counsel a written comment thereon;

(8) to be advised of the disposition of the grievance; and

(9) to request reconsideration of a dismissal of the grievance as provided in rule 5.6(b).

(d) Grievant Duties. A grievant must do the following, or the grievance may be dismissed:

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

(2) assist in securing relevant evidence; and

(3) appear and testify at any hearing resulting from the grievance.

[Adopted effective January 1, 2009.]

ELPOC 5.2 CONFIDENTIAL SOURCES

ELPOC 5.7 ADVISORY LETTER

An advisory letter may be issued when a hearing does not appear warranted but it appears appropriate to caution a respondent LPO concerning ~~his or her~~their conduct. An advisory letter may be issued by the discipline committee but may not be issued when a grievance is dismissed following a hearing. An advisory letter does not constitute a finding of misconduct, is not a sanction, is not disciplinary action, and is not public information. [Adopted effective January 1, 2009.]

TITLE 6—DIVERSION

ELPOC 6.1 REFERRAL TO DIVERSION

In a matter involving less serious misconduct as defined in rule 6.2, before filing a formal complaint, disciplinary counsel or the Clerk may refer a respondent LPO to diversion. Diversion may include

- arbitration;
- mediation;
- psychological and behavioral counseling;
- monitoring;
- restitution;
- continuing education programs; or
- any other program or corrective course of action agreed to by disciplinary counsel and respondent to address respondent's misconduct.

Disciplinary counsel or the Clerk may negotiate and execute diversion contracts, monitor and determine compliance with the terms of diversion contracts, and determine fulfillment or any material breach of diversion contracts, subject to review under rule 6.9. [Adopted effective January 1, 2009.]

ELPOC 6.2 LESS SERIOUS MISCONDUCT

Less serious misconduct is conduct not warranting a sanction restricting the respondent LPO's license to practice as an LPO. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

(A) the misconduct involves the misappropriation of funds;

(B) the misconduct results in or is likely to result in substantial prejudice to a third person, absent adequate provisions for restitution;

(C) the respondent has been sanctioned in the last three years;

ELPOC 7.5 INTERIM SUSPENSIONS EXPEDITED

(a) Expedited Review. Petitions seeking interim suspension under this title receive an expedited hearing, ordinarily no later than 14 days from issuance of an order to show cause.

(b) Procedure During Court Recess. When a petition seeking interim suspension under this title is filed during a recess of the Supreme Court, the Chief Justice, the Acting Chief Justice, or the Senior Justice under SAR 10, subject to review by the full Court on motion for reconsideration, may rule on the motion for interim suspension.
[Adopted effective January 1, 2009.]

ELPOC 7.6 EFFECTIVE DATE OF INTERIM SUSPENSIONS

Interim suspensions become effective on the date of the Supreme Court's order unless the order provides otherwise.
[Adopted effective January 1, 2009.]

TITLE 8—DISABILITY PROCEEDINGS

ELPOC 8.1 ACTION ON ADJUDICATION OF INCOMPETENCY

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

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

(2) was acquitted of a crime based on insanity; [PM3]

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

(b) Notice to LPO. The Board must forthwith notify the disabled LPO and ~~his or her~~their guardian, if one has been appointed, of the transfer to disability inactive status. The Association must also notify the Supreme Court of the transfer and provide a copy of the judgment, order, or other appropriate document on which the transfer was based. [Adopted effective January 1, 2009.]

ELPOC 8.2 DETERMINATION OF INCAPACITY TO PRACTICE AS AN LPO

(a) Discipline Committee May Order Hearing. The Clerk or disciplinary counsel reports to the discipline committee on investigations into an active, suspended, or inactive respondent LPO's mental or physical capacity to practice as an LPO. The committee orders a hearing if it appears there is reasonable cause to believe that the respondent does not have the mental or physical capacity to practice as an LPO. In other cases, the committee may direct further investigation as appears appropriate or dismiss the matter.

(b) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(c) Procedure.

(1) *Applicable Rules*. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) *Appointment of Counsel*. If counsel for the respondent does not appear within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent.

(3) *Health Records*. After a review committee orders a hearing under this rule, disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the inquiry, subject to a motion to the hearing officer, or if no hearing officer has been appointed, to the chief hearing officer, to limit the scope of the requested releases or authorizations for good cause.

(4) *Examination*. Upon motion, the hearing officer, or if no hearing officer has been appointed, the chief hearing officer as defined in ELC 2.5(f), may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in determining the respondent's capacity to practice as an LPO. Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(5) *Hearing Officer Recommendation*. If the hearing officer or panel finds that the respondent does not have the mental or physical capacity to practice as an LPO, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status.

(6) *Appeal Procedure*. The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(7) *Transfer Following Board Review*. If, after review of the decision of the hearing officer or panel, the Board finds that the respondent does not have the mental or physical capacity to practice as an LPO, it must enter an order immediately transferring the respondent to disability inactive status. The transfer is effective upon service of the order under rule 4.1.

(d) Interim Suspension.

(1) When the discipline committee orders a hearing on the capacity of a respondent to practice as an LPO, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a) unless the respondent is already suspended on an interim basis.

(2) Even if the Court previously denied a petition for interim suspension under subsection (d)(1), disciplinary counsel may petition the Court for the interim suspension of a respondent under rule 7.2(a)(3) if the respondent fails:

(A) to appear for an independent examination under this rule;

(B) to waive health care provider-patient privilege as required by this rule; or

(C) to appear at a hearing under this rule.

(e) Termination of Interim Suspension. If the hearing officer or panel files a decision recommending that a respondent placed on interim suspension under this rule not be transferred to disability inactive status, upon either party's petition, the Court may terminate the interim suspension.
[Adopted effective January 1, 2009.]

ELPOC 8.3 DISABILITY PROCEEDINGS DURING THE COURSE OF DISCIPLINARY PROCEEDINGS

(a) Supplemental Proceedings on Capacity To Defend. A hearing officer or hearing panel, or chief hearing officer if no hearing officer has been appointed, must order a supplemental proceeding on the respondent LPO's capacity to defend the disciplinary proceedings if the respondent asserts, or there is reasonable cause to believe, that the respondent is incapable of properly defending the disciplinary proceeding because of mental or physical incapacity.

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

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

(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or

(3) is currently unable to practice as an LPO because of mental or physical incapacity.

(c) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(d) Procedure for Supplemental Proceedings.

(1) *Applicable Rules*. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) *Deferral of Disciplinary Proceedings*. The disciplinary proceedings are deferred pending the outcome of the supplemental proceeding.

(3) *Appointment of Counsel*. If counsel for the respondent does not appear within 20 days of notice to the respondent of the issues to be considered in a supplemental proceeding under this rule, or within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent in the supplemental proceedings.

(4) *Health Records*. Disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the determination under section (b), subject to a motion to the hearing officer to limit the scope of the requested releases or authorizations for good cause. If the respondent asserted incapacity, there is a rebuttable presumption that good cause does not exist.

(5) *Examination*. Upon motion, the hearing officer may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in the determinations to be made under

section (b). Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(6) *Failure To Appear or Cooperate*. If the respondent fails to appear for an independent examination, fails to waive health care provider-patient privilege as required in these rules, or fails to appear at the hearing, the following procedures apply:

(A) If the Association has the burden of proof, the hearing officer must hold a hearing and, if presented with sufficient evidence to determine incapacity, order the respondent transferred to disability inactive status. If there is insufficient evidence to determine incapacity, the hearing officer must enter an order terminating the supplemental proceedings and reinstating the disciplinary proceedings. A respondent who does not appear at the hearing may move to vacate the order of transfer under rule 10.6(c).

(B) If the respondent has the burden of proof, the hearing officer must enter an order terminating the supplemental proceedings and resuming the disciplinary proceedings.

(7) *Hearing Officer Decision*.

(A) Capacity To Defend and practice as an LPO. If the hearing officer or panel finds that the respondent is capable of defending ~~himself or herself~~themself and has the mental and physical capacity to practice as an LPO, the disciplinary proceedings resume.

(B) Capacity To Defend with Counsel. If the hearing officer or panel finds that the respondent is not capable of defending ~~himself or herself~~themself in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint a member of the Association as counsel for the respondent in the disciplinary proceeding.

(C) Finding of Incapacity. If the hearing officer or panel finds that the respondent either does not have the mental or physical capacity to practice as an LPO, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status. The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(8) *Transfer Following Board Review*.

(A) The Board must enter an order immediately transferring the respondent to disability inactive status if after review of a hearing officer's or panel's recommendation of transfer to disability inactive status, the Board finds that the respondent:

(i) does not have the mental or physical capacity to practice as an LPO; or

(ii) is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity.

(B) The transfer is effective upon service of the order on the respondent under rule 4.1.

(2) set forth the respondent's prior disciplinary record or its absence;

(3) state that the stipulation is not binding on the Association as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding; and

(4) fix the amount of costs and expenses to be paid by the respondent.

(c) Approval.

(1) *By Hearing Officer*. A hearing officer or panel may approve a stipulation disposing of a matter pending before the officer or panel, unless the stipulation requires the respondent's license suspension or revocation. This approval constitutes a final decision and is not subject to further review.

(2) *By Board*. All other stipulations must be presented to the Board. The Board reviews a stipulation based solely on the record agreed to by the respondent LPO and disciplinary counsel or the Clerk. All parties to the stipulation may jointly ask the Chair to permit them to address the Board regarding a stipulation. Such presentations are at the Chair's discretion. The Board may approve, conditionally approve, or reject a stipulation. Regardless of the provisions of rule 3.3(a), the Board may direct that information or documents considered in reviewing a stipulation be kept confidential.

(d) Conditional Approval. The Board may condition its approval of a stipulation on the agreement by the respondent and disciplinary counsel or the clerk to a different disciplinary action, probation, restitution, or other terms the Board deems necessary to accomplish the purposes of LPO discipline. If the Board conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the Chair, all parties to the stipulation serve on the Clerk written consent to the conditional terms in the Board's order.

(e) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, all parties to the stipulation may serve on the Clerk a joint motion for reconsideration and may ask to address the Board on the motion.

(f) Stipulation Rejected. The Board's order rejecting a stipulation must state the reasons for the rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any disciplinary, civil, or criminal proceeding.

(g) Failure To Comply. A respondent's failure to comply with the terms of an approved stipulation may be grounds for discipline.
[Adopted effective January 1, 2009.]

ELPOC 9.2 VOLUNTARY CANCELLATION IN LIEU OF REVOCATION

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

respondent intends to submit a voluntary cancellation request and asks the Clerk or disciplinary counsel to prepare a statement of alleged misconduct and to provide a declaration of costs. After receiving the statement and the declaration of costs, if any, the respondent may resign by submitting to disciplinary counsel or the Clerk a signed voluntary cancellation, sworn to or affirmed under oath and notarized, that:

(1) includes disciplinary counsel's or the Clerk's statement of the alleged misconduct and either an admission of that misconduct or a statement that while not admitting the misconduct the respondent agrees that the Board could prove by a clear preponderance of the evidence that the respondent committed violations sufficient to result in the revocation of respondent's LPO certification;

(2) affirmatively acknowledges that the voluntary cancellation is permanent including the statement:

I understand that my voluntary cancellation is permanent and that any future application by me for reinstatement as an LPO is currently barred. If the Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by one whose certification has been revoked for ethical misconduct, and that, if I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this voluntary cancellation was based.;

(3) assures that the respondent will:

(A) notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license of the voluntary cancellation in lieu of revocation;

(B) seek to resign permanently from any such license; and

(C) provide disciplinary counsel or the Clerk with copies of any of these notifications and any responses;

(4) states that when applying for any employment or license the respondent agrees to disclose the voluntary cancellation in lieu of revocation in response to any question regarding disciplinary action or the status of the respondent's limited license to practice law;

(5) states that the respondent agrees to pay any restitution or additional costs and expenses ordered by the discipline committee, and attaches payment for costs as described in section (f) below, or states that the respondent will execute a confession of judgment or deed of trust as described in section (f); and

(6) states that when the voluntary cancellation becomes effective, the respondent will be subject to all restrictions that apply to an LPO whose certification has been revoked.

(c) Public Filing. Upon receipt of a voluntary cancellation meeting the requirements set forth above, and any executed confession of judgment or deed of trust required under section (f), disciplinary counsel promptly causes it to be filed with the Clerk as a public and permanent record of the Board.

(d) Effect. A voluntary cancellation under this rule is effective upon its filing with the

Clerk. All disciplinary proceedings against the respondent terminate except the Clerk or disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances to create a record of the respondent's actions. The Association immediately notifies the Supreme Court of a voluntary cancellation under this rule and the respondent's name is forthwith stricken from the roll of LPOs. Upon filing of the voluntary cancellation, respondent must comply with the same duties under Title 14 as an LPO whose license has been revoked and comply with all restrictions that apply to an LPO whose license has been revoked. Notice is given of the voluntary cancellation in lieu of revocation under rule 3.5.

(e) Voluntary Cancellation is Permanent. Voluntary cancellation under this rule is permanent. A respondent who has voluntarily cancelled under this rule will never be eligible to apply and will not be considered for admission to the practice of law nor will the respondent be eligible for admission or reinstatement for any limited practice of law.

(f) Costs and Expenses.

(A) If a respondent voluntarily cancels under this rule, the expenses under rule 13.9(c) are $1,000 for any proceedings for which an answer was not due when the respondent notified disciplinary counsel of the respondent's intent to voluntarily cancel under section (b). With the voluntary cancellation, the respondent must pay this $1,000 expense, plus all actual costs for which disciplinary counsel or the Clerk provides documentation, up to an additional $1,000. If the respondent demonstrates inability to pay these costs and expenses, instead of paying this amount, the respondent must execute, in disciplinary counsel's or the Clerk's discretion, a confession of judgment or a deed of trust for that amount. Disciplinary counsel may file a claim under section (g) for costs not covered by the payment, confession of judgment, or deed of trust.

(B) If at the time respondent serves the notice of intent to voluntarily cancel, an additional proceeding is pending against the respondent for which an answer has been filed or is due, disciplinary counsel may also file a claim under section (g) for costs and expenses for that proceeding.

(g) Review of Costs, Expenses, and Restitution. Any claims for restitution or for costs and expenses not resolved by agreement between the Clerk or disciplinary counsel and the respondent may be submitted at any time, including after the voluntary cancellation, to the discipline committee in writing for the determination of appropriate restitution or costs and expenses. The discipline committee's order is not subject to further review and is the final assessment of restitution or costs and expenses for the purposes of rule 13.9 and may be enforced as any other order for restitution or costs and expenses. The record before the discipline committee and the discipline committee's order is public information under rule 3.1(b). [Adopted effective January 1, 2009.]

TITLE 10—HEARING PROCEDURES

ELPOC 10.1 GENERAL PROCEDURE

(a) Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated, apply directly. A party may not move for summary judgment, but either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding. Motions for

[Adopted effective January 1, 2009.]

ELPOC 10.13 DISCIPLINARY HEARING

(a) Representation. The Board is represented at the hearing by disciplinary counsel. The respondent LPO may be represented by counsel.

(b) Respondent Must Attend. A respondent given notice of a hearing must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. If, after proper notice, the respondent fails to attend the hearing, the hearing officer or panel:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and

(2) must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:

(A) the facts stated are within the witness's personal knowledge;

(B) the facts are set forth with particularity; and

(C) it shows affirmatively that the witness could testify competently to the stated facts.

(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

(d) Witnesses. Except as provided in subsection (b)(2) and rule 10.6, witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by CR 32. Testimony must be recorded by a court reporter or, if allowed by the hearing officer, by tape recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(e) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this rule and with all lawful orders made by the hearing officer under this rule. Subpoenas may be enforced under rule 4.6. The hearing officer or panel may additionally draw adverse inferences as appear warranted by the respondent's failure to respond.

(f) Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the hearing officer or panel files a decision.
[Adopted effective January 1, 2009.]

ELPOC 10.14 EVIDENCE AND BURDEN OF PROOF

(a) Proceedings Not Civil or Criminal. Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but

are sui generis hearings to determine if an LPO's conduct should have an impact on ~~his or her~~their license to practice as an LPO.

(b) Burden of Proof. Disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a formal complaint charges a respondent LPO with an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.

(d) Rules of Evidence. Consistent with section (a) of this rule, the following rules of evidence apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if in the hearing officer's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(2) if not inconsistent with subsection (1), the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings;

(3) documents may be admitted in the form of copies or excerpts, or by incorporation by reference;

(4) *Official Notice*.

(A) official notice may be taken of:

(i) any judicially cognizable facts;

(ii) technical or scientific facts within the hearing officer's or panel's specialized knowledge; and

(iii) codes or standards adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association.

(B) the parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material noticed and the sources thereof, including any staff memoranda and data, and they shall have an opportunity to contest the facts and material noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(e) APA as Guidance. The evidence standards in this rule are based on the evidence provisions of the Washington Administrative Procedures Act, which, when not inconsistent with these standards, should be looked to for guidance. "Shall" has the meaning in this rule ascribed to it in the APA.
[Adopted effective January 1, 2009.]

ELPOC 10.15 BIFURCATED HEARINGS

describing in detail the additional evidence sought to be admitted and any reasons why it was not presented at the previous hearing. The Board may grant or deny the request in its discretion. [Adopted effective January 1, 2009.]

ELPOC 11.12 DECISION OF BOARD

(a) Basis for Review. Board review is based on the hearing officer or panel's Decision, any hearing panel member's dissent, the parties' briefs filed under rule 11.8 or 11.9, and the record on review.

(b) Standards of Review. The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer or panel cannot be considered by the Board.

(c) Oral Argument. The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to file their ~~his or her~~ last brief, including a response or reply, under rule 11.8 or 11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the time, place, and terms for oral argument.

(d) Action by Board. Neither the Chair nor any members of the Board who also serve on the Discipline Committee are, by virtue of that office or service, disqualified from participating in the review before the Board or from participating in the Board's vote on a matter. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer or panel. The Board may also direct that the hearing officer or panel hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) Order or Opinion. The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer or panel, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. A copy of the complete decision is served by the Clerk on the parties.

(f) Procedure to Amend, Modify, or Reverse if No Appeal.

(1) If the Board intends to amend, modify, or reverse the hearing officer or panel's recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.

(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.

(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.

(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request for reconsideration, the Board issues an order or opinion after reconsideration under section (e).

(g) Decision Ordering Dismissal, Admonition or Reprimand Final Unless Review Granted. The Board's decision of dismissal, admonition or reprimand is final if neither party files a petition for review within the time permitted by title 12 or upon the Supreme Court's denial of a petition for discretionary review.

(h) Decision Requiring Supreme Court Action. After the time for filing a petition for review has expired or a petition has been denied, if the recommendation of the Board is that the respondent LPO's certification be suspended or revoked, that recommendation along with the record shall be transmitted to the Supreme Court for entry of an appropriate order or other action as the Court deems appropriate under Title 12.
[Adopted effective January 1, 2009.]

ELPOC 11.13 CHAIR MAY MODIFY REQUIREMENTS

Upon written motion filed with the Clerk by either party, for good cause shown, the Chair may modify the time periods in Title 11, and make other orders as appear appropriate to assure fair and orderly Board review. However, the time period for filing a notice of appeal in rule 11.2(b)(3)(A) may not be extended or altered.
[Adopted effective January 1, 2009.]

TITLE 12—REVIEW BY SUPREME COURT

ELPOC 12.1 APPLICABILITY OF RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure serve as guidance for review under this title except as to matters specifically dealt with in these rules.
[Adopted effective January 1, 2009.]

ELPOC 12.2 METHODS OF SEEKING REVIEW

(a) Two Methods for Seeking Review of Board Decisions. The methods for seeking Supreme Court review of Board decisions entered under rule 11.12(e) are: review as a matter of right, called "appeal," and review with Court permission, called "discretionary review." Both "appeal" and "discretionary review" are called "review."

(b) Power of Court Not Affected. This rule does not affect the Court's power to review any Board decision recommending suspension or revocation and to exercise its inherent and exclusive jurisdiction over the LPO discipline and disability system. The Court notifies the respondent LPO and disciplinary counsel of the Court's intent to exercise sua sponte review within 90 days of the Court receiving notice of the decision under rule 3.5(a), rule 7.1(h), or otherwise.
[Adopted effective January 1, 2009.]

ELPOC 12.3 APPEAL

(a) Respondent's Right to Appeal. The respondent LPO has the right to appeal a Board decision recommending suspension or revocation. There is no other right of appeal.

(3) the record before the Board;

(4) the transcript of any oral argument before the Board; and

(5) any other portions of the record before the hearing officer, including any public file documents or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within ten days of entry of an order assessing costs under rule 13.9(e), the Clerk should transmit it to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under rule 13.9(d).

(e) Additions to Record. Either party may at any time move the Court for an order directing the transmittal of additional portions of the record to the Court.
[Adopted effective January 1, 2009.]

ELPOC 12.6 BRIEFS

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

(b) Time for Filing. The brief of the party seeking review should be filed with the Supreme Court within 30 days of service under rule 12.5(c) of the list of portions of the record transmitted to the Court.

(c) Answering Brief. The answering brief of the other party should be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. A reply brief of a party seeking review should be filed with the Court within the sooner of 20 days after service of the answering brief or 14 days before oral argument. A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.

(e) Briefs When Both Parties Seek Review. When both the respondent LPO and disciplinary counsel seek review of a Board decision, the respondent is deemed the party seeking review for the purposes of this rule. In that case, disciplinary counsel may file a brief in reply to any response the respondent has made to the issues presented by disciplinary counsel, to be filed with the Court the sooner of 20 days after service of the respondent's reply brief or 14 days before oral argument.

(f) Form of Briefs. Briefs filed under this rule must conform as nearly as possible to the requirements of RAP 10.3 and 10.4. Public file documents should be abbreviated PF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Clerk. The Supreme Court Clerk reproduces and distributes briefs as provided in RAP 10.5.

judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.
[Adopted effective January 1, 2009.]

TITLE 14—DUTIES ON SUSPENSION OR REVOCATION

ELPOC 14.1 NOTICE TO CLIENTS IN WHICH LPO IS PROVIDING SERVICES; PROVIDING PROPERTY BELONGING TO CLIENTS IN WHICH LPO IS PROVIDING SERVICES

(a) Providing Clients' Property. An LPO who has been suspended, revoked, or transferred to disability inactive status must provide each client to a transaction in which the LPO is providing services with the client's assets, files, and other documents in the LPO's possession.

(b) Notice if Suspended for 60 Days or Less. An LPO who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client to a transaction in which the LPO is providing services, of the suspension, the reason therefor, and of the LPO's consequent inability to act as an LPO after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another LPO; and

(2) notify the LPO's employer and all others seeking to employ the LPO of the suspension, the reason therefor, and consequent inability to act during the suspension.

(c) Notice if Otherwise Suspended or Revoked. An LPO whose license has been revoked, or suspended for more than 60 days as a disciplinary sanction, suspended for nonpayment of fees or under Title 7 or APR 12 must within 10 days of the effective date of the revocation or suspension notify every client to a transaction in which the LPO is providing services of the LPO's inability to act as the LPO for the transaction and the reason therefor, and advise the client to seek LPO services elsewhere.

(d) Notice if Transferred to Disability Inactive Status. An LPO transferred to disability inactive status, or ~~his or her~~their guardian if one has been appointed, must give all notices required by section (c), except that the notices need not refer to disability.
[Adopted effective January 1, 2009.]

ELPOC 14.2 LPO TO DISCONTINUE PRACTICE AS AN LPO

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

preclude a revoked or suspended LPO, or an LPO transferred to disability inactive status, from disbursing assets held by the LPO to parties to transactions or other persons.
[Adopted effective January 1, 2009.]

ELPOC 14.3 AFFIDAVIT OF COMPLIANCE

Within 10 days of the effective date of an LPO's revocation, suspension, or transfer to disability inactive status, the LPO must serve on the Clerk an affidavit stating that the LPO has fully complied with the provisions of this title. The affidavit must also provide a mailing address where communications to the LPO may thereafter be directed. The LPO must attach to the affidavit copies of the form letters of notification sent to the parties to transactions in which the LPO was providing services together with a list of names and addresses of all persons, entities or parties to whom notices were sent. The affidavit is a confidential document except the LPO's mailing address is treated as a change of mailing address.
[Adopted effective January 1, 2009.]

ELPOC 14.4 LPO TO KEEP RECORDS OF COMPLIANCE

When an LPO's certification has been revoked, suspended, or transferred to disability inactive status the LPO must maintain written records of the various steps taken by ~~him or her~~them under this title, so that proof of compliance will be available in any subsequent proceeding. [Adopted effective January 1, 2009.]

TITLE 15—AUDITS AND TRUST ACCOUNT OVERDRAFT NOTIFICATION

ELPOC 15.1 AUDIT AND INVESTIGATION OF BOOKS AND RECORDS

The Board and its Chair have the following authority to examine, investigate, and audit the books and records of any LPO and Closing Firm to ascertain and obtain reports on whether the LPO or Closing Firm has been and is complying with LPORPC 1.12A and B:

(a) Random Examination. The Board may authorize examinations of the books and records of any LPO or Closing Firm selected at random. Only the books and records of transactions in which an LPO participated may be examined in an examination under this section.

(b) Particular Examination. Upon receipt of information that a particular LPO or Closing Firm may not be in compliance with LPORPC 1.12A and B the Chair may authorize an examination limited to the LPO or Closing Firm's books and records. Information may be presented to the Chair without notice to the LPO or Closing Firm. Disclosure of this information is subject to rules 3.1-3.4.

(c) Audit. After an examination under section (a) or (b), if the Chair determines that further examination is warranted, the Chair may order an appropriate audit of the LPO's or Closing Firm's books and records, including verification of the information in those records from available sources.
[Adopted effective January 1, 2009.]

ELPOC 15.2 COOPERATION OF LPO

TITLE 7. INFORMATION ABOUT LEGAL SERVICES

TITLE 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

APPENDIX.

[Reserved.]

FUNDAMENTAL PRINCIPLES OF PROFESSIONAL CONDUCT FOR AN LLLT*

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

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

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

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

* These Fundamental Principles of the Rules of Professional Conduct are taken from the former Preamble to the Rules of Professional Conduct for lawyers as approved and adopted by the Supreme Court in 1985. Washington lawyers and judges have looked to the 1985 Preamble of the Rules of Professional Conduct as a statement of our overarching aspiration to faithfully serve the best interests of the public, the legal system, and the efficient administration of justice. The former Preamble is preserved here to inspire LLLTs to strive for the highest possible degree of ethical conduct, and these Fundamental Principles should inform many of our decisions as LLLTs. The Fundamental Principles do not, however, alter any of the obligations expressly set forth in the Rules of Professional Conduct, nor are they intended to affect in any way the manner in which the Rules are to be interpreted or applied.

PREAMBLE AND SCOPE

PREAMBLE: AN LLLT'S RESPONSIBILITIES

[1] An LLLT is authorized to provide limited legal services that lie within the scope of the practice that the LLLT is licensed to undertake. Within that scope, an LLLT is a member of the legal profession, is a representative of clients, and has a special responsibility for the quality of justice.

[2] As a representative of clients within a limited scope, an LLLT performs various functions. As advisor, an LLLT provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an evaluator, an LLLT acts by examining a client's legal affairs and reporting about them to the client or to others. To the extent an LLLT is allowed to act as an advocate or as a negotiator under APR 28, an LLLT conscientiously acts in the best interest of the client, and seeks a result that is advantageous to the client but consistent with the requirements of honest dealings with others.

(e) "Legal practitioner" denotes a lawyer or a limited license legal technician.

(f) "Limited License Legal Technician" or "LLLT" denotes a person qualified by education, training, and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations.

(g) "ELLLTC" denotes the Washington Supreme Court's Rules for Enforcement of Limited License Legal Technician Conduct.

(h) "Representation" or "represent," when used in connection with the provision of legal assistance by an LLLT, denotes limited legal assistance as set forth in APR 28 to a pro se client.

Comment

[1] Rule 1.0A was adapted from Lawyer RPC 1.0 with no substantive changes and applies to LLLTs analogously. Rule 1.0B adds terms that require definitions in light of the licensing of LLLTs as legal practitioners in Washington.

[2] The definition of the term "lawyer" is taken from APR 28(B). When used in the LLLT RPC, however, the term is used to denote a lawyer who is acting within the scope of the lawyer's license and in accordance with the Lawyer RPC. So, for example, the authorization in Rule 5.9 to enter into a law partnership with a lawyer requires that the lawyer is admitted and authorized to practice in the State of Washington.

[3] The terms "firm" and "law firm" are used interchangeably in the Lawyer RPC and also in these Rules. An LLLT should be cautious, however, in using the words "law firm" to describe a law practice that includes only LLLTs. The name and description of an LLLT's practice should not imply that a lawyer is associated with the firm unless that is the case. Any firm name used for an LLLT practice that does not include a lawyer must include the words "Legal Technician." See LLLT RPC 7.1 cmt. 2.

TITLE 1. CLIENT-LLLT RELATIONSHIP

LLLT RPC 1.1
COMPETENCE

An LLLT shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Comment

[1] Rule 1.1 was adapted from Lawyer RPC 1.1 with no substantive changes and applies to LLLTs analogously.

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

(a) Subject to paragraphs (c), (d), and (g), an LLLT shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. An LLLT may take such action on behalf of the client as is impliedly authorized to carry out the representation. An LLLT shall abide by a client's decision whether to settle a matter.

(b) An LLLT's representation of a client does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) An LLLT must limit the scope of the representation and provide disclosures informing a potential client as required by these Rules and APR 28.

(d) An LLLT shall not counsel a client to engage, or assist a client, in conduct that the LLLT knows is criminal or fraudulent.

(e) [Reserved.]

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

(g) Nothing in this Rule expands an LLLT's authorized scope of practice provided in APR 28.

Comment

[1] Rule 1.2 was adapted from Lawyer RPC 1.2 with changes to reflect the limited scope of practice authorized by APR 28. Otherwise, it applies to LLLTs analogously.

[2] Paragraph (a) was modified from the Lawyer RPC to exclude references to criminal cases, and paragraph (d) was modified from the Lawyer RPC to exclude (and therefore prohibit) an LLLT from discussing with a client the legal consequences of any proposed criminal or fraudulent conduct and assisting a client in determining the validity, scope, meaning, or application of the law with respect to any such conduct. In circumstances where a client has engaged or may engage in conduct that the LLLT knows is criminal or fraudulent, the LLLT shall not provide services related to such conduct and shall inform the client that the client should seek the services of a lawyer.

[3] Unlike a lawyer, an LLLT may perform only limited services for a client. Before performing any services for a fee, an LLLT must enter into a written contract with the client as required by APR 28(G)(2).

[4] Additional requirements concerning the authorized scope of an LLLT's practice are imposed by APR 28. An LLLT must ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If not, the LLLT shall not render any legal assistance on the issue and must advise the client to seek the services of a lawyer. If the issue does lie within the defined practice area for which the LLLT is licensed, then the LLLT is authorized to render the services that are enumerated in APR 28.

[5] An LLLT must personally perform the authorized services for the client and may not delegate those services to a person who is not either an LLLT or a lawyer. This prohibition, however, does not prevent a person who is neither an LLLT nor a lawyer from performing translation services. APR 28(G)(1).

[6] An LLLT may not provide services that exceed the scope of the LLLT's authority under APR 28. If an issue arises for which the client needs services that exceed the scope of the LLLT's authority, the LLLT must inform that client that the client should seek the services of a lawyer. APR 28(G)(3).

[7] [Reserved.]

[8] Certain conduct and services are specifically prohibited to an LLLT by APR 28(H).

LLLT RPC 1.3
DILIGENCE

An LLLT shall act with reasonable diligence and promptness in representing a client.

Comment

[1] Rule 1.3 was adapted from Lawyer RPC 1.3 with no substantive changes and applies to LLLTs analogously. *See also* Comment [5] to Rule 1.2.

LLLT RPC 1.4
COMMUNICATION

(a) An LLLT shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the LLLT's conduct when the LLLT knows that the client expects assistance not permitted by the LLLT RPC or other law.

(b) An LLLT shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] Rule 1.4 was adapted from Lawyer RPC 1.4 with no substantive changes and applies to LLLTs analogously.

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Comment

[1] Rule 1.9 was adapted from Lawyer RPC 1.9 with no substantive changes and applies to LLLTs analogously.

LLLT RPC 1.10
IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) Except as provided in paragraph (e), while LLLTs are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the disqualified LLLT and does not present a significant risk of materially limiting the representation of the client by the remaining LLLTs in the firm.

(b) When an LLLT has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated LLLT and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated LLLT represented the client; and

(2) any LLLT remaining in the firm has information that is material to the matter and that is protected by Rules 1.6 and 1.9(c).

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of LLLTs associated in a firm with former or current government LLLTs is governed by Rule 1.11.

(e) When the prohibition on representation under paragraph (a) is based on Rule 1.9(a) or

(b) and arises out of the disqualified LLLT's association with a prior firm, no other LLLT in the firm shall knowingly represent a person in a matter in which that LLLT is disqualified unless:

(1) the personally disqualified LLLT is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;

(2) the former client of the personally disqualified LLLT receives notice of the conflict and the screening mechanism used to prohibit dissemination of information relating to the former representation;

(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified LLLT before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified LLLT serves on ~~his or her~~their former firm and former client an affidavit attesting that the personally disqualified LLLT will not participate in the matter and will not discuss the matter or the representation with any other LLLT or employee of ~~his or her~~ their current firm, and attesting that during the period of the LLLT's personal disqualification those LLLTs, or employees who do participate in the matter will be apprised that the personally disqualified LLLT is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified LLLT. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The firm, the personally disqualified LLLT, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.

(f) When LLLTs and lawyers are associated in a firm, a lawyer's conflict of interest under Lawyer RPC 1.7 or Lawyer RPC 1.9 is imputed to LLLTs in the firm in the same way as conflicts are imputed to LLLTs under this Rule. Each of the other provisions of this Rule also applies in the same way when lawyer conflicts are imputed to LLLTs in the firm.

Comment

[1] Rule 1.10 was adapted from Lawyer RPC 1.10 with no substantive changes except to reflect the fact that LLLTs and lawyers may practice in a firm together. The general rules concerning imputation of conflicts of interest apply to LLLTs and firms in which both LLLTs and lawyers are associated analogously.

LLLT RPC 1.11
SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly permit, an LLLT who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the LLLT participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(2) a person who is not an LLLT is a corporate director or officer (other than as secretary or treasurer) thereof or occupies the position of similar responsibility in any form of association
other than a corporation; or

(3) a person who is not an LLLT has the right to direct or control the professional judgment of an LLLT.

Comment

[1] This Rule was adapted from Lawyer RPC 5.4 with no substantive changes except to change references to a "nonlawyer" to "person who is not an LLLT" to avoid confusion. It applies to LLLTs analogously.

[2] Rule 5.4 does not prohibit lawyers and LLLTs from sharing fees and forming business structures to the extent permitted by Rule 5.9.

LLLT RPC 5.5
UNAUTHORIZED PRACTICE OF LAW

(a) An LLLT shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) [Reserved.]

(c) [Reserved.]

(d) [Reserved.]

Comment

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

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

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

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

LLLT RPC 5.6
RESTRICTIONS ON RIGHT TO PRACTICE

An LLLT shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of an LLLT or lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the LLLT's right to practice is part of the settlement of a client controversy.

Comment

[1] This Rule was adapted from Lawyer RPC 5.6 with no substantive changes except to reflect that LLLTs and lawyers may practice in the same firm. It applies to LLLTs and to firms in which both LLLTs and lawyers are associated analogously.

LLLT RPC 5.7
RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) An LLLT shall be subject to the LLLT RPC with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the LLLT in circumstances that are not distinct from the LLLT's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the LLLT individually or with others if the LLLT fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-LLLT relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and

JUDICIAL AND LEGAL OFFICIALS

(a) An LLLT shall not make a statement that the LLLT knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications, integrity, or record of a judge, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) [Reserved.]

Comment

[1] Rule 8.2(a) was adapted from Lawyer RPC 8.2(a) with no substantive changes and applies to LLLTs analogously.

[2] Lawyer Rule 8.2(b) pertains to lawyers who are candidates for judicial office. Judges in the judicial branch of the state of Washington must be lawyers. Accordingly, Rule 8.2(b) does not apply to LLLTs and is reserved.

LLLT RPC 8.3
REPORTING PROFESSIONAL MISCONDUCT

(a) An LLLT who knows that another LLLT or a lawyer has committed a violation of the applicable Rules of Professional Conduct that raises a substantial question as to that LLLT's or that lawyer's honesty, trustworthiness, or fitness as an LLLT or lawyer in other respects, should inform the appropriate professional authority.

(b) An LLLT who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office should inform the appropriate authority.

(c) This Rule does not permit an LLLT to report the professional misconduct of another LLLT, a lawyer, or a judge to the appropriate authority if doing so would require the LLLT to disclose information otherwise protected by Rule 1.6.

Comment

[1] This Rule was adapted from Lawyer RPC 8.3 with no substantive changes except to reflect that LLLTs have the same rights and responsibilities with respect to the actions of lawyers that they have with respect to the actions of LLLTs. It applies to LLLTs analogously.

LLLT RPC 8.4
MISCONDUCT

It is professional misconduct for an LLLT to:

(a) violate or attempt to violate the LLLT RPC, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the LLLT's honesty, trustworthiness, or fitness as an LLLT in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the LLLT Rules of Professional Conduct or other law;

(f) knowingly assist

(1) a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law or

(2) a lawyer in conduct that is a violation of the lawyer Rules of Professional Conduct or other law;

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the LLLT's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This Rule shall not limit the ability of an LLLT to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward LLLTs, lawyers, judges, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict an LLLT from assisting a client to advance material factual or legal issues or arguments.

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of ~~his or her~~ their conduct as an LLLT, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;

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

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

(l) violate a duty or sanction imposed by or under the ELLLTC in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELLLTC 1.5;

(m) [Reserved.];

(n) engage in conduct demonstrating unfitness to practice law; or

(o) violate or attempt to violate APR 28 (F)-(H) or Appendix APR 28 Regulation 2.

Comment

[1] This Rule was adapted from Lawyer RPC 8.4 with no substantive changes except as discussed in these Comments, and otherwise applies to LLLTs analogously.

[2] An LLLT holds a unique form of license to practice law. As a legal professional, an LLLT has a duty to uphold the integrity of the justice system and of those who are authorized to participate in it as judges, lawyers, and LLLTs. Rule 8.4(f)(1) prohibits an LLLT from knowingly assisting a judge or judicial officer in conduct that violates applicable rules of judicial conduct or other law. Rule 8.4(f)(2) adds a prohibition against knowingly assisting a lawyer in conduct that violates the Lawyer RPC or other law. Rule 8.4(f)(2) is substantially identical to Rule 8.4(f)(1) except for its reference to the applicable code of conduct and should be interpreted and applied analogously. Similarly, Rule 8.4(h) has been modified to reflect that an LLLT's obligation to avoid conduct that is prejudicial to the administration of justice extends to an LLLT's conduct toward lawyers.

[3] Lawyer Rule 8.4(m) pertains to lawyers who serve as judges. Judges in the judicial branch of the state of Washington must in nearly all instances be lawyers. Accordingly, because Rule 8.4(m) will have little or no applicability to LLLTs, it is reserved.

[4] LLLTs are subject to discipline when they violate or attempt to violate the LLLT RPC, knowingly assist or induce another to do so, or do so through the acts of another, as when they require or instruct an agent to do so on the LLLT's behalf. In this way, LLLTs are held to the same standards that apply to lawyers. Rule 8.4(o), which does not appear in the Lawyer RPC, states that violating or attempting to violate APR 28(F-H) or Appendix APR 28 Regulation 2 is professional misconduct that subjects an LLLT to discipline.

LLLT RPC 8.5
DISCIPLINARY AUTHORITY

(a) Disciplinary Authority. An LLLT licensed to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the LLLT's conduct occurs.

(b)[Reserved.]

(c) [Reserved.]

Comment

[1] The first sentence of Rule 8.5 was adapted from the first sentence of Lawyer RPC 8.5 with no substantive changes and applies to LLLTs analogously.

[2] An LLLT holds a unique form of license to practice law. Unlike lawyers, LLLTs are not recognized licensed legal practitioners in jurisdictions other than Washington. With the exception of the first sentence of Lawyer RPC 8.5, that rule applies either to the conduct of lawyers from this jurisdiction who practice law in another jurisdiction, lawyers from another